GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

LAW ENFORCEMENT COMMITTEE

Doubletree by Hilton Austin

Austin, Texas

APRIL 4, 2016

VOTING MEMBERS

Doug Boyd...................................................Texas
Jason Brand..................................................USCG
Dale Diaz...................................................Mississippi
Dave Donaldson..............................................GSMFC
Campo Matens............................................Louisiana
Roy Williams..............................................Florida

NON-VOTING MEMBERS

Kevin Anson (designee for Chris Blankenship).................Alabama
Martha Bademan (designee for Nick Wiley)......................Florida
Leann Bosarge..............................................Mississippi
Roy Crabtree..................NMFS, SERO, St. Petersburg, Florida
Myron Fischer (designee for Patrick Banks)..................Louisiana
John Greene.................................................Alabama
Kelly Lucas (designee for Jamie Miller)......................Mississippi
Lance Robinson (designee for Robin Riechers)................Texas
John Sanchez.................................................Florida
Greg Stunz...................................................Texas
Ed Swindell.................................................Louisiana
David Walker...............................................Alabama

STAFF

Steven Atran.............................................Senior Fishery Biologist
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Douglas Gregory........................................Executive Director
Karen Hoak..............................Administrative and Financial Assistant
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Ken Haddad .................. American Sportfishing Association, FL
Chad Hanson ....................................................... Pew
Bill Kelly ............................................................... FKCFA, FL
Mark Kinsey ........................................................... 
Ed Lello ................................................................. Austin, TX
Clay Porch ............................................................ SEFSC
Brandi Reeder ........................................................ TPWD
Clarence Seymour ....................................................
TABLE OF MOTIONS

PAGE 13: Motion to approve the forms as revised. The motion carried on page 13.
The Law Enforcement Committee of the Gulf of Mexico Fishery Management Council convened at the Doubletree by Hilton Hotel, Austin, Texas, Monday afternoon, April 4, 2016, and was called to order at 4:10 p.m. by Chairman Doug Boyd.

ADOPTION OF AGENDA

APPROVAL OF MINUTES

ACTION GUIDE AND NEXT STEPS

CHAIRMAN DOUG BOYD: I am going to call the Law Enforcement Committee together. Members of the committee are myself, Doug Boyd, Chair; Lieutenant Commander Jason Brand is Vice Chair, and he is here somewhere; Dale; Dave Donaldson; Camp Matens; and Roy Williams. We are missing one of those persons, I think.

The first thing is the Adoption of the Agenda. Does anybody have any changes or additions to the agenda? I do, but I will wait to hear from anybody else on the committee. I do have a change for the committee.

We have Other Business, and a lot of that other business has been taken up in some of the other committees and Steven has reported on that. We have the Selection of the Recipient of the Officer of the Year Award, and we’re going to be discussing some of the qualifications of those people, and I would like to recommend to the council, to the committee, that we do that in closed session. I would like to move Number V down to Number VI and Number VI up to Number V. With the concurrence of our attorney, I would like to ask for a closed session for the discussion of the personal qualifications of the Officer of the Year Award. Does anybody have any objection to that? Mara.

MS. MARA LEVY: I think that that would qualify as a discussion of internal administrative matters that you could hold a short closed session for.

CHAIRMAN BOYD: Thank you. Any objection to the changes that I have proposed in the agenda? Mr. Chairman, are you all right with that?

MR. KEVIN ANSON: It sounds great.

CHAIRMAN BOYD: All right. Moving on to Approval of the Minutes, any discussion about the minutes or any changes or corrections in the minutes? All right. Steven, the Action Guide and Next Steps.

MR. STEVEN ATRAN: Thank you, Mr. Chairman. I’m not going to
read the next steps. It’s just a brief description of what we’re expected to do for each agenda item, and these are fairly simple items, except maybe for selecting the Officer of the Year.

CHAIRMAN BOYD: Okay. Next on the agenda is Tab L, Number 4(a), and Steven is going to take us through some of the implications of the nine-mile reef fish boundary and the others that are listed there. Steven.

