

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

**Crown Plaza Old Town  
Alexandria, Virginia  
February 3, 2009**

Approved May 2009

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1. **Approval of agenda by consent** (Page 1)
2. **Approval of proceedings of October 20, 2008 by consent** (Page 1).
3. **Move to reconsider the Scup TAL for 2009 by increasing it from 7.34 million pounds to the National Marine Fisheries Service Proposed TAL of 11.18 million pounds.** (Page 7). Motion by Mr. Pierce; second by Mr. Gibson. Motion carried (Page 9). Motion carried on Page 13.
4. **Move to remove the requirement for limiting landing to one trip per two weeks.**  
  
MOTION REWORDED ON PAGE 16: **Move to amend the Winter 1 landing limit of 30,000 pounds to a possession limit with no restriction on the amount of landings per two-week period** (Page 9). Motion by Mr. Simpson; second by Mr. Pierce. Motion was defeated (Page 11).
5. **Move to not implement the peak wave requirement recommended by the technical committee for the 2009 summer flounder fluke fishery** (Page 16). Motion by Mr. Gilmore; second by Mr. Fote. Motion carried (Page 19).  
  
SUBSTITUTE MOTION, PAGE 18: **Move to substitute that the conservation measures in the fishery for 2009 include performance measures based on the average historical performance as applied in 2008.** Motion was defeated on Page 18.
6. **Move to approve all summer flounder recreational proposals that achieve 50 percent of the required reduction through seasonal closures as approved by the technical committee** (Page 19.) Motion by Mr. Adler; second by Mr. Culhane. Motion carried (Page 21).
7. **Move to approve liberalization plans from North Carolina, Virginia and Delaware** (Page 21). Motion by Dr. Daniel; second by Mr. Travelstead. Motion carried (Page 21).
8. **Move to set the 2009 fishery in the states of Massachusetts, Rhode Island, Connecticut and New York an open season from May 24<sup>th</sup> through September 26<sup>th</sup>, a 10-1/2 inch minimum size in the private boat and shore modes, an 11-inch minimum size in the party and charter modes, except that for 45 continuous days within the open season the party and charter mode creel limit will be 45 fish. The 45-day season shall be at the discretion of each state** (Page 21). Motion by Mr. Simpson; second by Mr. Pierce. Motion withdrawn on Page 22 because of no second.
9. **Motion to maintain status quo for the 2009 regulations for the states of Massachusetts, Rhode Island, Connecticut, New York and New Jersey** (Page 23). Motion by Mr. Simpson; second by Mr. Pierce. Motion carried (Page 23).
10. **Motion to adjourn by consent.** (Page 23).

## ATTENDANCE

### Board Members

David Pierce, MA, proxy for P. Diodati (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
William Adler, MA (GA)	Tom O'Connell, MD (AA)
Mark Gibson, RI (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Bill Windley, MD, proxy for B Goldsborough, (GA)
David Simpson, CT (AA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Lance Stewart, CT (GA)	Ernest Bowden, VA, proxy for Del. Lewis, VA (LA)
James Gilmore, NY (AA)	Louis Daniel, NC (AA)
Pat Augustine, NY (GA)	Bill Cole, NC (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Tom McCloy, NJ, proxy for D. Chanda (AC)	Harry Mears, NMFS
Thomas Fote, NJ (GA)	Jaime Geiger, USFWS
Gilbert Ewing, NJ, proxy for Asm. Fisher (LA)	A.C. Carpenter, PRFC
Roy Miller, DE, proxy for P. Emory (AA)	

(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

Bill VanDusen, PA, Legislative Proxy  
Eugene Kray, PA (GA)  
Steve Meyers, NOAA  
Carrie Kennedy, MD DNR  
Mike Luisi, MD DNR  
Patricia Kurkul, NOAA  
Lara Slifka, CCCHFA  
Sean McKeon, NCFE  
Peter Himchak, NJ DFW

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Jeff Deem, MAFMC  
Greg DiDomenico, GSSA  
Brian Hooker, NMFS  
Frank Kearney, CCA-VA  
Bob Ross, NMFS  
Arnold Leo, E. Hampton, NY  
Philip Curcio, UBNY/NYFTTA

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, February 3, 2009, and was called to order at 10:20 o'clock a.m. by Chairman A.C. Carpenter.

### **CALL TO ORDER**

CHAIRMAN A.C. CARPENTER: Good morning. I'm A.C. Carpenter, and I'm the Chair of the Summer Flounder, Scup and Black Sea Bass Management Board. I would like to call the board to order. It appears that we do have a quorum, so we will get started without too much delay here.

CHAIRMAN A.C. CARPENTER: You have the agenda before you. Are there any additions, deletions or changes to the agenda? Tom.

MR. THOMAS W. McCLOY: Just a question, Mr. Chairman. I think at the October meeting we had requested some analysis be done on half a dozen slot options. I was just wondering whether we were going to get a report on that today.

CHAIRMAN CARPENTER: That work has not yet been done. Jim Gilmore.

MR. JAMES GILMORE: Mr. Chairman, just before we have a vote on the summer flounder limits, I wanted to have a possible discussion. At the December meeting we had talked about our management strategy but also there was a 50 percent seasonal closure issue raised, and I wanted to have more discussion about that because it raised some precedential concerns of ours.

### **APPROVAL OF AGENDA**

CHAIRMAN CARPENTER: We will get into a discussion of that. Any other changes to the agenda? The agenda stands as printed with the notation that we will discuss the motion that was made back in December.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN A.C. CARPENTER: You have before you the proceedings from the October 20<sup>th</sup> meeting. Are there any changes, additions or corrections to that?

MR. PATRICK AUGUSTINE: Mr. Chairman, I apologize for coming back into the room so late. Congratulations on your ascendance to the

chairmanship of this. I had hoped to be here to ask for one change in the agenda. Only because you are now loaded with a very, very duty, I was going to ask to have the election of the vice-chairman moved up to the beginning of the meeting so that he could participate from that position throughout this meeting. Now whether that is doable or not, I would appreciate if you could; if not, let the agenda remain.

### **ELECTION OF VICE-CHAIRMAN**

CHAIRMAN CARPENTER: Well, it being my general rule to have a vice-chairman sitting beside me and since there is the empty seat, I think that is an excellent idea. We will now take Item Number 8 first; the election of a vice-chairman. The floor is open for nominations.

MR. GILMORE: I would like to nominate Dave Simpson from the great state of Connecticut.

CHAIRMAN CARPENTER: We have a second by Dave Pierce. Mr. Pat Augustine.

MR. AUGUSTINE: I move to close the nominations and that the chairman cast one vote on behalf of the board. Congratulations, Mr. Simpson.

### **PUBLIC COMMENT**

CHAIRMAN CARPENTER: Now back to the agenda. We have public comment. This is a period that is allowed for public comment on subjects which are not on the agenda, but one person has signed up regarding the scup quota. Given that that is on the agenda, I will go ahead and take a very brief comment. Phil.

MR. PHILIP CURSIO: Thank you, Mr. Chairman, Philip Cursio representing United Boatmen and NFTA and RFA New York. I would rather reserve my comments until after the presentation if that is possible. I didn't realize since it is on the agenda, I would rather make the comments after the technical presentation is made.

### **REVIEW OF DATA-POOR WORKSHOP PEER REVIEW SCUP**

CHAIRMAN CARPENTER: That's fine. The next item is the review of the data-poor workshop. Tom Miller was originally scheduled to give that, but Tom is not able to be with us today, so we have Jessica from the Mid-Atlantic Council who will be making the presentation.

MS. TONI KERNS: Staff passed out a summary that was put together of the scup assessment and you were also e-mailed the scup and black sea bass assessment last week. These are extremely large files so therefore there were limited numbers of copies that were printed. Also in the supplemental materials was the peer review report, which is also a fairly large file.

You should have all of those pieces of information. Then Jessica Coakley also graciously put together a one pager of what these new assessment results mean for scup and black sea bass similarly to that was done as summer flounder, and those were passed out to you at the beginning of the meeting as well.

MS. JESSICA COAKLEY: Good morning, everyone. Before I get started, I just want to state, as A.C. had pointed out, unfortunately Tom Miller was not able to be with us to give this presentation today. He would have been the ideal person to give the presentation. The next ideal person to give that presentation would have been the SAW Chair from the Science Center, Dr. Jim Weinberg. He was not available either.

I am the stopgap measure to present this information to you. Having said that, I want to make it clear that at the end of this presentation I'm prepared to answer questions about the types of assessment models that were used, where to find information in the documents to answer some of your questions, but I am not prepared to interpret the expert panel results for you. I am just not prepared to do that today.

That isn't my role, so I am going to work through this information and we will do our best to muddle through with the questions when we get to those. The Northeast Data-Poor Stock Peer Review Meeting was held on the second week of December, December 8-12, this past year of 2008. It was held at the Steven Clark Conference Room at the Northeast Fishery Science Center. It was the culmination of many months of work by the Data-Poor Stock Workgroup.

The stocks that were included were the skate species complex – there are multiple skate species included – deep sea red crab, Atlantic wolf fish, scup, black sea bass. There was also a review of the work that was done up to that point on the weakfish assessment. The chairman of that panel was Dr. Tom Miller.

In addition the review panel was comprised of Dr. Bob Muller from the Florida Fish and Wildlife Commission, Andy Rosenberg from the University of

New Hampshire and Bob Boyle, who is a consultant with Beta Scientific Consulting. The northeast stocks were selected by the Northeast Regional Coordinating Council, and that group also set the terms of reference.

The assessment team for all of these specie-specific workgroups was comprised of about 20 members from the Northeast Fisheries Science Center, New England and Mid-Atlantic Fishery Management Councils, ASMFC and the Southeast and Southwest Fishery Science Centers. There were a lot of experts involved in producing those working papers.

It was a little different than the way the SAW/SARCs are normally held in that it was an interactive peer review process, and these expert reviewers were chosen primarily by the councils from the SSC rosters, which is the Science and Statistical Committee. One of the terms of reference that was included was to provide advice to the Science and Statistical Committee on how to deal with the new biological reference point information.

There were two products that were produced, which Toni had mentioned were distributed, a reviewers' report and a science report, which is Center Reference Document 09-02. These reports are also downloadable from the Northeast Fishery Science Center Website under the SAW Link. Actually on that site you can download pieces of the document if you don't want to download all 1,200 pages of it.

The terms of reference themselves were to recommend biological reference points and BRP proxies for black sea bass, red crab, scup, skates, and wolf fish, as well as to provide advice about scientific uncertainty and risk for the Science and Statistical Committees to consider developing reference points for species groups for situations where the catch or landings cannot be identified to the species level – and you'll see when we talk about skates that applies to the skate complex – to recommend ways to improve the information, proxies or assessments; and in the case of weakfish, to provide guidance for scientists to use in future assessments.

