

**Proceedings of the Atlantic States Marine  
Fisheries Commission's  
Summer Flounder, Scup, and Black Sea Bass  
Management Board**

**Doubletree Hotel  
Alexandria, VA  
February 22, 2006**

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*I move to approve all of them 26*

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*So the motion is to approve the four Rhode Islanders to the advisory panel. 42*

*MR. AUGUSTINE: Michael Plaia, Bruce Bannick, Mr. Baker, Ed Baker, and Ken Court. 42*

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF	Bendard Pankowski, proxy Sen R. Venables
William Adler, Governor Apte. (MA)	Howard King, Maryland DNR
Vito Calamo, proxy Rep. A. Verga (MA)	Bruno Vasta, Governor Apte (MD)
Mark Gibson, <b>Chair</b> , Rhode Island DEM	Russell Dize, proxy for Sen. Colburn
Jerry Carvelo, proxy for Rep. Naughton (RI)	A.C. Carpenter, PRFC
Eric Smith, Connecticut DMR	Jack Travelstead, Virginia MRC
Lance Stewart, Governor Apte. (CT)	Catherine Davenport, Governor Apte
Gordon Colvin, New York DEC	Preston Pate, North Carolina, DMF
Pat Augustine, Governor Apte. (NY)	Damon Tatem, Governor Apte. (NC)
Tom McCloy, proxy D. Chanda (NJ DFG&W)	Jimmy Johnson, proxy W. Wainwright (NC)
Erling Berg, Governor Apte. (NJ)	Wilson Laney, proxy J. Geiger, USFWS
Rick Cole, proxy for Patrick Emory (DE)	Harry Mears, NMFS

### Ex-Officio Members

Paul Caruso, Tech Chair

### ASMFC Staff

Vince O'Shea	Toni Kerns
Bob Beal	Brad Spear
Julie Nygard	

### Guests

Alan Risenhoovn, NMFS	Tom O'Connell MD DNR
Bennie M Williams, USFWS	Roy Miller DE DFW
Bob Ross, NMFS	Bill Windley, MSSA/RFA
Eric Robillard, VMRC	Sean McKeon, NCFA
Robert O'Reilly, VMRC	Sarah Widmon MD DNR
Tom Fote, CCA	Michael Luisi MD DNR
Dick Brane, CCA	Madeline Signst MD DNR
Alexie Sharov, MD DNR	Gene Kray, PA
Stewart Michels, DE DFW	Frank Cozzo, PA
Steve Doctor, MD DNR	Kelly Place, VA
Jessica Coakley, MAFMC	

**ATLANTIC STATES MARINE  
FISHERIES COMMISSION**

*SUMMER FLOUNDER, SCUP, AND  
BLACK SEA BASS MANAGEMENT  
BOARD*

DoubleTree Hotel Crystal City  
Arlington, Virginia  
February 22, 2006

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The meeting of the Summer Flounder, Scup and Black Sea Bass Board of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom of the DoubleTree Hotel Crystal City, Arlington, Virginia, on Wednesday, February 22, 2006, and was called to order at 11:25 o'clock, a.m., by Chairman Mark Gibson.

CHAIRMAN MARK GIBSON: Okay, we're going to get this board meeting going. This is the meeting of the Summer Flounder, Scup and Sea Bass Board. As I said earlier, we're quite a bit behind schedule so we need to push this. The first item is Pres Pate wanted to make an announcement.

MR. PRESTON P. PATE JR.: Yes, thank you, Mark. I'd just like to introduce our new commissioner who is a standing proxy for Representative Wainwright, Mr. Jimmy Johnson. Jimmy is a former seafood processor, a former eight-year chairman of the North Carolina Marine Fisheries Commission, currently in charge of the program within our parent department of implementing the Coastal Habitat Protection Plan.

And I've recently put Jimmy on the commission's Habitat Committee. So he's got a lot of experience, a lot of good judgment and knowledge that I think we should benefit from over the long term so

pleased to have him on our team.

CHAIRMAN GIBSON: Thank you, Pres. And on behalf of the board welcome, Jimmy. Next item is the agenda. We have a need to adjust the order. Items 7 and 8 need to be adjusted so that review of the consideration of the delayed implementation addendum would fall behind the review of Amendment 14 and 15.

There is a possibility, I suppose, that we might not get to the delayed implementation measure, depending on how today goes relative to other schedules. We also have some advisory panel nominations which we need to take up prior to other business.

With that are there any board comments or concerns or changes to the agenda? Seeing none, **the agenda stands approved as adjusted.** The next item, proceedings from November 2005, December '05 and January 2006 that are on your CD. They're on the CD.

Is there any board comments or a need for adjustments to those proceedings? Is there a **motion to approve** those? Motion by Bill Adler. Is there any objection to approving those proceedings as written? Seeing none, they stand approved as written.

Next item, public comment. Are there members of the public who wish to address the board at this time? And further along in the agenda under action items there will be opportunity for the public to comment on pending board actions.

No one from the public to comment at this time. We're doing really good. That's the first time that's happened. Scup recreational specifications, Julie Nygard.

