

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
SUMMER FLOUNDER, SCUP AND BLACK SEA BASS  
MANAGEMENT BOARD**

**Approved August 2009**

**Crown Plaza Old Town  
Alexandria, Virginia  
May 5, 2009**

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2. **Approval of proceedings of February 3, 2009 by consent** (Page 1).
3. **Move to adopt the new reference points for scup and for black sea bass described in the April 17 memorandum to us from the technical committee** (Page 3). Motion by Dr. Pierce; second by Mr. Augustine. Motion carried (Page 3).
4. **Move that the board reconsider the quota for 2009 and revise it to make it status quo 2008** (Page 4). Motion by Dr. Pierce; second by Dr. Stewart. Motion was defeated (Page 5).
5. **Move to develop an addendum to include a mandatory regional management tool for summer flounder in the FMP** (Page 12). Motion by Mr. Augustine; second by Mr. Miller. Motion was defeated (Page 12).
6. **Move that the board approve the 2009 regulations proposed and adopted by Connecticut; namely, a 19-1/2 inch minimum size; three-fish creel limit; and an open season from June 15 through August 19** (Page 17). Motion by Mr. Simpson; second by Mr. Augustine. Motion approved by consent (Page 17).
7. **Motion to adjourn by consent.** (Page 17).

## **ATTENDANCE**

### **Board Members**

David Pierce, MA, proxy for P. Diodati (AA)  
William Adler, MA (GA)  
Mark Gibson, RI (AA)  
David Simpson, CT (AA)  
Lance Stewart, CT (GA)  
James Gilmore, NY (AA)  
Pat Augustine, NY (GA)  
Brian Culhane, NY, proxy for Sen. Johnson (LA)  
Tom McCloy, NJ, proxy for D. Chanda (AC)  
Thomas Fote, NJ (GA)  
Gilbert Ewing, NJ, proxy for Asm. Fisher (LA)  
Roy Miller, DE, proxy for P. Emory (AA)

Bernie Pankowski, DE, proxy for Sen. Venables (LA)  
Tom O'Connell, MD (AA)  
Bill Windley, MD, proxy for B Goldsborough, (GA)  
Jack Travelstead, VA, proxy for S. Bowman (AA)  
Catherine Davenport, VA (GA)  
Red Munden, NC proxy for L. Daniel (AA)  
Bill Cole, NC (GA)  
Mike Johnson, NC, proxy for Rep. Wainwright (LA)  
Harry Mears, NMFS  
Wilson Laney, USFWS  
A.C. Carpenter, PRFC

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

### **Ex-Officio Members**

Rich Wong, Technical Committee

### **Staff**

Robert Beal  
Vince O'Shea

Toni Kerns  
Nicola Meserve

### **Guests**

Alexei Sharov, MD DNR  
Carrie Kennedy, MD DNR  
Mike Luisi, MD DNR  
Charles Lynch, NOAA  
Jessica Coakley, MAFMC  
Peter Himchak, NJ DFW

Jeff Deem, MAFMC  
Julie Defilippi, ACCSP  
Frank Kearney, CCA-VA  
Bob Ross, NMFS  
Arnold Leo, E. Hampton, NY

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 5, 2009, and was called to order at 11:18 a.m. o'clock. by Chairman A.C. Carpenter.

### **CALL TO ORDER**

CHAIRMAN A.C. CARPENTER: I will call the Summer Flounder, Scup and Black Sea Bass Board to order.

### **APPROVAL OF AGENDA**

CHAIRMAN A.C. CARPENTER The first order on the agenda is board consideration of the agenda. You had the agenda submitted. Are there any additions, deletions or changes to the agenda? Seeing none, we will consider that approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN A.C. CARPENTER You have the proceedings of the February 3<sup>rd</sup> meeting that were in your packet. Are there any additions, deletions or corrections to that? Seeing none, we will consider them approved by consensus.

### **PUBLIC COMMENT**

Public comment; this is a period reserved for items which are not necessarily on the agenda. There was a signup sheet. We did not have anybody sign up that we know about, but is there anyone in the public that would like to address the board right now?

### **TECHNICAL COMMITTEE REPORT ON THE DATA-POOR WORKSHOP PEER REVIEW**

Seeing none, we will consider that issue as taken care of. Item Number 4 on the agenda is the technical committee report on the data-poor workshop. We have Mr. Wong with us. We appreciate your being here with us today, and we will turn the mike over to you.

MR. RICH WONG: We're just going to review the Scup and Black Sea Bass Assessments and the biological reference points that came from the data-poor workshop and were subsequently reviewed by the peer review panel. I will be summarizing some of the assessment results and the technical committee comments on these new outcomes.

The scup assessment and the black sea bass assessment as well were vast improvements over the previous index-based assessment. They incorporated a lot more data, obviously. Because you were not relying on just a single index to describe the stock status and the population dynamics, the results that come from these new approaches should be a lot more stable.

They include fishery-dependent and fishery-independent data and they are definitely improvements. What we saw for scup is that the structure is indeed expanding. The fishing mortality rates have been very low in recent years; and together with extremely high recruitment observed in the most recent years leads to a very favorable outlook for the stock.

The peer review obviously went through this at the last commission meeting in detail what the peer review summarized. But for the technical committee we're just going to show here major points of interest. The biggest source of uncertainty for scup is the fact that these surveys don't capture older scup. Therefore, what we understand about the stock dynamics for the older age classes relies heavily on the catch at age from the fishery. That's a major source of uncertainty for this assessment. Of course, there is the usual suspects causing uncertainty revolving around natural mortality and what the maximum age is and the ongoing issue about discard estimates, particularly for the – more so for the past estimates of discards; not so much for more recent years.

Given this new approach, they were able to calculate reference points. The panel adopted the F 40 percent as a proxy for Fmsy, which is 0.177. The terminal year estimate of fishing mortality was very low, 0.05. The spawning stock biomass resulting from fishing at F 40 percent was also used as the proxy target for SSB Fmsy. Again, the stock is currently above the target. Overfishing is not occurring and the stock is not overfished.

As you know, this is a major departure from – the approach is vastly different and it yielded very different outcomes. We are, like I said before, not overfished and overfishing is not occurring. The technical committee agrees with the peer review panel's suggestion in not increasing the quota rapidly because of the uncertainties that exist in the assessment process. The other good news that came from the data-poor workshop was that scup is no longer considered a data-poor species.

The black sea bass stock was assessed using a length-based approach. Again, it incorporates a great deal of information about life history, fishery-dependent and fishery-independent data. The new results are much more uncertain than what came out of the scup assessment. Most of the uncertainty or a large bit of the uncertainty stems from the fact that we're trying to model a species that changes sex, a sequential hermaphrodite.

There are a lot of unknowns about the natural mortality that occurred because during the transition from female to male it is suspected that it is very high; and also, very importantly, the spawning-based reference points – it's difficult to determine the spawning-based reference points for hermaphrodites because it is not a simple fact of just counting mature females.

It is a little more complicated and the scientific community is still trying to work out how best to determine spawning-based reference points for these types of fish. Recently in the assessment – in recent years the model has a hard time fitting the very high survey values, both recruitment and adult indices. That's a source of concern, obviously.

Then there are the usually suspects of the unit definition, some concern over commercial discards and how to best sample these cryptic habitats or reef habitats. The reference point for black sea bass; the proxy for  $F_{msy}$  again was considered to be  $F_{40}$  percent, which was 0.42. The  $F$  fishing mortality in 2007 was 0.48. The spawning stock biomass target was 12,537 metric tons; and we're currently in 2007 at 92 percent of the target.