All right, moving on to scup, a new stock assessment was presented and it was based on an analytical model called an Age-Structured Assessment Program. This is the same model that was used in the assessment for summer flounder that went through the last SAW/SARC in June 2008; the statistical catch-at-age model

It was presented; it was accepted and it was recommended as the basis for the assessment and for the biological reference points. The new approach under this model uses more sources of data, fishery-level information, catch and landings, and information from multiple surveys. This model itself should represent a more stable basis for both assessment and status determination.

The scup stock has improved recently through recruitment and rebuilding of the population age structure. Compared to the new model, the previous index-based approach determining stock status was less sensitive to these variables. It did not take that age information or information about recruitment directly into account. These new results are a major change from the last update conducted in July 2008, which had indicated that the stock was indeed overfished.

So, this figure is spawning stock biomass. It is the retrospective analysis that was done from the scup ASAP-accepted model. As you can see, the spawning stock biomass was higher early in the time series, going back to the sixties, decreased but then leveled out throughout the seventies and early eighties and then dropped substantially into the early eighties through the late nineties when there was a very increase in spawning stock biomass.

There is a little bit of a retrospective pattern at the end of this time series. As you can see, when an additional year's worth of data is added those estimates tend to float up a little bit in terms of the SSB estimate. The time series appears to be relatively stable in terms of a retrospective pattern except for the end of that series.

In terms of fishing mortality rate, this shows sort of an inverse pattern where the fishing mortality rates were lower earlier in the time series, which was when the SSB was higher. You see increasing fishing mortality rates throughout the early 1980s all the way into the late nineties, which is when we saw that dip in SSB in the previous figure. Then in recent years the fishing mortality rate estimates have decreased.

You see a little bit of noise around 2002 in the fishing mortality rate estimates, and some of you may recall from seeing the index time series there was a spike in the time series in that year, so the model doesn't seem to fit that year quite as well. In terms of recruitment at age zero – this is the retrospective analysis as well – recruitment has remained relatively stable over the time period, but as you can see in

recent years we have observed higher recruitments, higher than we have seen throughout that time series.

At the end of the time series, because of that, there is a little bit more noise in the retrospective pattern. Now, this bubble plot has age on the bottom axis and the year on your Y axis. It is recreational fishery landings by age. As you move across from age zero to 7-plus category, it shows you relative contribution in landings at age.

Early in the time series, around 1985 you can see the age structure extended all the way to that 7-plus category, but then the older ages started to disappear throughout the eighties and into those late nineties. In recent years we see rebuilding of that age composition in these recreational fishery landings.

The bottom line in terms of biological reference points, the new model was recommended as the basis for BRPs. It is the age-structured assessment program. The biomass target, which is our SSB, MSY estimate is 92,000 metric tons. The threshold biomass level is one-half of that biomass target. That is the level which we determine whether we are or are not overfished.

Putting the 2007 SSB estimate over the biomass target, current SSB in 2007 is 130 percent of that target level, which indicates that the stock is not overfished. The fishing mortality threshold, the Fmsy proxy estimate of F 40 percent is estimated to be 0.177. The current fishing mortality rate in 2007 is 31 percent of that fishing mortality threshold rate, which indicates that overfishing is not occurring on the stock. The MSY estimate that was produced from ASAP is about 16,000 metric tons.

The advice to the SSC on scientific uncertainty was that the panel recommends that scup should no longer be considered part of the data-poor stock suite. They thought that the new model should be adopted. They highlighted several sources of uncertainty. One was recruitment. As you saw, the recent recruitments were higher than we had seen throughout the time series. There was discussion as to whether that would continue over time, so recruitment was highlighted.

Maximum age was also another source of uncertainty. With the expanding age structure, it was noted that the age structure may continue to expand, which may require a revision of the maximum age used in the assessment model, so maximum age was also highlighted. Survey variability in the absence of older fish in the surveys was another issue and another source of uncertainty for this assessment.

All of the federal surveys and state surveys do not sample the older ages of scup very well, although we do see those older ages appearing in the fishery data, in the catches and in the landings. That is one additional source of uncertainty. Discard estimates and natural mortality were also highlighted as sources of uncertainty.

So for biological reference points, we have new reference points that have been recommended based on that analytical assessment. Their advice was the perceived stock status is markedly better. The panel felt that there was ample justification for accepting the revised conclusions. In terms of more advice, however, this group felt that rapid increases in the quota would be unwarranted given uncertainties in the new model estimates and stock status. A gradual increase in quotas would be appropriate.

### **BLACK SEA BASS**

I'm going to move through black sea bass now. For black sea bass there were a couple of issues that were a main focus of discussion. One was the use of the tagging data to estimate  $M$ . The tagging information suggested that natural mortality might be higher for black sea bass. Another main focus of discussion was how to model a species that changes sex and is territorial; do standard fishery models apply?

For those of that aren't aware, black sea bass is protogynous hermaphrodite. All sea bass start out as females. They transition to males at some time between ages two and five years old. Then at that point those males either stay as a subordinate male or become a dominant male, which is during spawning season identified by that big hump and the flared chins. I am sure most people have seen a dominant male. They look very different from the non-dominant males.

Because you have that sex changing and site fidelity and these fish are territorial, there were questions as to how to apply standard fisheries models. For black sea bass a statistical catch-at-length model was used. It is called SCALE. It is similar to the statistical catch-at-age model, ASAP, except instead of fitting to age composition it fits to length composition.

When the model was fit, there were some residual patterns that showed up in the model. On Page 434 of the assessment report it highlights that residual pattern showed that predicted indices are greater than observed indices for 2004 to 2007. This would suggest that the model may overestimate predicted

abundance, so that was something that was highlighted in discussion.

Black sea bass, this figure provides the fishing mortality rate. The fishing mortality rate in 2007 was 0.48. The  $F_{threshold}$ ,  $F_{msy}$  proxy, estimated from the SCALE model was 0.42. That would indicate that overfishing is occurring. For black sea bass the biological reference points were based on this new SCALE model. The biomass target, the SSB MSY estimate about 12,500 metric tons. The threshold, which is our overfished status determination level, is one-half of that biomass target.

Setting up the ratio of spawning stock biomass in 2007 relative to this biomass target, it is 91 percent of the target, which indicates that the stock is not overfished; that the stock is higher than one-half of that target. The fishing mortality threshold, the  $F_{msy}$  level of  $F_{47}$ , is estimated to 0.42. Setting up that ratio again with the  $F$  estimate for '07 relative to that threshold, it is 114 percent of that  $F$  level, which indicates that overfishing is occurring.

The MSY estimate for black sea bass that came out of the SCALE model was 3,900 metric tons. For black sea bass the advice to the SSC on scientific uncertainty; they stated that the new results on status are uncertain. Several sources of uncertainty were highlighted. One is the natural mortality rate estimate.

Modeling a species that changes sex is obviously complicated. Traditional models may not apply. The lack of model fit in recent years – there are residuals that were highlighted – is also another issue. The tagging information suggests that there may be multiple stocks or subunits along the coast for black sea bass.

Another source of uncertainty, as well as the commercial discards, and the sensitivity of the biological reference points is the weight of different data sources. For biological reference points we have new reference points that are based on this analytical model called SCALE. The advice from this panel was that the model should be accepted for assessment and biological reference point calculation, but they recommended caution in management due to high uncertainty; allow for sizable uncertainty in stock status when establishing the catch limits. Those were their recommendations. Since we're not going through weakfish, that would be the end of the presentation.



CHAIRMAN CARPENTER: Thank you, Jessica. We would like to open the floor for a few minutes of questions on the technical. Bill Adler had his hand up first and then Dave Pierce.

## DISCUSSION OF DATA-POOR WORKSHOP

MR. WILLIAM A. ADLER: I just wanted to ask on this report that we received; did they mention why they consider the estimate of fishing discard mortality of 50 percent on the commercial discard? I know they say it is uncertain, but I always thought it wasn't that high. They didn't mention anything about that or they're not trying to get a better figure than 50 percent of the discards end up dead. This is in that big report that I got here, Page 25 of the report. I know they say it is uncertain, but still I didn't know whether they were working on trying to adjust that.

CHAIRMAN CARPENTER: I think what he is referring to is the report that came out on the CD for the peer review report.

MR. ADLER: Yes, that's it.

MS. COAKLEY: I'm not quite sure how to answer that. I mean, they mentioned this in the panel's report that the discard mortality is uncertain, but, again, I'm not sure quite how to follow up on that question. My suggestion would be at the Mid-Atlantic Council next week Dr. Jim Weinberg is going to be presenting this information as well then and may go into additional detail beyond what I have presented. I'd also encourage you to send him an e-mail if you have specific questions on issues and hopefully he can find the answer for you.

DR. DAVID PIERCE: Just a couple of brief comments and then a question for Jessica, recognizing, Jessica, that you're not here to field questions, as you said, on behalf of the workshop although you were there. You did fine job. I was there and I got to witness the discussions on scup, all the work done on scup, since I have great interest in that particular species; sea bass, of course, as well.

But, scup drew my attention and, frankly, I need to give a word of thanks and congratulations to Mark Terceiro, in particular, who worked on scup, and Gary Shepherd and others who put a tremendous amount of work into this. It was a very difficult task, and I admire them for the way in which they worked this through with their colleagues, those who worked with them; the way they worked this through and ended up with a couple of assessments now for scup

and for black sea bass that have moved us away from total reliance on bottom trawl survey results; the National Marine Fisheries Service Spring Survey results; from total reliance on that to now these new models.

Again, there is some uncertainty with these models, and that's okay, but still now we have metric tons. We have millions of pounds that we can work with instead of kilograms per tow. So, again, kudos to Mark and also, of course, to the peer review players who played such an important role in all of this work.

One reason I'm especially thankful that we are now working with tonnages and not the bottom trawl survey is that when we go to one of the documents that you referenced, Jessica – and it is on the website. It is for scup – when we look at the calibration work that is now being done with the Bigelow versus the Albatross, we see that for scup that they're not going to come up with a calibration factor.

It is pretty clear from the figure that they show us in that document – I think it is on Page 89 in that document, if you have it or if you reference it later on – it's just not going to happen. So, now we have something we can work with, and I am very grateful for that. My question now is about something I believe you can respond to, Jessica, and these are the two pieces of paper that were just passed out; that is, scup stock assessment, black sea bass assessment and rebuilding; seven things to know for scup and six things to know for black sea bass.

Number 7 on scup, there is a question that was asked, that you have here and then the answer that follows; have harvest quotas and limits been set too low in the past; and then the answer is, very briefly, no. And I believe the answer is the quotas – the rationale is the quotas and limits have been set consistent with scientific advice.