LAW ENFORCEMENT TECHNICAL COMMITTEE SUMMARY

ENFORCEMENT IMPLICATIONS OF THE LOUISIANA, MISSISSIPPI, AND ALABAMA NINE-MILE REEF FISH BOUNDARY

MR. ATRAN: Thank you. Just to let you know, there were some comments on several of the amendments and action that we’ve working on. Some of these, we have already reviewed in the Shrimp Committee and the Mackerel Committee. The rest, I believe, fall under Reef Fish, and so we will review the LETC comments for the reef fish amendments at the time that we get to them in the Reef Fish Committee rather than here, if that’s okay with you. Okay.

The first item that the Law Enforcement Technical Committee reviewed, and this was a joint meeting of the Law Enforcement Technical Committee and the Gulf States Marine Fisheries Commission Law Enforcement Committee, which, except for a couple of individuals, is pretty much the same people, was to discuss any enforcement implications of the new nine-mile reef fish boundary that Congress just implemented off the coast of Louisiana, Mississippi, and Alabama.

There could be some confusion about exactly what rules fishermen have to follow within this area now. Because it’s only a reef fish boundary, potentially you could have a vessel catching a red snapper and it would now be under the state regulations. That same vessel could catch say a red drum and it would be under federal regulations.

To avoid that confusion, the committee noted that there will probably need to be some sort of an outreach program and education program to the public to let them know what rules they should be following when they’re in this three-mile to nine-mile area.

The other thing that came up was that the new nine-mile boundary doesn’t appear on any nautical charts. Alabama and Louisiana have put some maps up on their websites that roughly show where
it is. I put the links to them in the summary. I’m not sure how useful they are, when you’re actually out on the water, for determining where you are, but they give a qualitative description of where the new nine-mile boundary is.

Some of the committee members thought that it’s unlikely that the National Ocean Service will put this boundary on their charts. First of all, it’s not any sort of a territorial boundary. It’s just a regulatory boundary, and it only applies to reef fish. For those reasons, I may be that it’s not appropriate to put it on the charts.

For vessels that are fishing right at that nine miles, it could be some confusion as to whether they’re in federal waters or state waters for reef fish purposes, and the committee just wanted to point that out.

ENFORCEMENT IMPLICATIONS OF OFFSHORE AQUACULTURE FMP

If there are no questions, I will move to the next item, which is the offshore aquaculture FMP. This is the FMP that the council worked on for I don’t know how many years, and it finally got approved and implemented in February. We asked to get an overview, from an enforcement perspective, of what this new aquaculture rule means.

Jess Beck is the Aquaculture Regional Coordinator. She couldn’t make it for the Law Enforcement Technical Committee meeting. She was coming the next day for the general business meeting of the Gulf States Commission, but we had her presentation, and Cynthia Fenyk went through the presentation and covered the items that she thought the law enforcement folks would be most interested in. Meanwhile, Jess Beck was on the telephone, in case anybody had any questions for her.

After going through the presentation, the enforcement committee did come up with several concerns about the new aquaculture rule. One is the fact that any vessels that are engaged in offshore aquaculture operations are required to have a copy of the aquaculture permit onboard, and they cannot engage in any commercial fishing activity while they’re engaged in aquaculture.

The law enforcement folks felt that they would prefer to see a placard required that’s large enough to be visible from a distance, so they could tell without having to actually stop and board the vessel if it was indeed and aquaculture vessel.
One of the new rules with these offshore aquaculture sites is that there will be what’s called a restricted access zone around each aquaculture site. I believe it covers at least two miles from the site, I forget the exact number, and that boundary is to be marked with buoys at each corner, but there’s no specification of what those buoys need to be. Conceivably, they could just be milk jugs or something that’s difficult to see at sea.

The committee felt that there should be some specifications for those buoys. They should be large enough to be visible from a distance and they should be marked with the owner of the buoy. One committee member suggested that perhaps some standard color should be adopted so that a vessel at sea would know when it’s encountering a boundary line for an offshore aquaculture facility.

Another item that came up is what happens with the brood stock that’s used to create the eggs for the aquaculture facility. In order to prevent any genetic diversification between the aquacultured fish and the wild-caught fish, the regulations require that the brood stock be a wild-caught fish for anything that’s raised in captivity, but there’s nothing that says what would happen to that brood stock once they’ve been used to create the eggs and the sperm that are necessary for the operations.

On some land-based hatcheries, there are some state regulations that cover disposition of the brood stocks, but those may not be applicable to these offshore facilities. They may not be applicable for an aquaculture facility that’s intended for food production as opposed to stock enhancement.