The stock is not considered to be overfished, but overfishing is occurring. In fact, overfishing has occurred for 22 straight years. At first blush to me, that caused me to pause, I guess, when we see that despite 22 years of being over the fishing mortality reference point, the stock is still rebuilt to its rebuilding target.

What this illustrates to me is that these reference points are determined based on assuming a stock at equilibrium, and the fact is the stock is not always at equilibrium, and these things can happen. It does not imply that the reference points are incorrect or that the population dynamics are not being properly described. Furthermore, what it does say to me is that we should be counting our lucky stars, quite frankly, because we don't have to pay for these sins of all these years of the fishing mortality exceeding the reference point.

For whatever reason we have reached the rebuilding target and we can actually reap the benefits of maximum sustainable yield or pretty close to it without having to pay for those prior sins. But that is a source of uncertainty, the fact fishing mortality rates have been relatively high and yet we're still at a very high biomass level, which could be kind of a fool's gold type of situation.

The technical committee accepts the SCALE model and adopts the biological reference points that were also adopted by the peer review panel. We suggest that you proceed with caution with the management of the stock due to the, quite frankly, large amount of uncertainty in the outcome results.

CHAIRMAN CARPENTER: Thank you; are there any questions on the technical committee's report? Well, apparently it is better to be lucky than rich some days and we appreciate that. Dr. Pierce.

DR. DAVID PIERCE: Did the technical committee have any opportunity to discuss the implications of the black sea bass assessment uncertainty relative to what we will have to do very shortly, and that is use that information to set 2010 quotas? Did you have chance to get into that to discuss the problems that may arise, how you might move forward to advise us for next year?

MR. WONG: No, we didn't specifically discuss how to set the quota based on the uncertainty that exists.

MS. TONI KERNS: David, the technical committee will participate in the data workshop to update the black sea bass assessment, which will use the 2008 survey and catch data as well as other information, and then we will use that information to make a recommendation to the board and council regarding those quotas.

The Monitoring Committee meets after the working group for the assessment update, as well as the Mid-Atlantic Fishery Management Council's SSC will look at that information and make a recommendation to the monitoring committee, and then we will bring that information to the board in August.

DR. PIERCE: I appreciate the procedure; thank you for repeating what the approach will be. I just wanted to highlight the fact that the technical committee's task is going to be quite formidable in light of the caveats attached to this particular assessment, the new reference points. Good news, of course, but at the same time tremendous uncertainty and we're going to have to figure out how to deal

with that, especially in the context of ACLs and AMs and the like. Although I guess we're not there yet with the Mid-Atlantic Council, but, anyways, that is something to look forward to in the next few months.

CHAIRMAN CARPENTER: Thank you; any other questions? You had some additional information, Toni, that you wanted to add at this point.

MS. KERNS: First of all, the board was e-mailed as well as in your supplemental materials was a memorandum from Pat Kurkul discussing the status of black sea bass. Since in 2003-2004 sea bass had exceeded the SSB target, the stock is considered rebuilt, so it is no longer under the rebuilding timeframe or rebuilding program.

That letter does go into some detail about uncertainty and the recommendation to move forward carefully with setting quotas because the SSB has declined since 2004 and we are overfishing. The provisions of Addendum XIX allows the board to adopt reference points through board action, so the board has been presented with recommended new reference points from the technical committee as well as the peer review for black sea bass and scup.

If it is the will of the board to adopt those reference points, then we can move forward in using these new models to set the quotas for the 2010 fishery. If the board does not adopt these new reference points, then we would use the information from the index to set quotas in the future.

CHAIRMAN CARPENTER: Thank you; questions for Toni? There are the slides for the scup. Does anybody have a motion? David.

DR. PIERCE: **I would move that we adopt the new reference points for scup and for black sea bass described in the April 17 memorandum to us from the technical committee.**

CHAIRMAN CARPENTER: Is there a second to that motion; seconded by Pat Augustine. Discussion on that motion? Toni has got some things that she would like to put up here for just a second. David, would you look at what we have on the board and see if that meets your intent of the motion that you made?

DR. PIERCE: Yes, those appear to be the numbers provided to us by the technical committee based on the results of the data-poor workshop.

CHAIRMAN CARPENTER: Thank you, and the seconder agrees that that is his motion?

MR. PATRICK AUGUSTINE: Yes, I do, Mr. Chairman.

CHAIRMAN CARPENTER: Any discussion of the motion? Is there any need for a caucus? **All in favor signify by saying aye; all opposed, no; any abstentions; any null votes. The motion carries.** I think that brings us to the discussion of the 2009 Black Sea Bass Quota. Dave Pierce.

### **DISCUSSION OF THE 2009 BLACK SEA BASS QUOTA**

DR. PIERCE: Well, I feel it's appropriate to bring forward to the board our desire to have a bit more discussion regarding the 2009 quota in light of the new assessment results. Clearly, we are in 2009 and therefore one might wonder any consideration of changes in the quota for 2009 might be inappropriate because here we are in May.

I would suggest in light of the significant cut that we took in quota for 2009 relative to 2008, halving of the quota, halving of the TAL; in light of that result and in light of the fact that for most states, if not all the states, clearly there will be fisheries for the remainder of the summer, summer and the fall, going into early winter, the later part of this year, that perhaps it would be appropriate for us to consider increasing the quota.

Of course, before doing that we need to have some numbers, we need to have some indication of what the consequences would be of our even considering an increase in the quota. For example, going back to what we had in 2008, which was already a very low quota – once again we slashed it in half, 2008-2009.

Right now, 2009, the TAL for commercial and recreational fisheries is 1,044 metric tons. That is the number published in the Federal Register, the number adopted by the National Marine Fisheries Service and, of course, by the Mid-Atlantic Council as well. In preparation for this discussion for this meeting, recognizing the shortness of time that we have to get into these issues, I asked staff if they would work with the Northeast Fishery Science Center in particular, perhaps with the Mid-Atlantic Council staff, with Jessica, to give us some information; that is, what would fishing mortality be in this year if we had gone with status quo for 2009; would we still be overfishing?

We have gotten information from the data-poor workshop that we're no longer overfished, we're at or above the target based upon projections that I've

seen. We are still overfishing by a relatively small amount, but still where would we be – what the F value be, what would fishing mortality be if we had gone with the status quo for 2009?

Now, I look at the data provided to us by Nancy Thompson in the memo – actually she provided it to Pat Kurkul – we all have a copy of it – relative to the rebuilt status of black sea bass. First and foremost let me make it clear that I truly appreciate the uncertainty of the black sea bass assessment. I'm not diminishing the significance of all of the concerns expressed by the data-poor workshop and by the technical committee.

There is a great deal of uncertainty that we have to face not and, of course, for 2010 in the future. I draw your attention to two figures in that document. Figure Number 1 that shows spawning stock biomass from 1968 through 2007 – and, by the way, interestingly enough, we were overfished with the new reference point only twice maybe over the last 30 years, 40 years. That's very good news.

Anyways, if you notice in this figure the biomass has dipped back below the target that we just adopted of 12,537 metric tons. However, that's for 2007. One of my questions was where were we in 2008 and where are we now in 2009? We have some projections that are shown in the same document, and they are on Page 3, Table 2.

I know from looking at this table that 2008 and 2009, that brings back up above the target of 12,537 metric tons. So, using this information, this updated information, these projections, we are not overfished and overfishing is not occurring in 2008 or 2009 – so very good news. Well, here we are in 2009 and we slashed the quota in half relative to 2008.

There were significant consequences of the slashing of that quota; socio-economic consequences; our having to, each and every one of us with black sea bass fisheries, commercial and recreational, make some rather significant and difficult decisions to cut the quota and to somehow allocate small amounts between all the users.