That's true; it was set consistent – they were set, scup and black sea bass, consistent with scientific advice at the time, but now we have some additional scientific advice that we will have to consider not necessarily in a big way for 2009, but for 2010 and beyond. So, I look at the document I just referenced, the scup document that came out of the data-poor workshop, as well as the black sea bass; and certainly on scup it strongly suggests to me that, indeed, we did set the harvest quotas and the limits too low in the past, such as 2008.

I'm not going to go all the way back in time, but 2008, very easily they could have been set very low

and too low because we were working with extremely conservative advice and bad news advice the last time around. I point you to Page 119 in that scup document that shows the spawning stock biomass over time. It was referenced by Jessica; she showed it.

So, I don't think that answer is relevant now in the context of new assessment advice. So, Jessica, that's the question; do you still stand by that particular "no" regarding have the harvest quotas and limits been set too low in the past if, indeed, we were to use the scientific advice that we now have?

MS. COAKLEY: Well, I think if I had to update this sheet, I would clarify that sentence by saying the quotas and limits have been set consistent with the scientific advice available at the time that those determinations were made. The intent of that statement was based on the information we have each year, the best scientific information at the time is used to set the quotas for the upcoming year. That was the intention of that statement for these two documents. These are something that was prepared as a general fact sheet. I can make that more clear the next time that the sheet is updated.

DR. PIERCE: Okay, thank you very much; and then just one final point that I believe that now we are working with a target – assuming it is all accepted. I am not exactly sure where it stands now relative to accepting or further consideration of these numbers for targets. But, we're now looking at, for scup – what is it? The target now is 90 some odd thousand metric tons and we are at about 116,000 tons, something like that.

So, we're quite a ways over our target. We are totally rebuilt. Overfishing is not occurring. We're not overfished for scup, and for sea bass I believe you said we're not overfished but overfishing still is occurring, so we have to be cognizant of that. So, again, thank you for that presentation, Jessica, and it is very heartening news.

CHAIRMAN CARPENTER: Thank you. Are there any other questions for Jessica? Seeing none, we appreciate your willingness to come today, Jessica, and fill in for Tom. I know that you have done a very good job. I think we are ready to move on to Agenda Item 5, which is setting the quota modifications.

But before we get to that, I think we ought to ask the TC Chair; do you have anything to add to the presentation or anything from the TC's perspective of what we should do, any advice? Normally the

process would be that when we're presented information like this, we would have the TC review this and report back to us before we would make any changes. Should we follow that process now and I am going to ask for some guidance from the staff.

MS. KERNS: Normally we would have the TC give advice on the scientific advice that you got from a peer review panel. This assessment document was only made available on Thursday, so the TC has not had time to sit down and read through this document to be able to give the board some good advice on these reference points, and so we would need to have some time for them to be able to do that before the board accepted these new reference points as they stand. It would be difficult for Rich to give any advice today since he has only had about 48 hours to look at the document.

## 2009 QUOTA MODIFICATIONS SCUP

DR. PIERCE: Toni is quite correct, but that is the process we follow. However, I think we have a unique situation here as a consequence of the data-poor workshop and additional information we now have before us – at least some of us may have it – and that is the National Marine Fisheries Service back on January 2<sup>nd</sup> published their proposed specifications for this year for scup, sea bass and for fluke.

Certainly, they responded very appropriately to scup and the data-poor assessment workshop findings in, I thought, a very responsible way and the only way they really could, and that is they are going for 2009 with a larger scup TAL than it otherwise would have been. They have actually chosen the TAL that would represent the council analyses that would provide the larger number.

In other words, a number of options were analyzed by the council; and as it indicates in that particular proposed rule, they're going with a higher number but restrained by the fact that the council has only certain options analyzed. Therefore, NMFS is implementing the least restrictive, the highest scup TAC and TAL alternative analyzed by the council.

They did this because they note that now we have reached the rebuilt status for scup. Now, this particular set of numbers that they have proposed I believe is different from the numbers that we're now working with now that have influenced the quota that we have set for the commercial fishery 2009, and certainly will have an impact or an influence on what we will do later on this morning relative to

recreational measures we will set for ourselves for this year.

So, I am suggesting, Mr. Chairman, that it would be appropriate for us to take action today regarding a change in the quota for scup and potentially for black sea bass that would reflect, if not entirely perhaps in part, that which the National Marine Fisheries Service is intending to do for 2009.

That particular action they intend to take is not completely sensitive to the data-poor workshop findings because, again, they didn't have the findings in hand, and the councils actually didn't have the findings in hand when the numbers were established for 2009. Of course, we didn't have those numbers either. That is my suggestion, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you, Dave. I think what we want is the technical committee to review and give them time to react to is setting the new reference points, which I think can be separate from setting the 2009 quota. If that is agreeable, then we will charge the TC with reviewing the document, making a recommendation to accept or reject or modify the reference points that have come out of this work, and in the meantime I think we are in a position where we can go ahead and adjust the quota. So if you have a motion along that line that we can begin to deal with and discuss, I would appreciate it.

DR. PIERCE: So you're looking for a motion relative to our forwarding to the technical committee the issue of whether or not the –

CHAIRMAN CARPENTER: I think that is standard procedure for the board and I don't think we need a motion to refer that to the technical committee. I think I've just done that so I'm looking for a motion dealing with the 2009 quota.

DR. PIERCE: All right, I would move that – well, does this have to be a reconsideration? I need some guidance regarding protocol.

CHAIRMAN CARPENTER: All right, Toni has got a presentation about the quota differences; so if we're ready to move into that phase, let's have her give her presentation and then we can go from there.

MS. KERNS: As David pointed out, the final rule that was published in January had a higher quota than that was recommended by the council and that the commission approved. That quota was based off of the highest F fishing rate that could be fished under the current rebuilding plan. The SSC and the

Monitoring Committee had recommended a slightly lower quota based on a different F rate due to the uncertainty in the assessment and from the information that we had at that time. This was prior to the data-poor working group.

That quota amounted to 11.18 million pounds that was published in the final rule, which was 8.53 million pounds for the commercial fishery and 2.63 million pounds for the recreational fishery. This is before any overages or RSA had been taken out. The commission approved a scup TAL of 7.34 million pounds; 5.5 going to the commercial fishery and 1.79 going to the recreational fishery.

If the board were to increase to a different number or change the TAL to a different number, that would require a two-thirds majority vote because this was a final action that was taken in August of 2008. Secondly, dealing with scup as well as an issue with the Winter 1 Trip Limit, currently the federal possession limit is 30,000 pounds per trip.

When we implemented the 30,000 pound trip limit several years ago, the board and council had a series of discussions on this trip limit, and the trip limit was set at the higher number to help vessels that were landing large schools of fish not to have a large discard number. The group indicated that it was their intention to not have vessels land more than 30,000 pounds per two-week period, so the states were to implement a two-week landing limit so a vessel couldn't take in more than 30,000 pounds for every two weeks.

And when 80 percent of that TAC is reached, then the possession limits drops to a thousand pounds per day. I have had several calls from dealers and from states that state regulations are not – the landing limits, they are possession limits which allow the vessel to land more than 30,000 pounds in a two-week period, and in some places a vessel could land in one state 30,000 pounds and then three days later go land in another state.

So that is not what the intention of the possession limits were intended for. If it is the intention of the board for it not to be a landing limit, then we would need to change that; or if states can't implement landing limits, then we need to reconsider this rule today. I would think that we should look at first the quota and then the possession limit.

CHAIRMAN CARPENTER: All right, now that you have seen the presentation, Dave, do you have a motion?

DR. PIERCE: I would move that we reconsider the scup TAL for 2009 by increasing it from 7.34 million pounds to the National Marine Fisheries Service Proposed TAL of 11.18 million pounds.

CHAIRMAN CARPENTER: The second is by Mark Gibson. Any discussion on the motion?

DR. JAIME GEIGER: Mr. Chairman, just a question. Looking at again the scup stock assessment rebuilding, seven things to know; I am looking at Item Number 7 where it says the data-poor stocks peer review panel stated "that rapid increases in quota to meet the revised maximum sustainable yields would be unwarranted given uncertainties in recent recruitments and a more gradual increase in quotas is a preferred approach reflective of the uncertainty in the model estimates and stock status." I would just ask, Mr. Chairman, the maker of the motion how does that motion reconcile with Point Number 7. Thank you.

CHAIRMAN CARPENTER: Well, I think the fact that the National Marine Fisheries Service has considered the status of the stock and that this 11.18 million pounds is still well below what could theoretically be allowed meets the criteria that it is a gradual increase. While seven to eleven is a fairly substantial increase in one year, it is still well within range of where we could have gone. I think it meets the spirit of Item Number 7, but I will let the maker of the motion address it as well.

DR. PIERCE: Yes, it is the National Marine Fisheries Service's conclusion that it is within bounds, so to speak; that it is a very, very modest increase in the overall TAL. We really don't know how high it could go. I don't believe there are any analyses for us to look at that would suggest what the number could be.

I suggest it could be much higher than the 11 point some odd million pounds, but I'm respectful of the advice provided to us by the data-poor workshop participants in that there still is an element of uncertainty. We have suddenly shifted from bottom trawl survey data to these new models, and it would be nice to have some more years' worth of information in order for us to, well, kind of gut-check the model and the findings. So, this is a very, very modest increase and well within bounds.

CHAIRMAN CARPENTER: Thank you. To the point of what may be possible, I am going to ask Dave to make a comment.

MR. DAVID SIMPSON: To that point and reading the data-poor workshop results, I noted that currently MSY is estimated at 35 million pounds, so theoretically, more than theoretically, we could increase from 7.34 to 35 million pounds and be fishing at an F of 1.77 and be right on MSY, so this is extremely conservative.

CHAIRMAN CARPENTER: Any more discussion to the motion? Jim Gilmore.

MR. JAMES GILMORE: Based upon that, Dave, that is actually a higher number than we had heard. We had heard about 30 million. I guess the question is back to the Service. I mean, as much as this is good news that we have got an increased number of fish in the waters, essentially leaving it at 11.18 is still going to make some difficulty in terms of what we're going to be doing this year.

So, the question goes to the Service is why it didn't go higher? I mean, even if we went to 15 million or somewhere around that area, we would be only at 50 percent of what that maximum number is, so I really wanted to get a sense of why it was limited to – you know, I think 50 percent of it would even be a modest increase, but we seemed to stop short of that.

CHAIRMAN CARPENTER: Would the Service like to reply?

MR. HARRY MEARS: I would only comment that we believe that the quota specifications for this coming fishing year are consistent with the results of the data-poor workshop report, and it is also following their advice. Certainly, we will be following future years' results using the new model type of approach. At the current time the quota is 50 percent – essentially we're just over a 50 percent increase from last year, and we believe that is a rational conservative approach to take considering the resource.