## Scup Recreational Specifications

MS. JULIE NYGARD: Thank you, Mr. Chairman. On December 6, 2005, the Summer Flounder, Scup and Black Sea Bass Management Board voted to continue the status quo management program in 2006 for managing the scup recreational fishery.

Within these bounds the board asked the technical committee to evaluate four possible modifications to the 2005 specifications that would apply to the four states in the regional management program.

Those states are: Massachusetts, Rhode Island, Connecticut and New York. The technical committee chair, Paul Caruso, will now review those options and their findings.

MR. PAUL CARUSO: Thank you, Julie. Just a brief review of the technical committee's review methods and findings for the options. Let's see if I can get this thing. We used two different methods.

The first is a similar method that we've used in the past. It has the same assumptions as past analyses, that availability and abundance is static and fisheries behavior will remain the same.

The second method is generally a, it's a method that you could call a work in progress but one which the technical committee is coming to some comfort level with and we're addressing, starting to address availability and abundance as significant factors in the catch and harvest.

The issues that we had to deal with before we started our analysis were numerous. And you'll have to excuse me here. In no way any comments I make should be construed as negative to the MRFSS survey nor the Mid-Atlantic Council workings in the past.

They're just issues we had to address.

But the use of last year's harvest analysis methods over-projected the recreational harvest. So essentially if we used that same method, we plugged in the same data we used last time, the answer would be that we would exceed the TAL.

And the reasons for that are essentially that that analysis uses non-contemporary data and it uses the same assumptions we've with the past analyses, that of static abundance and static effort.

The 2005 catch frequency data were not available at the time of this analysis so we could not plug in new data or updated data. The 2005 fishery performance data being used as a benchmark is preliminary and it's subject to change. That data will not be finalized until mid-April so right away we have some issues there.

For the preliminary estimates, the PSEs for those estimates, out of 19 out of 21 state wave mode cells had PSEs above 30 percent which generally means the data is not that good to use and the average was about 57 percent which means overall the data is not very good.

And there were some obvious errors noted in some cells. Like I said, the data is preliminary. There were no harvest estimates in cells where there was a lot of effort and should be a lot of catch.

There were also quite a bit of harvest in wave cells where there should be no catch because the season was closed. There is some reasons behind those. I'm not going to get into them right now but as I said the data is preliminary and that's the main reason they are the way they are.

So how do we rectify those problems? Well, in the first method we took the 2005 harvest values that we were presented with and we re-estimated the overall harvest by substituting appropriate proxy values in the problem cells.

Generally what that means is you plug in a value by itself; you don't change a lot of the cells; things don't get changed in a big way. The 2006 harvest estimate was then projected based upon the 2005 revised data or if necessary 2004-2003 data. In the case of 2004 some of the waves were closed so we had to go back to 2003 to get good information.

We then projected harvest based upon reasonable assumptions about the fishery response to the explored options. One example was that since months expected to reopen are adjacent to the times of highest availability it was assumed that the harvest for the half wave would best be represented by the entire wave estimates from prior years.

In an example, Massachusetts, you would be open -- if you looked at your harvest estimate for September and October it would imply that the harvest is equally distributed. The reality is most, 99 percent of it comes in September. So we used the entire wave estimate.

And what that does is it makes the assumptions conservative in a management standpoint. It over-estimates the projected harvest so that the answers we get lead you to conservative decisions.

Okay, as far as the second method -- and like I say, a work in progress here but one which we think holds a lot of hope because we've always assumed that everything will be constant and in reality it never usually is.

We looked at the stock indices from the NMFS survey for correlation to fisheries performance over the time series which is 1982 to 2004. And we looked at it with and without time lags.

And what fell out of that was that the fall survey index in numbers lag one year was regressed against the catch history and the harvest history. And we noticed a good correlation there. And in discussions with Mark Terceiro that makes some sense based upon the sizes of fish that are available in that index.

Regression coefficients were determined and used to predict catch for future years and past years. And then what we did was we looked at different regulatory scenarios that worked on the catch ratios.

What I'm talking about is the catch ratios is the catch to harvest. You will see in the results section here what I'm talking about a little bit more. So the findings with the first method, basically these two methods gives you the same answer but for different reasons.

The re-estimated 2005 harvest that we came up with is about 2.8 million. Like I say, that would be a high-side guess. The current estimate is 2.1 million. It reduces the difference between the 2005 harvest and the 2006 TAL to 30 percent from the existing 46 percent that you would expect from the data, the preliminary data, which isn't a big change.

Reopening the half wave may increase the 2005 harvest close to the TAL using this method. Changes to the 60-fish for-hire season, either of the two options, wave splitting or the addition of an additional 30 days to the season, would likely result in a

harvest close to or slightly in excess of the TAL based upon this method.

We also had a request from the state of New York to examine an option of 50 fish for all modes for the entire season but not open the additional half wave. And it looks like that option also using this method would not exceed the TAL.

The findings using the second method is that catch is highly correlated with abundance and availability over the past eight years. And we have an R-squared value of about 0.65 which is pretty good.