I'm hopeful that the board would entertain actually increasing the quota back to status quo. Now, what is the consequence of doing that? Again, Table 2, let's look at the predicted landings to predicted catch; predicted landings in particular we're talking about the TAL. Go to 2009, next to the bottom row, and go across that row, you see landings of 2,538 metric

tons; go across to the fishing mortality rate that would have generated this year, 2009, 0.42.

All right, 0.42 is the new F threshold. If we're above that we are overfishing; if we're below that we are not overfishing. The quota in 2009 right now is 1,044 metric tons. If it was status quo, 2008, approximately double that, it brings up to 2,088 metric tons. Well, that number is less than 2,538 metric tons, the value that would correspond to a fishing mortality rate of 0.42 in 2009.

I would submit that we could double the 2009 quota and bring it back up to the way it was in 2008, and we would be below the fishing mortality rate of 0.42. We would not be overfishing, so there is great justification for doing that. With all that said, **I would move that the board reconsider the quota for 2009 and revise it to make it status quo 2008, effectively doubling the quota for 2009.**

CHAIRMAN CARPENTER: We have a motion to reconsider the 2009 quota and revise it make it status quo 2008. Is there a second for this motion? Lance Stewart seconds the motion, so we do have a motion on the table. Before we get into too much discussion, my immediate reaction is that this would end up with us having one quota and the Mid-Atlantic probably having a different quota. Is there any possibility that the Mid-Atlantic Council is going to modify their quota if this motion were to pass, and I don't know exactly who to ask that question to. Jessica.

MS. JESSICA COAKLEY: Well, as you're asking me I'm looking at Rick Robins in the back. Rick, would you come up the microphone; I think it would be more appropriate for Rick to respond than myself.

MR. RICK ROBINS: Mr. Chairman, I did discuss this with our executive director this week and I don't think we would be reconsidering the quota. As you know, our specification-setting process we will undertake later this year, but it would not be prior to that. I believe that will be at our August meeting.

CHAIRMAN CARPENTER: Thank you, but that is what you will be discussing for 2010 at the August meeting; is that correct?

MR. ROBINS: That's correct; we would not be reconsidering the 2009 quota.

MR. RED MUNDEN: Mr. Chairman, my recollection is that we had to take a drastic cut in quota for 2009 because 2009 is the last year of the rebuilding schedule for black sea bass. My question



for the staff is should we go back to status quo and in essence raise our 2009 quota; and the stock is not rebuilt at the end of 2009, what happens?

MS. KERNS: Red, the letter from the National Marine Fisheries Service that was sent out to the board a couple of weeks ago as well as in the supplemental materials. It declares with the results of the data-poor workshop that the black sea bass stock is rebuilt so we are no longer under the rebuilding timeframe, so 2009 isn't the last year.

It's just not part of the FMP anymore unless we go below the threshold for SSB. We are not above the target anymore. The SSB dropped since it passed the target, but until you cross the threshold you aren't considered under a rebuilding plan. Now there is still uncertainty and that letter does recommend caution in moving forward and setting quotas, but it's no longer under that rebuilding plan.

MR. WONG: I'm not advocating for raising the quota or the status quo or whatever, but the modeling does imply that if there is error in the later years that we are overstating abundance – if there is error in the projections it is likely that they are more optimistic than we're interpreting. The other thing is I just wanted to correct Dr. Pierce.

He said that we have only been overfished two years out of the past 20, whatever the time series; we've actually been overfishing every year except two years in the past whatever, 30 years, just to make that correction for the record.

MR. AUGUSTINE: Mr. Chairman, I couldn't support this motion either. As Mr. Robins stated, we have already gone through our specifications. However, what we did, when we changed our specification, we actually wanted to keep the season open year round. We increased the minimum size from 12 inches to 12-1/2 inches. I'm wondering if the board would want to consider the size change as opposed to trying to tinker with the quota.

We would be out of sync with the Mid-Atlantic, but again by going to a 12-inch minimum size we would then allow greater harvest of black sea bass by shore-bound folks, which typically that extra half-inch just prevents them from keeping fish in their cooler. I would suggest that maybe we look that. Other than that, we could not support this motion.

MR. THOMAS FOTE: This is kind of late in the year to do this. I don't think we could basically – you know, most of us have set our specifications for

this year; most of the states have done that. You know, to go back and change all the regulations, by the time you do that it's October or November and we're already into the following year.

I mean, I don't see us being able to put this in place. Again, this is a fishery of 50/50, so if we're going to change the quota we've got to change it for both sides. Getting NMFS to basically change the size limit I don't think is going to happen this year. I can't support this motion at this time.

CHAIRMAN CARPENTER: All right, staff reminds me that if this motion were to pass, it would have to pass by a two-thirds majority. It would also call into question the people that have meeting-specific proxies. Is there any additional discussion given the hour of the day here that it would change anybody's mind with regard to this motion?

MR. HARRY MEARS: Mr. Chairman, very quickly, the National Marine Fisheries Service is strongly opposed to the motion. The fact is with the resource overfishing is occurring. What the maker of the motion was referring to were projections. The most recent scientific advice is to have caution and in fact to be conservative and not to be increasing fishing mortality and quotas on the resource when instead we should be concentrating on rebuilding it. Thank you.

CHAIRMAN CARPENTER: Thank you, and with that I'll call the question and give you 30 seconds for a caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Is everybody ready? **All in favor of the motion please raise your hand; all opposed like sign; any null votes, 1 null vote; any abstentions, no abstentions. The motion fails with a 1, 9, 1 vote.**

DR. PIERCE: Again, to clarify the record, perhaps I was misunderstood. I referred to Figure 1 in the document that we have before us indicating that maybe in only a few years since 1968 were we overfished – overfished. Okay, overfishing, yes, and therein lies a very strange thing and that is we have been overfishing since 1968; overfishing every year and yet we have never been overfished except for two years. It is an oddity.

CHAIRMAN CARPENTER: It is an oddity and I would suggest you take that up with the technical committee after this meeting. On to the next agenda

item, I am going to ask Toni to bring us up to date on why this item is on the agenda here.

## **TECHNICAL COMMITTEE REPORT ON SLOT LIMITS**

MS. KERNS: The board tasked the technical committee to review the potential use of slot limits and examine examples for mandatory regions. This task came from the board partially through a postponed motion made at the August 2008 meeting. Once Rich has given the presentation on both the slot limits and the mandatory regions, we will go back to that postponed motion.

MR. WONG: By the way, I just want to say, Dr. Pierce, you are correct. He interpreted Figure 1 properly. We have only been above the target for two years. I interpreted it differently. Okay, this slot limit analysis is the continuation from when we started to look at slot limits over a year ago. This analysis specifically looks at slot limits and bag limits and trophy combinations.

Let's go right into the analysis. Probably the most important thing that you have to understand before you start interpreting these results is that we are using a fishery mode, the partyboat, the for-hire mode as a model for the entire fishery. Let's examine the for-hire mode. Anyway, the for-hire mode only accounts for about 2.5 percent of the harvest.

Furthermore, there is some evidence that indicates that the for-hire anglers arguably could be the most efficient anglers. What I mean by that is they catch more keeper fish per discard fish. If that's the case, the harvest predicted in this analysis would be underestimated. This is an important caveat that you would just have to keep in the back of your mind while you interpret the results.

The results reaffirms what we saw in the last analysis that when you drop down the size limits for these slot options, the harvest is going to increase substantially. The harvest will stay about the same with larger slot limits. Again, this is a coast-wide analysis; so slot limits around 18 inches will keep the harvest about the same or keep it a little bit lower or even lower.

All right, this is the table that shows the results. It is probably pretty hard to see here. Like I said, when you drop down slot size limits to 14, 15, 16, 17 inches, the harvest is going to increase substantially. If the slot limit is from 17 to 20, around that size limit, it will maintain the current harvest or even

reduce it. Now this table does reflect the slot limits, bag limits and one fish 26-inch trophy class.