MR. AUGUSTINE: But on the other side of that coin we have had data that was not apparently correct or the model was different than we are now using to assess the stock, and, therefore, in previous years we have held a very tight line, as tight as we were able to, to stay under the quotas that were established. Here we are openly admitting by the peer review that the stock has been abundantly protected for several years, and the stock is indeed significantly above where we thought it was.

On the one hand I see us now taking a precautionary-precautionary approach on top of several years of a precautionary approach when in fact as a result of that, in our particular situation, a four-state combo that we have had, we find that because we have restrained as best we could with the limited quota available to us we find ourselves somewhere between 130 and 150 percent over the quota; again, based on the constraints that we have lived with and tried to abide by this reduced quota.

So, common sense on the one hand says why are we again squeezing ourselves to the point where even the peer review says we could go up to probably 24 million, if not higher. As Dave Simpson said, sure, you could go up to 30 or 35. That would be reckless and very unconscionable to do that.

I would be inclined to amend that motion to move it to a more likely number. We had discussed maybe 17 million as a number last night, but, again, that number is like pulling something out of the air. So, without knowing what the break would be between the lowest likely number, whether the NMFS took the 25 percent level or 50 percent level where we could go, what would it take us to move higher. Fifteen might be a good number.

I don't want to pull a number out of the air, but I would like to hear other board members' comments on this point. It just seems to me with all the stocks in their present condition – and let's look forward a little bit, we are still working on rebuilding the summer flounder, we have the fish where they're not supposed to be, and as a result seven of the nine states went over their quota – we're constrained again there and we will continue to be constrained. I would like to amend that motion to move the quota from 11.18 to 15 million pounds.

CHAIRMAN CARPENTER: Is there a second for the motion? Is there a second to the motion? There has been no second to the motion; therefore, we don't have a motion. Back to the original motion; is there any additional discussion?

MR. SIMPSON: I think we know how important it is for this species in particular to maintain consistency with the National Marine Fisheries Service. We don't always like the idea. We don't like the feeling of having to follow all the time, but I think we have realized how difficult it is when we become inconsistent with the federal guidelines.

I would also observe that we're already in this fishing year. We're fishing under a coast-wide allocation

that is being prosecuted in federal waters, so the fishery, in terms of federal waters, is already underway and presumably operating under an assumption of the final rule, the 11.18. I think later on the board will have a chance to focus on recreational measures that occur predominantly in state waters, and I think that's one of the bigger concerns. I think there is a lot of room there to talk about strategies for 2009 to meet the various objectives of the plan. I support the motion of 11.18.

CHAIRMAN CARPENTER: Is there any need for anymore discussion on this issue?

MR. MARK GIBSON: Is there any likelihood that the council and the service will revisit these numbers or is that a done deal for 2009? A mid-course adjustment; is that something that is possible that we need to be thinking about.

CHAIRMAN CARPENTER: Let me ask Harry; is there any possibility that once the final rule is published that it may change mid-season?

MR. MEARS: The specifications for the current fishing year have been set. I am sure they will be looked at as we go into the next fishing year, but at the current time there is no intent to do that.

CHAIRMAN CARPENTER: Thank you. Is there a need for a caucus?

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Are we ready to vote? All those in favor raise your hand; all opposed, same sign; any abstentions; any null votes. The motion carries 11 to nothing. We still need to deal with the scup trip limit. Are you ready with a motion?

MR. SIMPSON: I think so, yes. Toni brought up this concern and we had it brought to our attention in Connecticut that enforcing the one landing per two-week limit was a problem. I don't know how many states actually have this in their regulations. Even you do, as we do, we don't have a way to monitor it or enforce it when it comes to landings in other states.

We can't see what was landed in Rhode Island or Massachusetts or New York or New Jersey or anywhere else. When our dealer comes in and he tells us he thinks this boat landed three days ago in Rhode Island, for example, we have no way to confirm that or deny this person a landing. I think there is an issue for the commission to deal with. I

don't want to restrict our dealers who are trying to be vigilant to enforce something that as a practical matter is unenforceable.

I am going to make a motion to remove the requirement for limiting landing to one trip per two weeks. I would move that we change the wording of the restriction to a possession limit of 30,000 pounds per trip. Certainly, I appreciate the spirit and intent of the one landing per two weeks to try to stretch this fishery out as much as we can, but in practical terms we don't have a mechanism for enforcing it.

CHAIRMAN CARPENTER: Is there a second to the motion? Dave Pierce seconds the motion. Is there any discussion on the motion?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: If you just can hold up a second, we want to make sure that we got the motion down correctly.

MR. SIMPSON: The effect of this, so it is clear, is that there would no longer be a time associated with it. It would simply be a possession limit as our other regulations are. I think we will clarify it to say that the Winter 1 landing limit of 30,000 pounds be changed to a 30,000 pound possession limit, if that helps, and we could add with no restriction on the number of landings per two-week period.

EXECUTIVE DIRECTOR O'SHEA: I understand fixing the possession versus landing issue, but taking out the time requirement as well would seem to accelerate the fishery.

MR. SIMPSON: It would, and as I said I appreciate the intent is to slow it down, but as a practical matter even through the SAFIS System – that's what it's called, right – we can't look at Rhode Island's landings, so we don't know what a boat did. We have no way of knowing and the dealer has no way of knowing when a boat comes into Connecticut where they were yesterday.

There is just no mechanism for enforcing the two-week thing. I think it was a great concept but as a practical matter we're finding out that it's not enforceable and it's putting, to be specific about it, an important dealer of ours at a disadvantage because he's trying to stay true to the spirit of it, but he knows this boat was in Rhode Island three days ago. He is turning him away so he is going to go land in Massachusetts. They're playing it off of us; and rather than providing an advantage to people who are working the system, I think we should just set the playing field at a level pitch.

CHAIRMAN CARPENTER: There was a change in the language; is the seconder comfortable with the change? All right, so we have a motion on the floor. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, this sounds like it solves a simple problem for the dealers, but it sure as hell creates a massive problem for the poundage of fish that could be caught in a two-week period unless I don't understand something about 30,000 fish or having it in possession. The key here is if the system is broken why don't we attack the problem and fix the system, the reporting system?

Whether it means that calls have to go out, whether they're on an automatic dial-up system or something, but to open up Pandora's Box to solve a state's problem – we probably have the same problem in New York. It just doesn't make sense. Let's take the worse-case scenario. Let's say the person went out ten days in two weeks, and ten times thirty is a hell of a lot of fish; whereas, we're now talking about 30,000 pounds of fish in two weeks.

Why in God's name would we ever want to do this in Winter 1 open access like that? It is going to do two things. You're going to catch a lot of fish and you're going to drive the price down to nothing. I don't know how we could possibly support this motion without looking at fixing the reporting system first.

MR. GIBSON: Mr. Chairman, I support this motion for several reasons. First, Dave is correct that it is very difficult to administer this so-called aggregate program back in Rhode Island. Fishermen have to get permitted into it. There is an administrative burden. It is virtually impossible for us to determine in real time where they stand relative to their two-week catch limit.

It is difficult for enforcement; it's an administrative burden. Frankly, they're not catching their Winter 1 quota, anyway. We slowed it down too much, so we need to actually speed this up a little bit. Whether the 30,000 is the right number, I don't know, but I support doing away with this two-week notion in the landing aspect of it.

MR. THOMAS W. McCLOY: Mr. Chairman, I have a little bit different perspective. I fully recognize the enforcement issues that Dave brought up. However, I think, as Pat indicated, we need to work on that aspect of it as opposed to just opening the fishery up essentially. I would assume that this is going to greatly accelerate the rate of harvest if it is daily as opposed to every two weeks.

I think the discussion around the table has kind of indicated that all the fishermen are trying to beat the system. I doubt that there are a few of them out there trying to beat the system, but I think the majority of them probably are trying to play by the rules, and so we're going to be punishing the guys that are playing by the rules for the bad apples in the basket once again. I think we ought to really get to the crux of the problem and try to make this work for the best of the fishermen that are out there that are trying to do the right thing.

DR. PIERCE: I share the perspective of David and Mark. It's a problem regarding tracking. It works well for Massachusetts, though, because we really don't have a winter fishery for scup; and now our scup landings are going up so we're getting more value, I suppose, from boats that are coming to us from other ports. You know, it's not really needed, and, frankly, the National Marine Fisheries Services has a 30,000 pound landing limit or possession limit or trip limit. It is not constructed the way we did it through ASMFC. I think the service's strategy is preferable so I support the motion.

CHAIRMAN CARPENTER: Is there any public comment on the motion before we call for the vote? Harry.

MR. MEARS: Mr. Chairman, just a clarification from the maker of the motion. I'm assuming that this would still retain the provision that the possession limit would be decreased to 1,000 once 80 percent of quota is taken; is that correct?

MR. SIMPSON: Yes.

MR. DiDOMENICO: Mr. Chairman, Greg DiDomenico, Garden State Seafood Association. We understand the intent of this motion, but we definitely do not support removing the two-week landings' limit. The pace of this fishery in Winter 1 has worked very well certainly in New Jersey and certainly in most states.

It has avoided great price fluctuations in scup, which is very important under the current regulations and under the current situation. Our fishermen from every port, from Belford to Point Pleasant to Cape May, this fits very, very well. I understand the problem monitoring it, but I would really prefer to concentrate on enforcing it instead of penalizing those who are not taking advantage of the situation. Thank you.

CHAIRMAN CARPENTER: Thank you very much. I think we have had quite a bit of discussion, and I will remind the – Tom, I will give you one quick chance.

MR. TOM FOTE: Well, I haven't said anything on this, but concern is we change rules that promote discards. This fishery, we put the plan in place in '94 and it was basically to eliminate discards in this fishery. I mean, Jimmy Ruhle basically sits here and tells us how many he has to discard because the price ain't right.

If we start putting thousand pound trip limits on this, it means a lot of fish are going to be discarded. I don't know what the effects on the stock were, but I'm not really here to promote discarding. That's mainly what this plan was assigned in '94. We sat around the table in '94 saying that we did not need a recreational or even a commercial quota, but if we basically eliminated discards in this fishery we would have a healthy fishery. Now we're back a little over 15 years later saying we're going to promote discarding again. I have a concern over that.

CHAIRMAN CARPENTER: Thank you. I will remind the board that this will require a two-thirds vote in order to pass. I will allow 30 seconds for a caucus before we call the question.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, I will read the motion for the record: Move to amend the Winter 1 landing limit of 30,000 pounds to a possession limit with no restriction on the amount of landings per two-week period. Motion by Mr. Simpson; seconded by Dr. Pierce. I will note for the record that there was a question about when 80 percent of the quota was landed, the limits go to a thousand pounds. All in favor of this motion please hold up your hand; all opposed, same sign; any abstentions; any null votes. The motion fails for the lack of a two-thirds majority vote in favor. The next item; Dave on black sea bass.