Things came up like can they sell these brood stock fish once they’ve used them for spawning. There is nothing in the regulations right now that addresses that, and then the final item that came up for concern is the regulations allow for -- In the case of violations of either suspension or revocation of the permit, and this is similar to regulations for violations of commercial or recreational fishing, where a permit can be revoked or suspended.

In the case of a vessel, fishing vessel, it can just tie up at the dock, but, in the case of an offshore aquaculture facility, there is likely to still be fish in captivity. That facility is still offshore. It still needs to be tended somehow. There is nothing in the regulations that have any provision for what happens to the offshore facility while its owner is under
suspension or permit revocation, and so we need something to indicate what would happen to the offshore facility in that situation.

That was basically the information that we received. Somebody asked and we were told that NMFS has not yet received any applications for an offshore permit. It’s been several years since this thing started. Some of the folks may have moved on to other items. Some of them may be waiting to see what the outcome is of the aquaculture legal action that’s been filed, but, as of right now, our understanding is that nobody has applied for a permit. The next item is protocol for background checks. Sorry. Mara.

MS. LEVY: Thanks. I just wanted to clarify a couple of things with respect to the aquaculture final rule. One of the comments was that there was no requirement, I think, to mark the buoys that are used to establish this restricted access zone, but the regulations do provide that the permit number should also be included on the buoys or other floating device used to mark the restricted access zone, and so there is a requirement that they put some sort of identifying number on the buoy. It may not be necessarily big enough to -- I don’t know what the law enforcement committee was talking about, but it should be some sort of identifying information on that buoy.

With respect to removal of the systems, if a permit is suspended or revoked, there is a provision in there that allows the agency, the Regional Administrator, to order removal of the aquaculture facility, the things that are in the water, and so there is a mechanism to get those things out of the water if for some reason somebody’s permit is revoked.

MR. ATRAN: Thank you. We weren’t told that information during the review. I think, on the buoys, they were mainly concerned with the buoys being big enough to see from a distance.

MS. LEVY: The regulations are quite dense with respect to this plan, and so I wouldn’t expect every detail to have been presented, and also if there are things that, once this gets going or if the law enforcement committee identifies issues, the council can always go back and look at what is currently required under the regulations and decide to amend the FMP or do a framework or something to tweak certain requirements if it looks like things aren’t working as intended or could be improved upon.

MR. ANSON: Steven, just a question. I came into the council
right when the aquaculture amendment was being finalized, and so
I don’t remember all the details, but normally the buoys and
markers and such are under the jurisdiction, in navigable
waterways, under the U.S. Army Corps of Engineers. Did the
Aquaculture FMP kind of supersede their jurisdiction or their
responsibilities in coordinating those type of navigational
aids?

**MS. LEVY:** No, because they still have to get -- Anyone who
applies for this permit would have to have an Army Corps Section
10 permit for their entire area, which includes that whole
restricted access zone, and actually the restricted access zone
is defined as the zone that is incorporated within the Army
Corps Section 10 permit, and then the Coast Guard also has some
input into floating devices, and so that’s also something that’s
in there as well.

**MR. ED SWINDELL:** I have one brief question. What do you do --
Are the regulations about the structure itself and the security
of the structure being well done for storms and so forth? I
assume somewhere there has got to be -- Who makes those
judgments? What group is going to have that judgment?

**MS. LEVY:** Ultimately, the authority is with the Regional
Administrator to approve the aquaculture system they want to
use, which is the structures they put in the water, and there
are some specifications laid out in the amendment and the
regulations as to what they need to do, like to withstand storms
and things like that, and so they’re supposed to submit plans as
to what they want to do, and then the Regional Administrator is
supposed to review that and look at the criteria laid out in the
FMP and the regulations and decide whether to approve that
system for use.

**PROPOSED PROTOCOL FOR BACKGROUND CHECKS OF AP CANDIDATES FOR
VIOLATIONS IN STATE WATERS**

**MR. ATRAN:** Are there any other comments or questions about
aquaculture? If not, I will move on to the next thing, which is
Protocol for Background Checks of AP Candidates for Violations
in State Waters.