We used the 26 inches to describe a trophy class because that was what most state citation programs use for that minimum size threshold. What would happen? Now when you change the slot limit the harvest distribution is going to change. If you drop down to smaller limits the harvest will probably redistribute into shore modes. Larger slot limits would redistribute the harvest.

The states would obviously have better availability of large fish, particularly the northern states north of New Jersey and Virginia. Now, there was some belief that if you could save more – if you dropped down the size limits you would reduce the discard mortality, and that is true. This is from Table 4 from the report. The discard mortality does go down. If you look at the fifth column, that is the discards associated with each slot limit option. The smaller the slot limit, the less discard mortality.

However, interestingly, the total number of removals actually increases quite considerably when you drop down the size limits because you're dividing the TAL in pounds by smaller average weight. You reap some benefits in discard mortality but you vastly increase the total number of removals, and that has important implications with respect to the fishing mortality rate on the stock.

Now, this is Table 5 from the analysis, and, quickly, the shaded areas show the slot and bag options that would have achieved the quota, would have been at or under the quota. Now, the quota will change for each of these slot options. It is important to understand that; I think we all understand that.

A lot of these successful, I guess, options are very narrow slot limits, 15 to 16, 16 to 17, 17 to 18. A lot of them are one-inch ranges. Certainly, the larger slot limits would be feasible. In summary the quotas will inflate, again, as you drop down the size limits for a given TAL. The regulatory discards of large fish will actually increase. The high grading would be expected with the suddenly high availability of legal-size fish. Narrow slot bins are probably not feasible.

Total removals will increase substantially with declining size limits. Fishing mortality would rise due to considerable increase in harvest quotas and total removals. However, reference points would not change that much. This would lead to an acceleration in F relative to the reference point. The technical

committee recommended or thought it would be a good idea to wait until the rebuilding goal was met and the data needs are met before we experiment with slot management. If there are any questions, I'll be glad to answer them.

MR. DAVID SIMPSON: Thanks for the presentation, Rich. I guess I'll start with the comment that I agree with the recommendation that before we can seriously consider using slot limits as a management tool we need to reach our targets. We need to get there; we need to be able to show we can get there because it is a bit of a risk to move down on minimum sizes. A couple of questions; one, if you could remind me, the natural mortality rate in the new assessment is 0.4 rather than 0.2; is that right?

MR. WONG: I believe it is 0.25, Dave, on average 0.25 across the age structure.

MR. SIMPSON: But it is higher on younger fish, lower on older fish, so that any younger fish that might be preserved by a high minimum size would be facing a much higher natural mortality rate than we used to think of. In other words, there will be a greater degree to which if you don't harvest them they're going to die?

MR. WONG: In reality, yes, the natural mortality across any marine species is going to be higher when they're smaller, but in the modeling we do use a constant natural mortality. It is averaged. We do have an age-specific natural mortality but it is averaged and used on every – from my memory, it is used on all the age classes.

CHAIRMAN CARPENTER: Jessica, would you like to discuss that issue?

MS. COAKLEY: Yes. As chair of the Assessment Working Group I have a good recollection of the assessment and how that natural mortality was calculated. Input into the ASEP model, it's an age-specific vector of M, so there is a vector for age one, age two, all the way out to the age seven-plus category, which is used.

It was calculated as a sex-specific natural mortality rate, so it was different for the two sexes within an age and then averaged and then carried out across all the ages, so the vector for age zero was higher than the vector for the seven-plus category, so it declines at age. That is the way it is put into the model. Now if you take the average across all of those age-specific vectors of M, it comes out at about 0.25; so

on average it's about 0.25, but it's going to be higher on the younger ages and lower on the older ages.

CHAIRMAN CARPENTER: Does that answer your question?

MR. SIMPSON: Yes, thanks. I'm just putting this out for something for the board to think about and for the technical committee to think about when we hopefully reach this point where we have rebuilt the stock and we're not overfishing anymore. There is a consideration there, and as everyone knows at least in the northern states where we have 19, 20, and 21-inch minimum sizes, we're fishing almost exclusively on female fish.

I guess I would suggest that in the future when we revisit this that we think about that fact and we think about the implications of slot limit management on our newly adopted, well, a year ago, reference point for summer flounder, which is an F 40 percent MSP, so it opens up a whole new world of looking at the advantages of distributing the mortality over a broader number of ages and what that could do for recreational fishing opportunity while still preserving that 40 percent MSP. It is just more in line of a comment and hopefully food for thought for both the board and the technical committee going off into the future.

MR. AUGUSTINE: Good presentation, Rich. It just seems to me, following along with what Dave is saying, we should put this off until we are finally rebuilt and totally rebuilt. But more importantly by you establishing these slot sizes, it just seems if you were to overlay the slot sizes along with the minimum size of fish along the coast – migratory, if you will, or from south to north or north to south – it would seem if you ended up eventually with mandatory regional or coastwide, that the technical committee might want to consider overlaying the slot size on each of those regional areas or on a state basis so we'll get back to a point in time where you're talking about fish for fishermen rather than pounds for fishermen being converted.

CHAIRMAN CARPENTER: Thank you; I think we have some discussions coming up on that in a moment here. Anything else specific to the slot limits? Jim.

MR. JAMES GILMORE: Mr. Chairman, actually Dave Simpson asked most of my questions. When I read your report, Rich, it was kind of – I got through the whole thing and it was very impressive. I think you did a great job on that and I'd actually like to get

a copy of your powerpoint so when I go out on the road and I hear slot limits I'll have some good answers for them.

The only thing that was odd was when I got to the conclusions at 13. Up until 12 it sounded like this wasn't going to work and then all of a sudden we got to Conclusion 13 and then it indicated that it might be a future thing once we are rebuilt, but a lot of the other caveats in there seemed like it actually – because of the increase in the fishing mortality and a lot of other factors, it actually may never work. Can you just clarify that a little bit; do you think that if we did get back to – you know, after we're rebuilt and essentially that we look at doing this later, that it is a possibility it will actually work?

MR. WONG: Well, we used the word “experiment” I think properly because we really don't know exactly how fishing mortality will respond if we drop to smaller size limits. We have an idea, but until you go that route we don't know. I mean, we believe that it is probably not a good idea, but we don't know for sure until you try it.

The other thing is I just wanted to address – Dave brought up some really good points, but we did do spawning stock biomass and yield-per-recruit modeling, and it does not show much benefit to spawning stock biomass to dropping down to smaller size limits even though, yes, it is true that the female sex ratio is skewed – the sex ratio skewed towards females is larger sizes. We did look at that, but it is another thing that is just kind of an unknown but we have an idea of what is – we have a guess of what is going to happen.

CHAIRMAN CARPENTER: Thank you very much. I think it is a very good report; it's in your packet; and you can all look over it. In the interest of time I'd like to move on to the discussion or the technical committees report on mandatory regional suggestions.

## **TECHNICAL COMMITTEES REPORT ON MANDATORY REGIONS**

MR. WONG: Okay, this is the mandatory regions. This is an issue that has been bounced around for quite a while. We finally had an opportunity to evaluate specific criteria to justify the regional groupings. I assumed that one of the main benefits to grouping is the benefit that you reap as far as uniformity in regulations across multiple states. I mean, there is benefit for compliance and enforcement.

If, indeed, that is one of the main benefits, then you really should group the regions by like-size distributions because the size distributions determine what your size limits and bag limits and seasons really are going to be. We looked at the recreational total catch. That includes both discards and harvested fish on a state-by-state basis.