### **BLACK SEA BASS**

DR. PIERCE: We're still, I believe, on possible action for black sea bass 2009 quota modifications. I need to make a point. I'm not in a position to make a motion even though I would like to regarding the black sea bass quota for 2009. I look in the National Marine Fisheries Service Proposed Rule and I don't see any increase in the TAL for black sea bass unless I've missed something.

I think that has happened because the council didn't have an alternative within the necessary documents that the service has to review that would have allowed the service to have selected a higher number consistent with the very positive news that has come out of the data-poor workshop.

Frankly, I have been advising my fishermen – at least I have been up to this point in time – that they were going to lose their black sea bass commercial fishery and even the recreational fishery in 2010 in light of the dire situation that we thought we had a few months ago, but now I find out that indeed that's not going to be the case. We are almost totally rebuilt.

We're at 92 percent or so of the target, which is a startling reversal. I mean, it is absolutely startling; welcomed, but still it is a magnificent flop from where we were to where we are. Again, if I was to make a motion to increase the black sea bass quota it would never pass. It would create a problem with federal permit holders and state permit holders, so I'm stuck not being able to urge a larger number.

However, I think that this very good advice and very good conclusion from the data-poor workshop will feed into our upcoming discussions on the recreational proposals for black sea bass. I don't see them here, but I think it will come up as part of needed attention on our agenda today. With that said, Mr. Chairman, I just express some frustration, but I guess that is the way it is.

CHAIRMAN CARPENTER: All right, anything else on black sea bass? Seeing none, we will move on. Jack Travelstead.

MR. JACK TRAVELSTEAD: I'm just wondering where we are on the size limit change that we recommended on sea bass at our last meeting. Did we not recommend an increase to 12-1/2 inches?

MS. KERNS: We did recommend an increase for the recreational size limit for 12-1/2 inches, up from 12 inches. When the Wave 5 landings came in, it showed that the projected landings that we had anticipated is actually lower than what was actually landed, so there is actually a higher number of black sea bass landed than we thought, so there is an increased reduction required.

Because this is a coast-wide size, possession and bag limit, the TC had recommended waiting until the National Marine Fisheries Service came out with their proposed rule for black sea bass measures to see where they would go on that before making a change.

MR. TRAVELSTEAD: So we're in a holding pattern or we have decided to stick with what we have?

MS. KERNS: Right now we're at 12.5 inches, which is what all the states should be implementing, but depending on what comes out in the proposed rule and then the final rule based on these new numbers and then when we have the Wave 6 numbers, we can see what those final landings are and not be projected landings to see if that reduction stays the same or increases or decreases.

CHAIRMAN CARPENTER: I think that is a long answer for a holding pattern. Tom McCloy.

MR. McCLOY: Sorry to prolong this discussion, but now I have a question. Is there any indication when NMFS will be coming out with their proposal?

CHAIRMAN CARPENTER: Harry, do you have an answer?

MR. MEARS: We were just discussing the timing here. It usually comes out at the same time with the conservation equivalency results for summer flounder, and I believe that is usually in the May timeframe. Toni might have a better resolution.

MS. KERNS: A lot of that depends on how quickly states can send me their final summer flounder regulations. They can't put out the proposed rule until we send them the conservation equivalency letter saying that all states have implemented summer flounder regulations that are conservationally equivalent to the coast-wide reduction that is required. We sort of make the timing of that proposal usually the end of April or the beginning of May period, depending how quickly we can get that letter to them.

MR. McCLOY: Mr. Chairman, that is going to create a problem for New Jersey. I don't know about the other states, but generally speaking we take care of scup, sea bass and summer flounder at our March council meeting, and then those measures are in place at least by the end of April. Now, if we put everything except sea bass into place before the end of April, now we have to go back to the council again to deal with sea bass. I am looking for direction from the board on where are we going with this this year?

CHAIRMAN CARPENTER: Tom, in the absence of any other concrete information, I think you're going with 12-1/2. We're in the exact same boat. We're going to meet the first week in March, and that's



what we're going to have to deal with. Let's move on the agenda to the item dealing with the summer flounder recreational, but before we get to that Toni is going to have a presentation which should help to lead into the discussion that we were asked to deal with.

### **STATE SUMMER FLOUNDER RECREATIONAL CONSERVATION EQUIVALENCY PROPOSALS**

MS. KERNS: At the beginning of the meeting, staff passed out a memo that gives you information on each state's reduction that was required or the liberalization that they were allowed plus a table of proposals that state provided. In December of 2008 the board made the following motion concerning summer flounder fisheries.

They moved to adopt conservation equivalency for the 2009 fishing year with the provision that states that exceeded their 2008 target be required to implement a seasonal closure to achieve a minimum of 50 percent of the required harvest reduction and to direct the ASMFC Technical Committee to reevaluate the application of performance measures for evaluation of state conservation equivalency proposals.

### **TECHNICAL COMMITTEE RECOMMENDATIONS**

So what that motion meant was that the board was requiring 50 percent of any reduction from a state to come from a seasonal adjustment in their recreational measures. It also asked the TC to reevaluate performance measures. The TC got together and came to the conclusion that if a performance measure is implemented, if that is what the board wants to move forward with, then that seasonal reduction should come out of the peak wave.

When states went back to look at their proposals that they would put forward some states indicated that they would have to have a mid-season closure in order to take that seasonal reduction out of their wave of landings. Instead they came up with an average performance from the years 2001 to 2008; and if they, on average, went over their landings' target, then they took an additional reduction of that percentage out instead of taking the seasonal reduction from their peak wave in order to not have mid-season closures.

The TC said that would be a fine alternative to the peak wave. Each of the states developed proposals that met the board requirement. All of the states except for New York developed proposals that met the TC recommendation. New York's options, one option has – the largest percentage coming out of the peak wave was their first option, and that is 78 percent. Their lowest percent coming from the peak wave was 10 percent out of Option 6.

They didn't present any proposals for an additional reduction based on performance, so none of theirs meets the TC recommendation for performance measures if that is the prerogative of the board to be used. All the other proposals have measures that meet both the board and the TC recommendations.

Except for New York all the proposals followed the guidelines of Framework 2. The TC reviewed each of the proposals and approved the methodology that was used to come up with those proposals. Some general comments that the TC had on the state proposals is that states should review non-compliance information for their states as a factor that contributes to the difficulties in constraining their harvest.

They said that it is complicated to determine liberalization due to the limits in data that the TC has available to work with and recommends that any states with the ability to liberalize should go either in incremental or stepwise approaches. The TC finds it difficult to evaluate proposals that have area splits such as those that are in the Maryland and North Carolina proposals because there is no specific guidance on that.

The following states have reductions required of them, and the following three states have liberalizations that are available to them. I think the easiest way to go through these proposals instead of listing out each of the state proposals, because some states have four tables and eight proposals, is to determine if the board wants the state proposals to meet the requirement of the 50 percent reduction coming from the seasonal adjustment as well as does the board want to have a performance measure from each state's proposal or not. That is not clear from the original motion.

### **DISCUSSION OF PROPOSALS**

CHAIRMAN CARPENTER: I think Toni has laid out the question pretty well. Jim, you had asked to discuss this issue so as I see it I think the question is do the performance factors that the technical

committee came up with; is that the intention of this motion or not? I will Jim lead off the discussion.

MR. GILMORE: At the December meeting, when we walked in the room, we were essentially coming up with a vote on management measures, and I think that was our impression of whether it would be conservation equivalency or coastwide. Conservation equivalency won the day. That 50 percent addition was sort of something that at that point seemed to be procedurally inappropriate because we were quantifying how we were going to implement those at a point when really our charge was simply to come up with a management approach.

At the time I think we were more focused on the management measure and not so much how we were going to implement it. We didn't know what the 50 percent rule was going to mean. Subsequent to that, we first limited ourselves on some options. There may have been some other approaches we could have taken to this.

Maybe they wouldn't have worked or maybe they would have, but as soon as we put that 50 percent restriction in we kind hunkered down into trying to take this seasonal closure. I think that was bad enough. Right now if we're just taking a 50 percent closure, we probably could accommodate that with the restrictions or the limits that New York has put in.

However, adding on what the TC has required is that we would have to take that during a peak wave is something that we can't figure out how we're going to do in New York. I mean, we're looking at a fishery that years ago went from the beginning of May until October. We're down, with the 50 percent reduction, to a six-week season; and if we have to essentially incorporate this peak wave issue, we're going to have to do a mid-season closure in six weeks.

I mean, it has gotten to the point of absurdity. We in New York are opposed to the 50 percent obviously for the struggle we are having right now. But, more importantly, I wanted to also have some discussion about – I know there are quantitative issues that are brought up at different board meetings, but that sort of like was – I guess in the future if things like that are going to be brought up, it would be helpful to have those beforehand because, again, it was a number that was thrown out.

My segue before with scup is that we have a number thrown on the table, and we essentially don't know what it means and sometimes votes approve things

that maybe don't make a lot of sense, and I think we're here now. It's the immediate issue of the 50 percent rule, but also I wanted to get a little discussion, as we go forward, that if we have these type of things brought up in the future we really do procedurally vet them or at least inform the other members before they're put on the table. Thank you.

MR. AUGUSTINE: Mr. Chairman, please indulge me for a few minutes because what I am about ready to say is critical to the whole process. I went back and looked at our Commissioners Manual and looked at what our role and responsibility was relative to following scientific information.

In the decision that was made in December at this meeting that Jim Gilmore just referred to, we did not follow scientific information. We followed the whims and woes and concerns of board members. The monitoring committee, technical committee and the National Marine Fisheries Service put on the record – their advice was do not use state by state. Seven out of the nine members were over.

It has not worked. Several of our scientific people on the board said it has not worked; conservation equivalency has not worked. Yet we took a vote because it was the easiest way out and the least amount of pain for some states. The recommendations were do coastwide or some kind of regional setup.

We all know the way the plan is set up now there is no way in hell on this God's earth that we're going to get acceptable regional groupings together because certain states feel they have got to protect their so-called God-given quota that was established at a time that it longer works, 1998. So, therefore, we have gone off scientific information, technical committee advice and taken a new course.

If this is the way the commission is going to work, I think we're just going to go ahead and open up Pandora's Box. So, for the betterment of the commission and the direction we're going, I think some of us have got to take a deep breath and go back and focus on what our role and responsibility is as board members around this table.