This deals with getting background checks conducted of anyone
who is a candidate for being added to one of our advisory
panels, to see if they’ve had any recent fishery violations. We
have a draft of the proposed protocol and a draft of what would
be the online form for the applicant to fill out, which is Tab
L, Number 4b.
We had a webinar-based meeting of the Law Enforcement Technical Committee, I believe it was in February, and it was a few months ago, in which we initially asked about whether or not they could accept these online signatures and what their protocols would be once they receive a request.

All of the state agencies indicated that they could respond within ten days, and some of them, the people online, say they would have to check with their state attorney’s office to see whether or not a digital signature, just typing your name into the box and checking off a check box, would suffice for the signature. I believe in all cases that is acceptable.

The other issue where we had a little bit of a problem is that the request from the council had been for the states to conduct background checks for violations that involve federally-managed species, and not all of the states are able to do that. The states will maintain records of the type of violation, but only a couple of the states have the species codes to indicate specifically which species were involved in the violation.

After some discussion, the Law Enforcement Technical Committee said that, to be fair in all states, they could just arrange to have any fishery violations, or any saltwater fishery violations, within the past five years, I believe is what we’re asking for, reported.

The feeling was that, even if you had a fisherman who had state violations, the chances are that individual, if he’s going to violate the state regulations, he would be just as likely to violate federal regulations, and so the technical committee felt that it wouldn’t be too much of an issue to report all of the violations and not just the ones covering federally-managed species.

If you look at the form, if we could put that up on the screen, Tab I, Number 4(b), this is roughly what the online application is going to look like. The software doesn’t allow us to actually put it up on the website until it becomes live, but this is roughly what it’s going to look like and the information that’s going to be requested.

Right now, it asks the applicant to provide their name, birthdate, address, city, and some telephone, email, and fax information. The committee asked that we add drivers’ license to this, drivers’ license or state-issued ID number, if the applicant doesn’t have a drivers’ license.
For the state agencies, at least some of them, that is the easiest way for them to identify a unique individual, and so they would like to have that added to this section.

Then, if you were to scroll down to the next page, there’s where they would select which panels they want to be on, but if you go down to the bottom, where it says signature and date, here is where we needed to get the okay from the state attorneys’ offices that this would be an acceptable way to provide a signature.

It says that by typing your name and entering a date that you affirm that what you provide is accurate. There is a place for the person to put in their signature and then the date, and then there is a checkbox that says, right now, by checking this box, I consent to a -- I can’t read it at the moment. It says, by checking this box, I consent to a fishery violation background check by NOAA/state law enforcement.

One problem that the committee had with that wording is that it only authorized the background check to be conducted. It doesn’t say anything about who is authorized to view the results of the background check, and so they suggested a change that says, by checking this box, I consent to allow NOAA/state law enforcement to provide a marine fishery violation background check to be provided to the Gulf of Mexico Fishery Management Council.

The individual is not only permitting the background check to be conducted, but he is also permitting the results to be shared with the council, and those were the two changes that the Law Enforcement Technical Committee requested in this draft protocol. That and, as I said, the violations will be provided for all saltwater fishing violations and not just those that involve federally-managed stocks. Are there any questions?

**MR. ANSON:** Steven, were you going to -- At top of the page that has industry affiliations, were you planning to populate that with all of the known affiliations, or were you going to leave that as just a box they could type in and type in two or three or four responses? It seems like -- I mean some of them have been around obviously for a long time, but it just might be more administrative work.

**EXECUTIVE DIRECTOR DOUGLAS GREGORY:** That’s a drop-down box. It would say commercial, recreational, for-hire, environmental, but it didn’t just -- The drop-down menu didn’t come across in the
PDF.

MR. ANSON: But you’re not specifying like the actual names? You’re just generally saying a commercial affiliation or a recreational or --

EXECUTIVE DIRECTOR GREGORY: Correct.

MR. ATRAN: If there is no more questions, one of the things that the council needs to do is to approve the draft protocol or approve it as revised, and so the committee may want to make a recommendation to the council to that effect.

CHAIRMAN BOYD: All right, committee. Do I hear a motion from anyone? Dale.

MR. DALE DIAZ: I would make the motion to approve the forms as revised.

LCDR JASON BRAND: I second it.