This analysis uses the MRFSS data and some supplemental volunteer survey data from Connecticut and Maryland and the American Littoral Society Tagging Data. Again, there are caveats with the MRFSS data. The sampling of discards only occurs in the for-hire mode. We also looked at the fishery-independent survey, the NEAMAP Survey, and this has some spatial caveats since the survey only occurs in nearshore waters.

So when we look at the MRFSS recreational total catch, the best way that I thought to describe this is just show you the mean sizes by state. In general you just kind of see a declining average size by latitude, disrupted by this relative large-sized caught in Virginia. Now, the problem with relying on this solely to describe the availability of fish is that each of the states have different size season bag limits, and this can bias the catch distribution, the size of the catch.

Grouping states solely on this fishery-dependent size distribution can potentially be misleading. The other analysis was looking at the NEAMAP data. This survey provides some size distributions that roughly describe the availability of fluke in nearshore waters for Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia and North Carolina.

The data suggests that the separation of size distribution is occurring in New York and New Jersey. There is some discussion about whether that size distribution is different in the spring or not because this survey occurs in the fall and the spring. Now, there are seasonal differences, like I just stated, and the survey only reflects nearshore distribution.

Like I said, there are some benefits going to regional management as far as compliance and enforcement. In some cases data may be improved when you pool across states. The concern is that the observed size distributions by state may be biased by fishery regulations or fishery preferences, particularly timing of the fishery.

Now there are some generalities that you can gain from this analysis. The technical committee decided that there wasn't enough data to properly describe the

size distributions by state and to identify mandatory regions.

CHAIRMAN CARPENTER: Thank you very much. Again, it sounds like we were looking for a silver bullet that you haven't found yet. Are there any questions for Rich particularly to the analysis that he has just gone through. Pat.

MR. AUGUSTINE: In your concluding statement there is not enough information that is representative of the fisheries to identify options for mandatory regions based on technical criteria; from what it looks like you did I think your statement is correct. However, when we went forward with a motion last year it was to create an addendum to look at and review mandatory regions.

In that discussion we discussed specific regions, if you will, that had been identified by the advisory panel back in about 2004 or so. As part of that discussion we talked about exactly what you showed up here, that the size distribution is different in the full range from the three or four upper states, Rhode Island, New Hampshire, Massachusetts, Connecticut and New York; and probably the three that were grouped together, it would just seem to me that a technical review of those states that are on common water bodies would be a way to go to either prove or disprove that same size fish inhabit similar waters.

Relative to New Jersey, their state is shaped and divided in such a way I think in one end of it – and I won't speak for New Jersey, but as it has been presented at this meeting in the past there are two distinct areas. In one area you catch smaller fish and in another area you catch a larger fish. I won't try to delineate beyond that. In the case of Delaware, wherever it could fit, whether it belonged in that same combine, it would seem we would have to look at similar sizes.

By the technical committee looking at all of this in the overall scheme of things without specifically getting more confined or restricted in the area, we have always said North Carolina is a region by itself. There is no way they're going to catch 18, 19, 20-inch fish on a regular basis, so that area would be looked at by itself. That was what we were hoping for in terms of the presentation that you made today. Maybe that is too specific but that is where I'm coming from, Mr. Chairman.

CHAIRMAN CARPENTER: Pat, I don't want to get into too long a discussion here, but I think the technical committee has done an awful lot of work.

I'm sort of a visual person and I'm referring to Figure 2 in their report where they have the median size of the catch distribution by state. If I'm kind of looking at that, I'm going to try to put probably Rhode Island and Delaware together as a region, and that certainly doesn't work.

We see that Connecticut fits in here with neither neighbor on either size. Virginia fits with neither neighbor on either side. I'm not sure on what basis we've got a technical basis to decide what region you ought to have. You're pretty much saying, okay, let's pick three states and then analyze that data, which is essentially what the committee has done. I'm not sure that this is going to be very fruitful to continue much of this discussion unless you have a better idea.

MR. AUGUSTINE: Well, it's a better idea than going with conservation equivalency which puts several states at a disadvantage, and no one has had the fortitude to come forward to come up with some other suggestion. We cannot get the states to buy into one size fits all. We know that doesn't work on a coastal basis.

This approach I think if you were to combine a regional area, if you will, with a slot size that would accommodate those three or four states, that might be the next approach. If we reject going forward with mandatory regional, if you decide to select state by state, or some way of combining quotas together in common waters, then we're locked into conservation equivalency forever, and there is no state going to give up any percentage of the catch. What it sounds like is we're banging our heads against the wall and we're locked into the percentages that were given to us that we selected in 1998. It just means more lawsuits, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you. Any other discussion? Yes, Jim.

MR. GILMORE: Let me see if I can characterize it a little bit. I think we got into the next discussion a little bit too quickly, but, Rich, the question I've got really comes down to one of the problems that we've had with what Pat had mentioned about doing a redistribution is that we're kind of in this like endless loop right now. We don't have the opportunity to evaluate it.

Since '98 when we went to conservation equivalency, we no longer have a data set, and that seems to be in the analysis you did for mandatory regions. We can't evaluate it because, for lack of a better term we

screwed the data set up and we don't have another one that we can look at. So, if we had a data set to look at that would be, you know, maybe representative of the coast, would you have a different – I know it's hard to answer, but I mean if we had a good data set to base this on do you think that there actually would be a better way of estimating some regions.

MR. WONG: Yes, sure, if you had the data that describes not only the coastal distribution but also the inshore, the bay distribution availability of fluke, of course, you could group states by size distributions. We have said in the past that you need to almost have – you need to have a coast-wide regulation in effect that is common across all states, and you still have to have surveys that sample those inside areas, too.

CHAIRMAN CARPENTER: And did you not look at the available fishery-independent surveys and were you able to draw any conclusions from that that were different than what the fisheries showed?

MR. WONG: Well, the fishery-independent data was limited to nearshore areas, so we don't have an idea of what the availability of fish is in bay areas or creeks or any type of inside waters.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I just had a question about a term regarding – I think the term was we messed up the data or we screwed up the data. I'm wondering is what is being referred to is the fact that after 1998 there were not consistent regulations up and down the coast; and as a result of that, those regulations had an impact on what the individual states landings were. Is that what is meant by the term "screwed up the data"?

CHAIRMAN CARPENTER: Let me ask the author of that statement.

MR. GILMORE: I apologize there, Mr. Executive Director. It was probably a poor use of terms, but that is exactly what I was referring to is that we had something of a pure data set that we – it was no reflection on anybody doing bad work.

MR. WONG: Even if you constant regulations across the coast, it would be hard to make generalizations based on fishery-dependent size distributions even if the regulations are the same in every state. Fishery-dependent data can be skewed based on just the preferences of fishermen in that state, so we ideally would need to have a fishery-independent survey that has less spatial and temporal biases.

MR. FOTE: Many years ago – and I think it was started with Connecticut's problem by having such a small summer flounder quota – there was a working group put together to look at if we had reached a certain quota, how do we redistribute the increases in quota and do we do that equally among the states.

The problem was we had basically visions at that time we were going to go 30 and then 40 million pounds and we never got that way. The quota started going in the other direction and the resource became smaller and smaller that we were dividing among the states. I'm still hopeful at one point that we start basically looking at a larger quota.

This working group was not only supposed to look at summer flounder but it was supposed to look at sea bass and scup and try to redistribute the increases in all those quotas equally among the states and try to figure out a method of doing that. Again, when we started changing the rules in 2001 and 2002 and we saw all the complications that came in, that kind of went out the window. A.C., I think you remember all of the discussions that –

CHAIRMAN CARPENTER: Yes, and I thank you, Tom, and I don't think we're going to be able to resolve that today with –

MR. FOTE: No, what I'm saying is –

CHAIRMAN CARPENTER: -- the time we've got left. So with an interest of trying to keep somewhere near the schedule, there was a motion that had been on the table that was awaiting this last report. The motion is now back before, and I would like to direct the board's attention to the board where the motion is there. Is there any particular comment specific to the motion?