Many folks here, as in all meetings with the commission, go back home and get beat up by their constituents and their commissions and groups because they didn't do the right thing for their state. Some of us, on the other hand, put our chin out there and make the hard decisions, the hard calls; not necessarily to the best advantage of our constituents

but more importantly to the best interest of the fishery and the management process by which we are governed.

So, if I were an individual that had financial backing to do it, I probably would sue the commission on having taken this 50 percent approach and having done what we did in terms of our decision. It is not going to change the matter, but I do think we either have to decide, Mr. Chairman, whether we're going to follow scientific advice, our technical committee, monitoring committee, or not.

Again, as Mr. Gilmore said, we will continue to take it on the chin. We aren't going to solve the problem today. Eventually the stock will be rebuilt. In the meantime we will do the best we can, but we're going to have a hard time struggling through with an additional six-week closure and end up with a fishery that now is so abundant in our waters people will throw up their hands and say, "Catch me if you can." Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you. Well, let me respond a little bit to some of the things that have been said. We have followed the best scientific advice and the advice of our technical committees for the last several years, and we continually go over on the recreational harvest. We have penalized everybody when just one state goes over because when any one state goes over or in this case six states go over not only are we penalizing those states, but we're penalizing the commercial fishery, we're penalizing everybody by not meeting the goals and plan that we laid out. So, having a state go over penalizes not only that state; it penalizes every state.

I think my recollection of this motion, when it was offered, was the recognition on the part of the maker of the motion that in order to get a meaningful reduction in a state's landings you had to take at least half of that reduction in the form of a season closure. That's the most effective way. It is also the most painful way. But, what we have been doing in the past has not seemed to work.

This was an honest attempt I think by the board in December to say if we're going to stick with state by state – and that seems to be the will of the board – that here is an honest effort to try and get the reductions that are needed in a meaningful way. The advent of the technical committee's additional caveat that it should come out of the peak wave I think is the technical committee's advice and I think it's something we should consider. But I don't know that necessarily is the defining issue here. I think the 50

percent was an honest attempt that was made to have this thing become a meaningful action in 2009.

MR. FOTE: I didn't vote on the 50 percent because I wasn't sitting on the commission at that time. My concern with summer flounder has been along that we have been underestimating what the stocks are, underestimating what a quota should be, the quota should be much higher. Until we get that straightened out – we have got a small portion of that straightened out with the SAW Review last year, but I'm looking for a lot more changes over the period of time so we get a realistic – until we find out what really people are catching, not the estimates of MRFSS, the serious problems we have dealing with.

But I look at 50 percent, that was an arbitrary figure. I mean, we had no idea – you had no idea sitting around the table – not we because I wasn't there sitting in that capacity – but you no idea of what the effects would be on states, and it was only really going to affect one or two states dramatically. It would cause massive closures.

I feel very difficult in basically supporting it. I would support – you know, we look at it. Yes, I think a percentage, but without tables and charts I can't tell whether it should 10 percent, 15 percent or 20 percent. Plus, at 50 percent I know I am going to greatly affect one state that under a coastwide wouldn't do that, so I'm saying I should give that state an understanding of the consequences that it puts on that state.

As I said, I fought – I said here for years for New York – and Pat knows me because I think that they have been unfairly treated as far as the number of anglers and we never did a retrospective on the number of anglers in that state when those numbers started going up in 2001, during that period when we saw the numbers yesterday. This is a long story, but I support looking and revisiting this.

CHAIRMAN CARPENTER: Let me try to help us out here. I think the first question that the board needs to answer is the second part of this motion; do we want to deal with the technical committee's recommendation that it comes out of the peak season? I think that is a pretty straightforward question.

Then I think we need to go back to the first part of the motion and decide whether you want the 50 percent or you want some other number. Given the timeframe that we're dealing with here, I don't see everybody resubmitting plans and us having another

meeting. I really think it comes down to whether you want the performance or not. Dave, I think I had you next on the list.

MR. SIMPSON: I was just going to comment or observe that according to the document we were handed out under technical committee recommendations, the options that New York present do meet the 50 reduction from the season requirement that the board imposed, and I think that's important to keep in mind.

It did not incorporate options or include options that would address the peak wave issue, but I think we have to recognize that New York is down to such a short season that they would be forced to consider something like a two-week closure in the middle of a six- or eight-week season, which is completely impractical from an enforcement communication standpoint.

I know Connecticut has a couple of options that my technical committee person included and had approved that we would open, say, in late May, go to the end of June, close for two weeks, open up again on July 15<sup>th</sup>. We're not going to do that. We can't communicate that. We could never possibly enforce it. While I appreciate the intent behind the technical committee's suggestion, as a practical matter it won't work.

It is already February. We still have to decide what we're going to do, implement those changes, communicate those changes to the public. We've got a big task in front of us, and some of these things are only going to make those tasks more difficult. To sum up, I think what they've done is in compliance. It does have the outstanding issue of what do we want to do with performance measures, should last year's estimate of overharvest be incorporated into these estimates, and I don't have a comment on that.

MR. TRAVELSTEAD: Mr. Chairman, I would like to hear the technical committee's comments on this issue and what their justifications and thinking on the various measures that they're suggesting. I'm in particular interested in what level of confidence does the technical committee have that if we abide by their recommendations will we in fact be back here next year with no state having gone over quota?

What is their level of confidence that we will actually achieve the goal that these measures are supposed to produce? In achieving I mean not just on paper as they're presented now, but in actuality will we be back here next year having achieved that?

CHAIRMAN CARPENTER: I am going to ask Rich. I think you have asked him a mouthful of questions.

MR. RICH WONG: Jack, it's impossible to answer how confident we are in how well the conservation equivalency measures are going to exceed the target. When we analyzed all the data last year and wrote that report, we saw that it was a very complicated issue when we couldn't answer what was causing these overages when it occurred on a state-by-state basis, the potential reasons for overages. I can't answer how confident we are.

The bottom line is, of course, the more restrictive measures you have the more you're minimizing the chances of exceeding your target, but we can't say there is a magic bullet. I just can't answer that first question. The other point about the peak; the technical committee approved all of the proposals whether they included the entire season closure in the peak wave or not.

The closure in the peak wave was a suggestion or a recommendation as another mechanism that the states could use in order to minimize the chances of exceeding their target. In the case of New York, you know, all of these options were approved. What were the other questions?

MR. TRAVELSTEAD: I think you've done all you can do on that. I just would answer for you and say that in my opinion I have no confidence that we will be back here next year with every state at or under their quota. All you have to do is look at past history and see there are many cases where consistently some states are always over their quota, and most states are over their quota at least half the time.

Unless we do the bare minimum, which is what the technical committee is asking for, we're going to just continue to repeat history. If we're willing to do that, it seems to me we ought to be honest with the public right up front and say, "Look, we know we're not going to succeed." You should continue to plan for overages and that means lower quotas.

That means everybody is affected negatively. That means the commercial quotas aren't going to be what they should be because of the overages. That means states that were under quota won't see the full benefits because they're taking up the slack for states that go over quota. Let's just be up front with the public and tell them that's the way we've decided it is going to be instead of trying to fool them every year with something written on paper that suggest

we're going to be under quota when in fact we won't be.

MR. GILMORE: Mr. Chairman, maybe I can move this along, but, first off, just a comment, Rich, or for the technical committee. The limits we've put in from New York, even though they don't take the complete recommendation, all of the seasonal restrictions, they're all in Wave 4 essentially, so we're essentially taking I think the spirit of what you folks were recommending, which was we limit the fishery during the peak time of the season.

Without going into the two-week peak period closure or whatever, we still have at least taken those during Wave 4, which is the highest part of our fishery. But to move it along, Mr. Chairman, I have a motion that I would like to put on the table to get this going. We would move to not implement the peak wave requirement recommended by the technical committee for the 2009 summer flounder fluke fishery.

CHAIRMAN CARPENTER: Do I have a second for that motion? Tom.

MR. FOTE: I second.

CHAIRMAN CARPENTER: Yes, it should be the performance measure and not the peak wave. All right, we now have the motion on the floor.

DR. LOUIS DANIEL: I'm not going to echo what you, Mr. Chairman, and what Jack just said. I agree with both of you a hundred percent. I'm very concerned about the impacts of these overages of the recreational fishery on the commercial quota and our apparent inability to manage the fishery for all the user groups. It's a question for the technical committee. If we approve this are we more or less likely to achieve what we're trying to do?

MR. WONG: To answer your question and to go back to Jack's original question, we do have more confidence this year that we could achieve the coast-wide target because we're trying a new method, which is to implement a season closure which we think could – well, in adhering to the board's request for 50 percent of the reduction occurring in some kind of season closure, the technical committee felt that could be a successful mechanism to reduce effort.

That's what the technical committee thinks is probably the problem causing the overages. There are just too many people fishing. So, yes, herein lies

the art to fisheries management. You know, we have to experiment and see if this season closure could be successful. It is something that we have never forced states to do before. We have never forced anyone to take any reduction in the form of a season closure.

DR. DANIEL: Followup, Mr. Chairman. First, I've never heard of sausage making referred to as art before, but was that generally a consensus opinion of the technical committee, Rich?

MR. WONG: What part of that?

DR. DANIEL: The part about using the peak wave as possibly a better chance of achieving our reductions.

MR. WONG: Yes, it was generally a consensus, but we did discuss that there were situations, obviously, where it wouldn't make sense to use the season closure in the peak wave if the reduction, say, was small. I mean, just using a closure for a short duration, obviously, there are implications whether it would have any real advantage over having it in the front or the rear end of the season. There is the recruitment issue, there is the enforcement issue, there is whether even the MRFSS Telephone Survey would even detect a small closure and would detect a reduced effort due to that small closure. We did discuss it and there was a consensus.

MR. FOTE: As the seconder, I wanted to explain why I seconded the motion. My concern all along is that, you know, if I would have sat here years ago and said New York would be at a 20-1/2 inch fish or a 21-inch fish and we would be going over quota every year, I would never have believed that because we were fishing a 13- and a 14-inch fish and we saw this huge growth.

I mean, there is totally something wrong with the way we're estimating the stocks and what can be out there. Also if you look at the far end and you look at the peak that people are fishing, that is one thing. If you look at the end of the season, which he says is doing in Wave 4, that is when the bigger fish are there.

The problem that we have had all along is that the fish are getting so large that we're putting into the system that the number of fish we're taking now compared to what we took 15 years ago is probably about one-quarter or even less than we did back then because of the sizes we have gone up to. That is really a difficult situation.

That means that we have trips that only a third of anglers are successful than they were 15 years ago recreationally, and that is really the heart of it. Now we are in the same situation we are with striped bass where we're discarding as many fish and it is causing enough hook-and-release mortality that is making exactly what we are taking home.