CHAIRMAN BOYD: We have a second by Jason Brand. Any discussion? Any opposition to the motion? Seeing none, the motion carries. Steven. Doug Gregory.

EXECUTIVE DIRECTOR GREGORY: I just wanted to remind the committee that, in a previous meeting, we decided that we would, in future advisory panel applications, we would get the applicants and the council would preliminarily nominate people for those panels and then that list would go to the law enforcement, instead of all the applicants.

We may want to revisit that in the future, depending on how many applicants we get, but we were trying not to overload the law enforcement agencies, but the way the system is now, we’ve got two advisory panels coming up for appointment next year and then two the following year, and so it may not be too overwhelming, but that’s our current system, that we were going to make a preliminary nomination and do the background check on those and then come back at a subsequent council meeting and make the final appointments.

CHAIRMAN BOYD: As the council knows, we have had considerable internal issues with how this operates over the years. We’ve tried to do background checks and we’ve backed away from them and we’ve come back and we’ve done limited and we’ve backed away from them, and so this is one more try at it, and I would assume that we may be modifying our procedural process as we go along.
One of the other things I would remind the committee is when we get to full council on this, the last meeting, the full council said that they wanted and requested that we ask for violations, and Steven said this, of federally-managed species. The states said that they really couldn’t do that very well.

That is a discussion that I think is very important, because we have the possibility of having someone who has a violation on a speckled trout, one speckled trout undersized, in the state and now we have reported them as having a fisheries violation, and that’s not necessarily what we’re looking for, and so I think we do need to have a discussion about that and be cognizant of the fact that we may get that kind of a report back. Steven, do you want to go ahead?

OTHER BUSINESS

MR. ATRAN: Thank you, Mr. Chairman. Before we get into the Officer of the Year Award, the other item on the agenda is Other Business. We already covered the discussion of TED compliance and the use of courtesy inspections as part of the TED compliance statistics. That was covered in the Shrimp Committee, and so we don’t need to go over it here. The question would be, is there any other other business?

CHAIRMAN BOYD: Dale.

MR. DIAZ: I was not on the Shrimp Committee, and that came up kind of quick. Is there a way -- How can we proceed? You all refresh my memory, but I think we wrote a letter asking that these compliance checks, these courtesy checks, not be counted against the shrimp industry in any way, and maybe we didn’t word the letter correctly, but maybe there is some legal requirement that forces the Protected Resources Division to do it. Dr. Crabtree, can you help with this in any way? I mean what is the proper thing for the council to be doing to try to impact this to where courtesy inspections do not negatively count against the shrimp industry’s compliance rate? Is there anything? Do you have any suggestions that might help us?

DR. ROY CRABTREE: My recollection is the letter you wrote just asked that the form indicate whether it was a courtesy inspection or not and that’s it. Now, I am not aware of anything that suggests courtesy inspections are hurting the shrimp industry in any way. I am aware of the concerns that have been raised, and we’ll look at this as this goes along, but we are likely to finalize the shrimp policy, the TED compliance
policy, relatively quickly.

We are looking at other options and other ways to do this that range from using the observer programs to evaluate TED inspections, TED compliance, and a host of other things, but, at the moment, one of the problems we have is just the number of reports we’re getting and being able to have enough information to get an evaluation of compliance.

As that problem improves and that situation improves, we will probably have more leeway to look at courtesy inspections, but I’m not aware of anything that indicates it is penalizing the shrimp fishery and hurting them. The compliance numbers from courtesy inspections are largely minor violations, which don’t really pose that much of a problem towards the compliance numbers.

We aren’t getting asked to do courtesy inspections on vessels that have their TEDs sewn up, for example, and I doubt we’re ever going to be asked to do a courtesy inspection of a boat that has a blatantly illegal TED on it, and so most of what are being found on those are minor violations.

MR. DIAZ: I understand that, but I just hate for it to count against the shrimp industry in any way.

DR. CRABTREE: I think if it’s showing good compliance that it’s not being used against anyone. It may actually be pulling the compliance numbers in the other direction, towards higher compliance numbers.

I just don’t know that that’s the case or not, because we don’t have enough data and enough boardings every month to be able to say for sure how that’s going, but I know you’re not going to see the really egregious violations on a courtesy inspection, because I don’t believe those guys are going to ask for a courtesy inspection. Most of what I’m told the courtesy inspections are showing are relatively minor violations, which don’t really pose that much of a compliance issue. All violations are not treated the same, and very minor violations may not have any impact on the effectiveness of the TED, in which case they aren’t really counted against anything.