MR. GILMORE: Just a little bit of a refresher about the intent of the motion; it was made about a year ago, so it may be a little stale. The real reason for the motion is to get a third option. We go back to long before I was here and a lot of people were here. We had a coastwide that a lot people decided didn't work, so we had the first management approach and it just was not working, so we went into the state-by-state approach.

Now I've been here a year and a half and through several meetings from technical committees, advisory committees, monitoring committees. They also have concluded it does not work so we have two things that don't work. We need a new option and that's what we're really looking at doing this.

Again, we can't re-evaluate that original distribution that was set up in '98, but we're trying to manage this fishery in New York as best we can. If anybody is not familiar with the numbers we have this year, we're doing 21 inches, two feet, a very short season with an 18-day midseason closure. If you don't believe how difficult this is, I'll let you see my e-mail from the last two hours. I've got expletives in here I have never seen before.

We're trying to control the harvest, but we need help, we need more options than what we have right now, and continuing to go through with either a black and white of conservation equivalency or coastwide, which is not working – I'm sorry, conservation equivalency which is not working now and coastwide that hasn't worked in the past and we agree doesn't make any sense because it will disadvantage other states; it is just not going to get us where we need to get.

We're trying to manage the best we can, but we're really imploring the cooperative nature of the commission to try to look at a third option so we can maybe get a different way to manage this fishery. Thank you.

CHAIRMAN CARPENTER: Thank you, Jim, and I'd like to compliment the state of New York publicly for taking the actions that you have taken. It shows a genuine interest on your part to try to live within the confines of the management plan. I do applaud you and I'm sorry your e-mail looks like it does. Is there any other comment specific to the motion that's on the table? Tom.

MR. THOMAS McCLOY: Mr. Chairman, I think Jim knows and if he doesn't I will tell him again that I am completely sensitive to his dilemma in New York. I think we've all been wracking our brains on trying to find a way to help him get out of that and still keep our own scalps, of course. I think in light of the technical committee's recommendation after this analysis they did, be it what it may and using the data that it was, I don't think this motion is worth going forward on right now. Quite frankly, there is no technical support for it, and so are we going to spend the time and effort to go through the addendum process and end up at the same place six months from now.

## **CONSIDERATION OF POSTPONED MOTION ON MANDATORY REGIONS**

MR. SIMPSON: Just to clarify what you're suggesting with the motion that was postponed and is up on the screen here is that if the board voted to approve that and we go to hearing, we would then have – if it was successful we would have a third option which would be mandatory regions. Each year we would, as a board, visit those three options; and as a board vote either coast-wide conservation equivalency or go with the mandatory region; is that right? I'm just looking for that clarification.

CHAIRMAN CARPENTER: There are four options that would be available, Toni is telling me.

MR. KERNS: Dave, you also have the option to do voluntary regions that is in the toolbox already.

CHAIRMAN CARPENTER: And that one requires no work on the part of the board.

MR. SIMPSON: Right, so Connecticut would like to voluntarily partner up with New Jersey anytime they're willing. Okay, just so I understand it, it would be revisited each year, it would be a board decision to adopt for that year the mandatory region, whatever that might be, and it could take a different shape, I suppose each year, but to be successful I think it would have to have some staying power so that we could show that it would work.

I'm just thinking out loud through this; to me generally it would be to address the difference in the available size of fish up and down the coast and the changing distribution as the age structure changes with the rebuilding of the resource. Really, I appreciate the efforts the technical committee put into this, but it really is a policy decision.

I mean we make decisions everyday with less than perfect information. If we didn't, we'd never make a decision in fisheries. I support it as an option. I think we need to figure out a way out of this box, and I will just leave it at that.

CHAIRMAN CARPENTER: All right, in the interest of time, we're well behind schedule now, and I will remind the board that the option of voluntary regional management is available, and the only thing that takes is an agreement between people that think that they have something in common and technical analysis that their regulations would help to preserve and control the catch. Are there any additional

comments specific to this motion that would change anybody's view? Tom.

MR. FOTE: If it can be done voluntarily, it can be done. If you wind up where some states force another state that doesn't want to do this to advantage two states over another state or one state over another state, then you do wind up in lawsuits and then you do wind up pulling this commission apart. I mean, I understand what is going on and I don't accept it.

CHAIRMAN CARPENTER: All right, with that I am going to call the question and I will read it into the record: **Move to develop an addendum to include a mandatory regional management tool for summer flounder in the FMP.** The motion was originally by Mr. Augustine and seconded by Mr. Miller. Thirty-second caucus on the issue.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Everybody ready to vote? **All those in favor of the motion signify by holding up their right hand; all those opposed the same sign; abstentions, 2 abstentions; null votes. The motion fails; it was two, six and two.**

MR. SIMPSON: But Connecticut didn't vote.

CHAIRMAN CARPENTER: While we're waiting for them to get the record straight on that vote, we have Jessica Coakley here with us today. Thank you, Jessica, for coming with us today and we will ask you to please proceed.

### **REVIEW OF MAFMC PROGRESS ON ANNUAL CATCH LIMITS AND ACCOUNTABILITY MEASURES**

MS. COAKLEY: Thank you for having me. I am going to give a quick update on actions the council is taking related to annual catch limits and accountability measures. These are new requirements that came about with the 2006 reauthorization of the Magnuson-Stevens Act. I see many people that have seen a similar presentation before; so for those who have seen this before, you get to see it again.

For those of you that haven't, this will be some new information and new terms about these new requirements. These requirements came out of the reauthorization and there is a deadline associated with these requirements. The deadline for overfishing stocks the requirements need to be in

place by 2010, and for those stocks not experiencing overfishing, they need to be in place by 2011.

For our Mid-Atlantic Council's stocks, as of fishing year 2008 none of the stocks were experiencing overfishing with the exception of scup, but scup has since been declared rebuilt with overfishing not occurring based on the new data-poor stock assessment. The council is subject to the 2011 deadline, so they're going to be working towards that implementation deadline.

The new guidance introduced a whole new series of terms, all of which are aimed at ending overfishing and preventing the overfishing level from being exceeded. The first term at the time is the overfishing level, the OFL, and this corresponds to maximum sustainable yield. Basically we take our fishing mortality threshold rate,  $F_{msy}$ ; you multiply that out by whatever the stock biomass is and you get your overfishing level, which sometimes it will be above  $msy$ . Sometimes it will be a little bit below, but on average it should vary about  $msy$  and produce  $msy$  in the long term.

The next term that was introduced through the guidance in its framework is acceptable biological age. Acceptable biological catch could be equal to the overfishing level if there is no scientific uncertainty inherent in determining the status of that stock. We recognize that stock assessments and the way we assess the stock has a lot of uncertainty associated with it, so how that level of uncertainty would be characterized and used to set the ABC level.

The next term in this framework is the annual catch limit. The annual catch limit is offset from the acceptable biological catch based on management uncertainty. Many of the management systems and the way information is reported and regulations are implemented have some uncertainty associated with them.

The difference between the ABC and the ACL is supposed to be based on that management uncertainty. Now the annual catch limit is supposed to be linked with accountability measures. These measures are supposed to prevent the annual catch limit from being exceeded frequently and ultimately prevent the overfishing limit from being exceeded.

That is the intent of having those AMs linked up to the annual catch limit, and there are many examples of AMs. It could be proactive AMs such as in-season type management measures or reactive AMs such as



deducting overages or adjusting regulations in response to what has happened to prevent an overage from occurring. That is another term that was introduced to this new guidance.