We shouldn't be there with summer flounder. Summer flounder is not a striped bass fishery. Summer flounder is to take home and eat fishery, and here we are forcing anglers to kill as many fish as they are taking home by hook-and-release mortality. We need to correct the system. We are basically promoting discards and we're promoting – you know, we're not promoting good fisheries management.

CHAIRMAN CARPENTER: Thank you, Tom. Any other discussion on the motion either for or against? We have a board and then one from the public and then we're going to have a vote.

MR. SIMPSON: I think last year we incorporated a performance measure that looked at our previous year's overage and made some adjustment, and I still support using that approach. What I don't support is the adjustment to the peak wave, the alternative that a reduction in the peak wave has to occur because I think that results in these short-term closures.

If you go all the way back to – I think conservation equivalency was born in the Weakfish Plan, and certainly I remember them talking about recoupment and the idea that a two-week season, a very short closure is ineffective because people would just fish around it and make up the effort. The other part is it is just completely unenforceable, it is impossible to communicate, so I want to speed this along because we have a lot more to do than this.

I can't support not implementing performance measures, so I would offer to amend it back to what New York originally had, which was to not implement the peak wave requirement recommended by the TC. I think I need to further clarify this – that conservation measures in the recreational fishery for 2009 must, however, include performance measures based on average historical performance as applied in 2008.

CHAIRMAN CARPENTER: While Dave is working on that, Toni, if you could help explain where we started and where we have gotten to.

MS. KERNS: Because the original motion at the December board meeting did not require a

performance measure – it just directed the TC to reevaluate performance measures – so, as Rich said, the TC looked at performance measures and they said if the board is going to use them, then we recommend either it come out of the peak wave or you use your average performance from 2001 to 2008, as some states have done in their proposals, such as Connecticut has proposals that go through that information. So what this motion would do is require that recommendation from the TC from just the average performance but not use peak wave, and that's how you got here.

CHAIRMAN CARPENTER: All right, do I have second for the motion? Roy Miller has seconded. Discussion on the motion to amend? I had Jack Travelstead and then Jim Gilmore.

MR. TRAVELSTEAD: Just a question for clarification. The 50 percent reduction by season remains?

CHAIRMAN CARPENTER: That's my understanding.

MR. TRAVELSTEAD: The substitute removes the provision that it come out of the peak wave, but adds an update performance measure to include 2008? Okay, and just one question for the technical committee relative to this. Was there any discussion about including any type of stock growth parameter as part of the performance measures?

MR. WONG: Yes, that was discussed again this year. I think any state – maybe Virginia was the only state that chose to use that as an additional safeguard for their proposed measures for '09.

MR. GILMORE: You know, the first amendment was okay because it was just going back to the peak wave. Toni, what you said makes sense. The concern I have is that what the substituted motion says is that based upon the average historical performance as applied in 2008, which was the performance factor which was a seven-year average. Now, if we're just using the 50 percent reduction in season, I'm okay with that, but again this – and we were very clear on the record last year we never wanted to see the performance factor again, and that says that we're performance factor back in. That's the problem I have supporting it right now.

CHAIRMAN CARPENTER: I think you have hit the nail on the head. Is there any additional discussion on the motion? I have a comment from the public.

MR. CURSIO: Mr. Chairman, Phil Cursio, United Boatmen, New York; New York Fishing Tackle Trade Association; Recreational Fishing Alliance of New York. Taking away spring black fish, you're poised to take away winter flounder, over the last several years you have reduced our fluke fishery in New York to a skeleton of what it once was – if the goal of this board is to cause 50 to 75 percent attrition in the recreational fishing industry on Long Island, this is most certainly the way to go about it. Congratulations!

To paraphrase a famous author, it is not fish you're taking away; it's men's lives. We have an industry that is dependent solely on this fishery at this point. You're taking the legs out from under a chair, you've left one leg and now you're about to saw it in half. We can't support either one of these motions. We are disgusted with this process. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you. Before we take a vote on this, Toni has some additional information that we need to go through.

MS. KERNS: I just want to make the board aware of the process that we would follow if this motion does pass. If this motion passes, then the states that have not submitted proposals that look at the average performance from 2001 to 2008 would need to resubmit proposals. The TC would have to review those and then the board would have to approve them. Because our next board meeting is not until the May meeting, we would have to do this through either e-mail correspondence or a conference call for the board, and we could also have probably a conference call for the TC to review those proposals.

CHAIRMAN CARPENTER: All right, we're going to have a moment to caucus. Remember the first vote is going to be on the substitute motion which would actually require the use of performance factor and resubmission of plans by some states.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Are we ready for the vote? Let me read the motion into the record: Move to substitute that the conservation measures in the fishery for 2009 include performance measures based on the average historical performance as applied in 2008. The motion was by Mr. Simpson and seconded by Mr. Miller. All those in favor of the motion please raise your hand, four in favor; all opposed, five opposed; any abstentions, two abstentions; any null votes, no null votes. The motion fails.

We're back to the original motion which was to not implement the performance measures recommended by the technical committee for the 2009 summer recreational fishery. Any additional comment on this? Dave Pierce.

DR. PIERCE: Just to clarify, Mr. Chairman; this references then the decision that was made by the board at its last meeting regarding using seasonal closures to achieve the minimum 50 percent of the required harvest reduction?

CHAIRMAN CARPENTER: No, this is only dealing with the second half -- the performance factor, the requirement to use performance factors. It does not change the 50 percent. A moment to caucus.

(Whereupon, a caucus was held.)

MR. ROY MILLER: Mr. Chairman, would you repeat what you said. It may require some additional explanation.

CHAIRMAN CARPENTER: Voting for this motion would eliminate the need to have performance factors as recommended by the technical committee of taking 50 percent out of your peak wave. You will still have to take 50 percent of your reduction out of the season. It just won't have to come out of your peak wave.

MR. MILLER: I thought that was the intent of the substitute motion, but apparently I missed something.

CHAIRMAN CARPENTER: Nor will you have to do any performance factor if you can get the entire thing out of a season closure. Are we ready to vote? All of those in favor of the motion please raise your hand, seven in favor; all opposed, two in opposition; null votes, no null votes; abstentions, two abstentions. The motion carries.

All right, I think with that we have decided that we are going to use the 50 percent in the season closure as the method – I think rather than take each state's proposal one at a time, if we would have a motion that would approve any state plan that meets the board requirement of the 50 percent reduction being done with the season and done according to the methodology approved by the technical committee, that we will be able to work with those. I think that is the motion we're looking for. Bill Adler.

MR. ADLER: I so move whatever you said there. I'm not going to repeat all of that.

CHAIRMAN CARPENTER: Do we have a second to that motion? Seconded by Mr. Culhane.

MR. ADLER: Mr. Chairman, under this thing here, these options that every state has, you're basically saying that they can pick whichever option that they want in that little section of theirs?

CHAIRMAN CARPENTER: Yes, I think as long as 50 percent of their reduction comes out of the season, then they can pick any of those options that they have presented and the calculations were done based on the methodology that was approved by the technical committee. I think the staff will be able to highlight those that are approved very shortly and get back with the states to let them know which options meet the criteria.

Remember that any state that wants to apply a performance measure certainly can be always more restrictive than the ASMFC requirement, but this would be the minimum. Jim Gilmore.

MR. GILMORE: Mr. Chairman, just a point of clarification, Toni. Now the numbers that New York submitted do comply with the 50 percent reduction?

MS. KERNS: Yes, the proposals that were submitted all meet the 37 percent reduction and 50 percent of the closures comes out of the season.

MR. AUGUSTINE: Toni, is there a drop-dead date – if a state decided they had one or two other options, could they still submit to the technical committee? For instance, if I may, we didn't put an option down for three fish a day, for instance, and I'm just wondering if there was a drop-dead date that these had to be submitted or could some more be submitted?

MS. KERNS: If a state is using a different methodology to determine a proposal, then that would require the board to reevaluate those proposals again. Therefore, it would delay us getting information to the National Marine Fisheries Service. If the state is using the same methodology to come up with their measures, then they would need to inform the TC Chair that they have done that, but the TC has said that – oftentimes states will change their seasons a little bit to adjust, but they're still going forward with the same methodology so it hasn't been a problem. You still need to inform the Chair, but it has to be the same methods that were done to –

MR. AUGUSTINE: It would be and that was why I needed the clarification. Thank you.

MR. MILLER: May I follow up on that, Mr. Chairman? If a state such as Delaware, after it goes to public hearing, wanted to add a seasonal closure to the regulatory mix of proposals, could that be done by just consideration of the technical committee or would it require a submission to the technical committee followed by board action?

In other words, could it be accomplished for the 2009 fishing season? I bring this up, Mr. Chairman, historically fishermen in our state have rejected the concept of seasonal reductions while at the same time our fishermen have repeatedly urged us to have our regulations as complimentary to New Jersey's as physically possible because of our obvious sharing of the Delaware Bay Resource.

Every year we go through this agonizing over why our regulations are different than New Jersey's, and I have the annual problem of trying to justify those differences. This year, because of an overage on New Jersey's part and an underage on the part of Delaware, it may be fortuitous and for the first time in recent memory we may be able to propose regulations that are somewhat the same as New Jersey's if not exactly the same. That is why I was wondering what it would take for Delaware, after the fact, if you will, to request a seasonal closure as part of its mix of regulatory actions. Thank you.

CHAIRMAN CARPENTER: Let me ask a question; would you be looking at a change in your size limit and creel limit that would be more liberal than what you have proposed in this plan?

MR. MILLER: No, we would just adopt a season limit to be similar to what New Jersey presently has.

CHAIRMAN CARPENTER: All right, let me get some technical advice here. Well, let me ask the technical committee for some input here. If the proposal that Delaware submitted was 18-1/2, 19 or 19-1/2 and a four-bag limit and open all year long, if they stuck with any one of those but yet added a seasonal closure, wouldn't that be a more conservative and approved plan which allows – any state is allowed to be more conservative than their approved plan. I am seeking some guidance here from the technical committee and the staff.

MR. WONG: Yes, it would be, but I think what Roy said was that if Delaware wanted entertain a seasonal option that was similar or entertain regulations that were similar to New Jersey because of the shared Delaware Bay waters, New Jersey may have an 18-inch size limit, which would require Delaware to



bring forward an option with an 18-inch size limit and some seasonal closure.

So, the fact is that Delaware does have a 103 percent allowed liberalization, but even with their – I mean, the technical committee certainly gives some weight to an option that is well below the liberalization limit or well above the reduction limit. So, if there was an option that was like 70 percent or 80 percent, you know, there is a lot of buffer room there.