CHAIRMAN BOYD: Brandi.

COMMANDER BRANDI REEDER: Thank you. Dr. Crabtree, do you happen to know what the violations severity was on the boats that were captured at the dock in Mississippi?
DR. CRABTREE: No.

COMMANDER REEDER: The thing is that there was a period of time to where there were a number of vessels that were considered noncompliant, and it was due to one net maker. The majority of law enforcement, state law enforcement, do not have any jurisdiction over net makers, and so it would require larger coordination with our federal partners.

Without a doubt, we have good relationships with OLE. All of this takes time though, and so it’s raised our concerns on a few net makers and then also, again, prior to the start of the season, if you have a number of people that end up in violation, what’s it going to do to our overall numbers and what impact is that going to be on industry?

CHAIRMAN BOYD: Leann.

MS. LEANN BOSARGE: You know you brought up something that I hadn’t thought about before, Dr. Crabtree. If we have a good inspection, and I guess my question is if there are no violations -- Like if somebody has their TED courtesy inspected and they’ve got it right, just right, everything. The angle is right and everything is right, is that still going to get filled out on a form and sent up for our TED compliance numbers? I mean, in other words, those positive inspections?

DR. CRABTREE: No violation inspections, they would still fill out the form and those would come to us, and they would be factored into the overall compliance rate. For the past year-and-a-half or two years, the compliance numbers have all been pretty good, and all within the range we’re trying to keep them, and so we have achieved a real improvement in compliance that’s been observed in the fishery from where we started. Overall, the steps we’ve taken to improve compliance are working.

CHAIRMAN BOYD: Any further discussion? Steven.

MR. ATRAN: Thank you. Can you refresh me -- My short-term memory apparently isn’t very good, but did the Shrimp Committee recommend writing a letter, as asked by the Law Enforcement Technical Committee? I don’t remember if they did or not.

CHAIRMAN BOYD: Leann.

MS. BOSARGE: I had one more follow-up to Brandi, but no, we didn’t. We did get to review that portion of the document, and
we did get some feedback from Texas enforcement, but we didn’t
get to that and we didn’t get to two other items on the agenda,
just due to time, and so hopefully at full council we will have
a little more time to discuss a couple of different items on our
agenda.

You know, Brandi, you brought up something that we’ve heard from
the industry in the past too, which is some sort of
certification for the net builders, and I know that’s a big,
convoluted bear of an issue to tackle, because what are the
repercussions if they build something that’s out of compliance?
What do we or NMFS or anybody else, what can we actually do to
those people?

It is something that we have had some feedback from industry on,
and you know you mentioned a situation where you were seeing
that. I am not familiar with that situation, but it is
something, and, going forward, even with some of the changes
that may be coming down the line with TEDs in skimmers.

I hope that we are proactive, and if that’s something that we
could consider as a council, to try and stand up some sort of
program like that, where we make sure that not only are we
reaching out to the fishermen and training our law enforcement
and training our fishermen, but that we’re also reaching out to
the net makers, that more than likely will be putting these TEDs
in the nets, and making sure that at least they’ve been trained
properly, that we’re having some sort of outreach to them and
give that fisherman some comfort, knowing that the TED he
bought, when he bought it at least, was compliant.

Now, that’s not to say he can’t alter it or when it gets pulled
that it naturally may get altered and it may go out of
compliance, but at least he had some comfort level that when he
bought it that it was right.

CHAIRMAN BOYD: Steven, anything else?

MR. ATRAN: That concludes, I guess, the discussion on the TED
compliance issues, and so I don’t have any other other business.
I don’t know if anybody else does.

CHAIRMAN BOYD: I don’t believe there’s any other other
business, and so let’s take a -- Based on our agenda change,
let’s take a five-minute break while we go into closed session.
For the audience, we changed our agenda up, and we’re going to
go into closed session to review the Officer of the Year Award,
because of the personal nature of these awards. We would ask
that anyone who is a visitor and not on staff or on the council to please leave the room in about the next five minutes. Thank you.

(Whereupon, the meeting went into closed session on April 4, 2016.)

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