The last term up there is an annual catch target, and it is something that is suggested in the guidance for fisheries where you might not have effective in-season management. Basically you would set that target at some level less than the annual catch limit to buffer that annual catch limit, buffer against it so it isn't exceeded and that you don't trigger those accountability measures.

These are the new terms that came out from the new guidance, but ultimately that framework of terms is aimed at making sure that overfishing limit isn't exceeded. The council has started moving forward with actions to address these new requirements. They have identified which species the new requirements apply to, and it's going to apply to all council-managed species with the exception of loligo and illex squid.

Those two are annual life-cycle species and they're not subject to overfishing, although there are mechanisms in those plans to set catch levels, but they're not subject to these requirements. The 2011 implementation deadline, clearly there is a lot of work to be done. The council has formed a Fishery Management Action Team, which is going to be group that actually writes this omnibus document.

It is an omnibus amendment that is going to be used to implement all of these new requirements for the Mid-Atlantic Council for their individual plans. It is going to amend each of those individual FMPs. The council has also formed an ACL/AM Committee that is going to be discussing these issues as the council moves through the development process.

It is composed of council members as well as Vince O'Shea and Pat Kurkul have been attending as well. They have engaged the Science and Statistical Committee, which are the scientific advisors, to get advice on how to deal with scientific uncertainty, how to account for it when setting the acceptable biological catch levels.

I also note on the FMAT Toni Kerns is an FMAT member as well, so she is engaged in that process at the staff level. In terms of what these requirements apply to, there is the list of all the council species. Summer flounder, scup and black sea bass are on the list there as well as bluefish and dogfish. All five of those species are either jointly or cooperatively

managed with the council and commission, so these new requirements are clearly relevant to everyone who is involved with the fisheries management.

All five of those species have commercial fisheries and recreational fisheries, which is going to pose a particular challenge when setting these catch limits for either those two sectors or within federal and state waters. As I highlighted, we've got joint and cooperative management; joint for those four species, fluke, scup, sea bass and bluefish.

We meet in conjunction in August and December with the council and the Summer Flounder, Scup and Black Sea Bass Board. We have cooperative management for spiny dogfish. The council has a 2011 timeline that they need to meet in terms of implementation. Right now we're in the early development states. We're in the process of scoping to get public input.

I know in your briefing CD you have a copy of the scoping document. There are also copies in the back. The council is going to be receiving scoping comments until May 31<sup>st</sup>. That's 16 days later than what is indicated in the scoping document. There is going to be a press release coming out this week indicating that there has been an extension.

I would encourage people to read through the scoping document and comment. Once that information has been compiled for the council and based on advice from all their committees and advisors, the council is going to identify alternatives and options to address these new requirements.

An Environment Impact Statement is going to need to be written, take it through the public hearing process, and then ultimately submit it to the National Marine Fisheries Service for implementation for the 2011 fishing year. There is a lot that needs to be done. There is going to be lots of opportunity for input into this process.

In terms of calculating acceptable biological catch and annual catch limits, the council is looking at control rules for ABC that are going to account for scientific uncertainty. They're working with their SSC on that. They're going to look at control rules for the annual catch limits that will account for management uncertainty, and they're going to be looking at developing associated AMs, accountability measures, that are going to be linked up to the annual catch limit and are going to either prevent it from being exceeded or mitigate any overages that occur.

Control rules that are under consideration could be based on probability-based methods such as have been used in setting the summer flounder quotas where you pick a higher probability of not exceeding your overfishing limit versus setting a higher TAL based on a higher probability of not exceeding the overfishing limit versus a lower probability like maybe going with 75 percent probability instead of 50 percent probability. That's something that has been done before.

They're also looking at percentage-based offsets, so maybe setting ABC based on a fixed offset, making it 75 percent of OFL, the overfishing limit, just as an example; or, maximum spawning potential-based methods. Summer flounder, here is another example where the threshold is based on a 35 percent MSP but the target is based on a 40 percent MSP, so it is retaining more spawning potential. Therefore, the catch level is less at that higher spawning potential. Those are all things that are under consideration, and they're going to be up for discussion.

The council is also considering classifying stocks based on specific criteria into tiers. Basically a tier-based process is similar to the process that's used out in the North Pacific. It's way of organizing control rules. An example would be having tiers based on the level of stock assessment information you have; you know, taking the most data-poor stock where maybe you just have catch information or a survey index, something very basic, would be, say, a low tier.

Then your best stock assessment with the most information could be a higher tier. Each tier would have different kinds of control rules associated with them based on that level of uncertainty; so when an assessment is done and you figure out what tier it fits into, then you know what control rules need to be used. That is something that also is under consideration.

In addition, the National Standard 1 Guidance that came out in January suggests considering ecosystems in several different ways. It's required but it's something that is suggested in that guidance. It could be the inclusion of ecosystem component species in the Council FMPs. Right now all the stocks that the council has in FMPs are target stocks like fluke, scup, sea bass, something that is being directed on, but they could consider ecosystem component species.

They could also consider adjusting your ABCs or ACLs or that framework based on ecosystem consideration; so maybe for forage species it is

appropriate to set an ABC a little bit higher and leave more forage fish out there versus say for another species that you might not want to do that for. Again, these are just ideas that are being floated.

These accountability measures, as I mentioned, they're considering both proactive preventative measures or reactive measures; proactive ones being in-season adjustments, closing the fishery in season, having trip limits to ensure that you don't go over your quota or triggers where when you're at 80 percent of your quota, maybe your trip limit drops, for example.

Those will all be proactive-type measures versus reactive measures where you need to go through and deduct overages and things like that. Now, either these ACLs or AMs could be set for the overall fishery or they could be set sector-specific such as for the recreational fishery or for the commercial fishery.

The guidance also speaks to the possibility of setting state or federal annual catch limits and having those associated accountability measures. Now, these new requirements are under the Magnuson Act so the council is bound to those. The council would then, for example, be responsible for the federal accountability measures.

In terms of cooperative management it may be appropriate to take a look at how those ACLs are being set in the cooperative commission/council context because fishing mortality on the stock comes from both places and it all adds up to fishing mortality overall in terms of removals. That is something to think about and that's something that I know the council is going to be discussing.

Really, the challenges that I see at this point, these annual catch limits and acceptable biological catch include discards,, so in a lot of cases we're setting TALs based on landings, but in this new framework discards are going to need to be taken into account, and it's probably worth taking a look at what the cause of any overages might be – are these things coming from the discards; are they overages that are due to landings, and maybe the response is different or would be different in terms of accountability measures, depending on which it is.

It is going to be challenging to figure out how these semi-quantitative and qualitative factors factor into these buffers, either accounting for scientific uncertainty or management uncertainty. In addition, the council is having some discussions at this point – early discussions about developing a risk policy,

identifying what their tolerance for risk of overfishing is, so that's something that can be taken into account in this process. They're in the early stages of discussing that as well.

I have given some examples of things that might be considered. All of this is just at the beginning of the process. The council could deviate from some of the examples that are given in the scoping document, and I know that they're open to hearing what this group and what other groups have to say about this framework for ABCs, ACLs and AMs.

The council is going to be considering these scoping comments in June, but there are going to be a lot of other points for comment throughout this process. I guess where I'm going to leave off here is I know that these are new requirements and new terms that have been introduced. If you have any questions, I would encourage you to call the council staff. You can always e-mail me or call me.

I'm always happy to answer questions, but you've also got a lot of commissioners and board members around the table that also sit on the council or are involved in the process, so I would encourage you to sit down and talk with them and get familiar about this process and make sure that your thoughts on it are known and that both groups have an opportunity to talk about how to handle these new frameworks, new requirements and how this is going to affect the cooperative management for fluke, scup, sea bass, bluefish and dogfish as we move forward. That's it.