CHAIRMAN CARPENTER: I think the way to proceed would be if a state does want to change this, they would have to go to the technical committee for a review of the methods and approval and then come back to the board and probably come back through a FAX vote of the board, but I don't think that – yes, we have done it before, so I think that's the method that we ought to stick with. Does that answer your question?

MR. MILLER: Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: All right, are we ready for the vote? Have we had time to caucus? Is there a need for caucus? Let me read the motion that Mr. Adler so aptly put on this board: Move to approve all summer flounder recreational proposals that achieve 50 percent of the required reduction through seasonal closures as approved by the technical committee.

Motion is by Mr. Adler; seconded by Mr. Culhane. All those in favor raise your hand, eight in favor; all opposed, one on opposition; abstentions, two abstentions; null vote. The motion carries. I think we have finished with Item Number 6, if I'm not mistaken.

DR. DANIEL: This didn't deal with the states that were not over. We have also got a liberal – I think there are three liberalization plans from North Carolina, Virginia and Delaware that I would move we approve.

CHAIRMAN CARPENTER: We have a motion from North Carolina and seconded by Virginia to approve the plans that were for liberalization. Is there any discussion on the motion? Any need for a caucus. All in favor say aye; all opposed say no. The ayes have it; the motion carries.

MR. GILMORE: At actually the last two meetings we actually had a tabled motion for mandatory regions that are in the minutes that is actually not on the agenda, but we have tabled it to this meeting, so we need to deal with that.

CHAIRMAN CARPENTER: I am getting some nods up here that that motion has been dispensed with. While they research that, can we move on – in light of the hour can we move on to the consideration of approval of the recreational scup measures and we will come back to the tabled motion.

MS. KERNS: At the December 2008 board and council meeting we voted to do conservation equivalency for the scup measures. With the new TAL that the board voted in today, the northern region still has a reduction to face as well as the southern region. The northern region needs to meet a 37.6 percent reduction and the southern region needs to meet a 52.8 percent reduction in their landings. The northern states got together last night to discuss this and I'm going to give the microphone to Dave Simpson to explain their proposal.

MR. SIMPSON: I put together a motion that Nichola has, and I will read it to you: Move to set the 2009 fishery in the states of Massachusetts, Rhode Island, Connecticut and New York an open season from May 24<sup>th</sup> through September 26<sup>th</sup>, a 10-1/2 inch minimum size in the private boat and shore modes, an 11-inch minimum size in the party and charter modes, except that for 45 continuous days within the open season the party and charter mode creel limit will be 45 fish. The 45-day season shall be at the discretion of each state.

CHAIRMAN CARPENTER: All right, we have a motion from Mr. Simpson; is there a second to the motion. Seconded by Dave Pierce. Any discussion by board members?

DR. PIERCE: This motion was carefully crafted by David with input from the states in the northern region where the majority of the recreational fishery occurs. It is a motion, as I understand it, that is based on the updated stock status information that we are totally rebuilt and that we are well above that rebuilding target of 92,000 metric tons. We are at about 119,000 metric tons.

In my particular state it makes a great deal of sense to, in a sense, go with the status quo; that is which we had in 2008 applied in 2009 largely because the motion that we passed a while ago increases our commercial quota in Massachusetts as in the other states, too. For us our summer quota goes up from about 378,000 to 646,000, which is still a small quota but nevertheless it is a good increase, and we're happy about that, with 11.18 million pounds with the TAL.

But, clearly, if we were to go to public hearing with the requirement that we have to cut the northern region by 34 percent it puts us in an incredibly difficult situation with the public since the commercial quota goes up relatively significantly and yet the recreational fishery has to be cut by 34 percent with a rebuilt stock. It doesn't play well; it doesn't make any sense.

This particular strategy is a lot more reasonable and it is not liberalization. We are not easing the rules and regulations. We are maintaining them. Then we will see what the landings will be in 2009 as judged through the MRFSS or MRIP and then act accordingly. Of course, come 2010 we all expect – I think all of us expect around this table that we will see a bright picture that would be reflected in our being able to, well, change the numbers for the commercial fishery, certainly, and perhaps make some more changes to the recreational fishery measures that would be more liberal than what they were in 2008, and, of course, if this motion passes more liberal than in 2009. So, it is a reasonable approach and we wholeheartedly support it.

MR. GILMORE: Dave, could you give me the cliff notes on this; how does this differ from 2008?

MR. SIMPSON: It requires the party and charter so-called bonus season, as it has become known, to occur within the same period as the private and shore mode; where last year it could occur and did occur in most states outside that period. The other nuance of it is that because of that there is an understanding that 45-day period could straddle waves, so you would have to start on August 20<sup>th</sup> to get 45 days, whatever it would be, to get 45 days in before September 26<sup>th</sup>. Otherwise, it is the same.

CHAIRMAN CARPENTER: Anymore comments from the board members? Any comments from the public? Phil, come right up.

MR. CURSIO: Mr. Chairman, Phil Cursio, United Boatmen of New York; New York Fish and Tackle Trade Association; RFA New York. A question, if I may, for Mr. Simpson. How does this – by forcing the partyboat season, the bonus season, into the regular season; how does this benefit the stock situation?

I don't understand why we're being forced to give up our fall season, which is really when the public has come to expect – and that's really our best part of the season as far as carriage. So if someone could

explain to me why that has been taken away from us, I would appreciate hearing it.

MR. SIMPSON: Right now with an 11.18 million pound TAL, the recreational fishery is expected to cut 34 or 37 percent, something like that, and the only change from last year is moving that bonus season and retaining the bonus season, but shifting it into the same period where the fishery open for the other states. Although I understand the frustration, I think as a practical matter if we hope to stay within the overall TAL, that's a pretty modest adjustment to accomplish that.

MR. CURSIO: Thank you, Mr. Simpson. If I could continue just briefly based on that answer, first of all, as far as the 37 or 40 percent reduction our position is that because of the fact that this new stock assessment was developed and has shown retrospectively that the stock was in much better shape than what we anticipated, that that reduction really is a paper tiger.

There is no reason to institute that reduction at this point. Those fish are in much better shape than we thought, and the new, best signs available have indicated that the quotas that we were fishing under last year were artificially low. Therefore, that reduction should not even apply at this point. It should be thrown out. It has been supplanted by superior science.

Number two, I just note for the record that the partyboat season that would be most important for some of the northern states in that four-state region is retained; whereas, the partyboat season for what would really be important for New York partyboats has been eliminated. I don't see where the fairness is in that.

We weren't even aware that this deal was being made and we object to it. We cannot support this motion as it stands. Once again, we see New York taking it on the chin for everybody else at this table. It is an outrage.

CHAIRMAN CARPENTER: Thank you. Any other comment from board members? Dave, is there anything new that you're going to add?

DR. PIERCE: Yes, unfortunately so. I seconded the motion and, indeed, it needs to be seconded. However, I have given some further thought to this in the last five minutes, and it has occurred to me that if we make this change; that is, if we require the 45-day season for the 45 fish to be just during the open

season, it will create all sorts of chaos for the party and charterboat fishery in Massachusetts.

They have already got their charters. They've already got their reservations with expectations that they will be able to begin their season with the 45 fish on May 15<sup>th</sup>. That means that they will be unduly harmed by that particular strategy. I would move to amend and that would be to strike the language "except that for 45 continuous days within the open season".

MR. FOTE: Point of order; can he amend his own motion or can he just withdraw the second?

DR. PIERCE: Well, I will have to vote against this motion if it's –

CHAIRMAN CARPENTER: To the point of order, I think you are correct, Tom, he would have to withdraw his second rather than try to amend the motion.

DR. PIERCE: Then I would withdraw the second so that I will be in a position to amend the motion. Otherwise, I will have to vote against the motion and that would not be good.

CHAIRMAN CARPENTER: One thing at a time. Do I have someone else that is going to second the original motion? All right, seeing no second; is there a second to the original motion? Seeing none, we are ready to accept another motion. Does anybody have a motion crafted?

MR. SIMPSON: Move to very simply maintain status quo regulations for 2009.

DR. PIERCE: I second that.

CHAIRMAN CARPENTER: All right, we have a motion to maintain status quo for the 2009 regulations. Is there any additional discussion on that motion? Tom McCloy.

MR. McCLOY: I just request a clarification. Is this coastwide or just for the northern section?

CHAIRMAN CARPENTER: The intent of the motion was from Massachusetts to New York. All right, this will cover the four states from Massachusetts, Rhode Island, Connecticut and New York only. There will be a need to be an additional motion for other states. We need to handle New Jersey as a separate motion. Tom.

MR. McCLOY: I was going to move to amend this motion to include all the states that have a scup fishery.

CHAIRMAN CARPENTER: Toni, can you help clarify this?

MS. KERNS: All you need to do is add New Jersey to that. The board already approved status quo measures for the states of Delaware south, so that has already been taken care of at the December meeting, so it could just say Massachusetts through New Jersey.

CHAIRMAN CARPENTER: Is that a perfection of your –

MR. McCLOY: That's perfect.

CHAIRMAN CARPENTER: Would you accept that as a friendly amendment; will the seconder accept that? So we're dealing with a friendly amendment by adding the state of New Jersey to the original motion. Any additional discussion on this? Caucus and we're going to call for the vote.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Are we ready for the vote given the hour of the day? All those in favor please raise your hand; all opposed, same sign; abstentions, three abstentions; null votes. The motion carries. Since we took care of Item 8 earlier, there is a question of a motion. Toni I think has researched this and has some information.

MS. KERNS: The motion to require regions was tabled to this meeting, but it also had asked for the slot limit information to be given to the board at that same time. The TC has not been able to conduct that slot limit information because they were working on their state proposals. Rich has indicated to me that the TC will be able to have that evaluation by the May meeting. That is the information that I have for the state of New York.

MR. GILMORE: We agree with that. We have looked in the notes and essentially that was true so we would essentially move to table it to the May meeting then although it was Mr. Augustine's motion so maybe he has to do it.

CHAIRMAN CARPENTER: I think we want to postpone it to the next meeting, which would be the May meeting. I think it is on the record and this

clarifies it, so that action will be taken. Is it a burning thing because we're well past the time?

MR. AUGUSTINE: It's burning because I just wanted to make sure that the technical committee will come forward with some combinations for what would turn out to be mandatory. I wanted to make it abundantly clear as a part of that addendum that it would state in the event that conservation equivalency is accepted by the board in the future, that these mandatory regions will kick in. I would like to have them make sure that is addressed in the proposal when they bring it forth at the May meeting.

### **ADJOURN**

CHAIRMAN CARPENTER: That will be added to the record of this meeting, and I am sure it will be taken care of. Is there any additional business to come before the board? Seeing none, there is a motion to adjourn and we are adjourned.

(Whereupon, the meeting was adjourned at 12:50 o'clock p.m., February 3, 2009.)