CHAIRMAN CARPENTER: Thank you, Jessica. I think you summed up very well that the responsibility of this board is to stay abreast of what is going on with the council, be cognizant of it and recognize that it may have an impact on some of our management plans. It's not just summer flounder; this is all of the species and I think it is a nation-wide effort. Any questions or comments? Yes, David, and keep in mind the time, please.

DR. PIERCE: I appreciate that. An omnibus amendment, I'm very glad you're doing it because you have the time to do it, 2011. The New England Council, unfortunately, is doing it on a plan-by-plan basis. It's a very confusing situation because staff is doing it differently. One plan has one approach; the other plan has the other approach.

Because we have to sit here and deal with fluke and sea bass and scup, the omnibus is the way the go. My only question is or comment is that I would hope that the Mid-Atlantic Council leadership is talking to

the New England Council leadership so that a consistent approach can be developed, if at all possible.

Frankly, I don't look forward to the time when I'll be at our New England Council meeting making decisions as to how to do the ACLs and the AMs, and I come here and there is an entirely different approach based upon the Mid-Atlantic Council philosophy. I just hope that discussion is occurring; because if it isn't, then we might have some great divergences in approach as to how we set these things, and that will just confuse everyone; in particular the fishing industry, and they're already confused enough. We need to minimize that confusion.

CHAIRMAN CARPENTER: Seeing our colleagues from the South Atlantic in the room here, they may come up with a third way of doing this thing. Vince has a frown on his face.

EXECUTIVE DIRECTOR O'SHEA: Well, not necessarily a frown, but just the idea that the advice for the New England Council and the Mid-Atlantic Council to be in alignment here is a good suggestion, but that is not necessarily going to help the commission. Without the commission also being sensitive to the need to be in alignment with the two councils where we have intersections with fishery management plans, so just the councils being in alignment in and of themselves isn't necessarily going to prevent strange things from happening here.

CHAIRMAN CARPENTER: Thank you for that recognition. Let's move on to the next agenda item. It is a discussion of Quota Transfer Regulatory Language within the FMPs. Dave, you had asked for this item on the agenda.

### **QUOTA TRANSFER REGULATORY LANGUAGE WITHIN FMPS**

DR. PIERCE: Yes, I'm going to step away from the table, so to speak, Mr. Chairman, and Dan McKiernan will address the particular issue that he has been working on in cooperation with staff.

MR. DAN MCKIERNAN: A.C., I promised you a three-minute elevator speech and I'll stick to that. We here today simply to ask the board to approve the initiation of a new addendum to fill in gaps regarding quota transfers for summertime scup fisheries and the annual sea bass fisheries. As the slide mentions, guidance is lacking regarding timing the procedures and the policies of how the transfers take place.

I just might add that of the three species that are managed by the Mid-Atlantic Council, fluke has federal language about timing of transfers, et cetera. However, that's not the case for scup and sea bass since they don't have an analogous state-by-state share program. We're really trying to fill in these gaps, and I have been advised by staff, Bob Beal and Toni, in a lot of my conversations on an annual basis that these commission addendums or the plans do lack the details that we need to move forward.

I'm really working in two major issues. One is I would like to come clean on what the reconciliation period would be, when can you transfer, is it acceptable to transfer in a post-season way after all the states have tallied up their landings through the last day of the year? Second, the distribution mechanism – I worked closely with the states of New York and Connecticut this past winter to try to come up with an arrangement to share underages that some states might have had to cover our states' minor overages.

It was clear that whatever policies we were coming up with, they were done on the fly and we need something more firm. I'm asking if the board would approve staff to work with some of the states to develop a draft addendum to be considered at the August meeting for public hearing in the fall and approval in November.

**CHAIRMAN CARPENTER:** Thank you for your very quick reply to my request for you to keep it short. The way that this item was put on the agenda, it was as a discussion item, and I'm not expecting the board to take any action today to initiate an addendum. What I would suggest is between now and our next meeting that we continue this discussion and have the item fleshed out enough that we can present to the board an action item to begin initiating an addendum at that point in time.

**MR. McKIERNAN:** Would that move us into a February approval, then?

**CHAIRMAN CARPENTER:** I think the limitations on the staff have to be taken into consideration here. We really don't have the luxury today to initiate and addendum, and I think the best way to proceed is to work with staff to see if we can have something ready for the August meeting that the board can react to at that point in time. Yes, it probably will push you back to February, and I apologize for that. Dave.

**MR. SIMPSON:** Mr. Chairman, since we're on this topic I just wanted to publicly thank the states that

transferred unused scup from the 2008 season to states that were over, including Connecticut. It makes a big difference for a small state with a modest quota, and our fishermen really appreciate it. This year they'll be fishing on 89,000 pounds of scup, and it would have been a lot less if states hadn't transferred, so I really appreciate it.

**EXECUTIVE DIRECTOR O'SHEA:** Mr. Chairman, real quick, I just want to clarify that the staff agrees that the plan is silent on this issue. Lest anyone think that the staff agrees the plan needs to be modified, that is a decision for the board to make. We're in agreement that your plan is silent on this issue.

### **ADJUSTED CONNECTICUT RECREATIONAL SUMMER FLOUNDER REGULATIONS**

**CHAIRMAN CARPENTER:** Thank you. With that, we will move into other business. There was a review of the Adjusted Connecticut Recreational Summer Flounder Regulations.

**MR. SIMPSON:** Toni had asked me to provide a summary of what we had done this year in Connecticut with our summer flounder regulations in the recreational fishery. For a little bit of background, in 2008 Connecticut was over the 2008 target. We were required to reduce our 2009 harvest by 33.6 percent.

Our 2008 regulations were at 29-1/2 inch minimum size, five-fish bag limit and an open season from May 24<sup>th</sup> to September 1. That is 101 days open season. As a performance measure the management board required all states facing reductions to achieve half of that reduction through a season restriction.

In response to that we developed options that embraced that concept of doing most of the work with the season. Early in April we adopted a 19-1/2 inch minimum size, a three-fish creel limit, so down two, and an open season from June 15<sup>th</sup> through August 19. That is a 66-day open season for summer flounder in Connecticut, 35 days less than we had last year.

That measure was developed using a slight modification to our season calculation that I discovered in response to an innocent question from an attendee at one of our public hearings, "Are you sure you're doing those calculations right?" We took a closer look at it and we weren't convinced doing them right. We ran the modification that we used through the technical committee at their March 31-

April 1 two-day meeting, you know, last month, and they didn't have any problems with it was the report I got back from my technical committee person and from Toni.

So with that, we did go ahead and implement the season that I described, open June 15<sup>th</sup> through August 19<sup>th</sup>. It is about six days different than the original calculation would have suggested. The tackle shop owner that brought it to our attention had good instincts when he felt like the restrictions we were talking about sounded like more than 34 percent. That's the summary I have to report to the board. If there are any questions, I would be happy to answer them.

CHAIRMAN CARPENTER: Given that it is a change from what had been approved, would you move the adoption of your change.

MR. SIMPSON: Certainly. **I move that the board approve the 2009 regulations proposed and adopted by Connecticut; namely, a 19-1/2 inch minimum size; three-fish creel limit; and an open season from June 15 through August 19.**

CHAIRMAN CARPENTER: Is there a second to that motion? Seconded by Pat Augustine. Any discussion on that motion? Any opposition to that motion? **Seeing no opposition, I'm going to rule the motion approved by consensus.** Thank you very much.

### **ADJOURN**

Is there any other business to come before the board? Seeing none, the board is adjourned.

(Whereupon, the meeting was adjourned at  
1:07 o'clock p.m., May 5, 2009)