The catch to harvest ratios average 77 percent, essentially, during the early part of the time series. They're quite stable during that time series. Since '98 they've dropped to an average of .54, meaning you're only taking home 54 percent of the total catch. And most recently in 2005 that dropped to 0.39. So last year's management actions essentially can be viewed as having a 13 percent effect on the harvest versus the catch.

Projected harvest under the regulatory regimes similar to the past eight years are not likely to approach the TAL using this method. They fall far under the TAL because the overriding influence here on the harvest and catch is your abundance.

Additional findings of the committee were that the recent wave closure and size increase had a significant impact on the harvest for catch ratio last year. That's the 13 percent I mentioned.

Size limit effects appear short-lived as undersized fish recruit to the fishery in one or two years. Essentially if you raise the size limit a half inch the next year the fish grow into that size so your size limit

advantage is now gone.

And if you raise it an inch within two years they grow into the one inch, they grow through the one-inch slot so they're now recruited to the fishery and again your Fs go up if you're relying solely on F reduction from a size limit.

The fishery itself is largely recruit-driven which implies that the three-year moving average index may not be reactive enough for setting the rec TAL. Basically what has happened is as the stock is going uphill quite rapidly the TAL is being set on the three-year moving average so the TAL is set low and the harvest goes past the TAL.

When you're coming down the other side of the abundance slope the TAL is set high and the catch is going to be low because you're not likely to realize that TAL. This factor increases the risk that a TAL will be set too low or too high in any given year.

These are just the graphics of the regression that we used to predict the catch. Like I said, it's a pretty good fit. We don't know if this will work out in the future but we're hoping we can continue this analysis into the future for other species.

Hopefully we can work on some multiple regression models or some general linear models and we can start to look at some of these bag limit analyses that we do in the past on top of these predictions of catch based upon the indices.

Here you have the track record of your catch and harvest from '82 to 2005. And if you look at the far right-hand side of the graphic you'll notice the space between the two lines -- the harvest being the blue line on the bottom and the catch being the top line -- increases.

And you can essentially look at that space between the two lines as your regulatory effect. So even though it doesn't show up well here because of the scale, in 1998 you start to separate your ratio of catch. The harvest to catch is going down.

The bag limits started in 2000 and that's where you see a real separation. The 9-inch size limit, you can see things are really pretty constant. The limit by itself didn't change the distance.

The 10-inch size limit, again, same thing. Basically what you have is over the last eight years a fairly constant effect of your regulations on the take-home harvest versus the catch of scup.

And this is just your NMFS Fall Survey index lagged one year that was used in the regression. And you can see the noise in the survey which is why you use the three-year moving average, which is a good thing.

But you can also see that it looks like availability and abundance is dropping off quite rapidly which is pretty much what leads to the recreational catch and harvest being under the TAL or could lead to it. And that's about it. I'll entertain any questions you have. David.

CHAIRMAN GIBSON: Questions for Paul. Dave Pierce.

DR. DAVID E. PIERCE: Yes, Paul, if you will, clearly the survey indices are quite important for our estimating where we are with stock abundance. Would you go to Figure 3, the one that you just I believe put up on the screen that shows the NMFS Fall Survey index number per tow through fall 2006. I'm seeking a clarification.

MR. CARUSO: It's fall 2006 because it's got a one-year time lag. So you're looking at a 2005 value. It's just moved up one year.

DR. PIERCE: It's moved up one year. But how is that done? What does that mean? In other words, if you would explain what you mean by lagging it one year because we can't predict what's going to happen in the fall of 2006, that is the fall survey index.

MR. CARUSO: Right.

DR. PIERCE: We're not there yet so how do we justify — what confidence do we have, does the technical committee has that this particular data point for the fall of 2006, which is very low, that it actually will be there?

MR. CARUSO: It's not a projected point, David. It is the actual survey value of 2005. It's just on the axis of the graphic it's lagged a year, just the way it — I could have graphed it as the 2005 index which it really is.

CHAIRMAN GIBSON: You're using that as a predictor of the performance in 2006 of the fishery.

MR. CARUSO: Yes.

CHAIRMAN GIBSON: So he's suggesting that the 2006 fishery will have that level of performance based on the '05 fall survey.

MR. CARUSO: You've got two different graphs up. Mark, you're looking at one and Dave's looking at the other one. I think. But he is essentially right. I'm using the 2005 Fall Survey harvest lagged a year as an indicator of abundance for the year 2006 to predict what the harvest will be or the catch, not the harvest. The harvest is, take it the next step, you look at the ratio and how



your regulations change that ratio.

DR. PIERCE: Okay, thank you. So that clarifies it. This is just a prediction as to what we expect we will find in 2006, that finding being determined through the fall survey that will be done. Well, not the survey, that's the fishery. We expect that the abundance will be down based upon fall 2005 survey index.

MR. CARUSO: Okay, if you go to the graphic on the screen now, that's the one. The green line is the predicted catch. It's the 2005 index that's used to predict that catch.

DR. PIERCE: Okay, so we're predicting that the 2006 catch will be lower than in 2005. And as a consequence of that you're saying and the technical committee is saying that we perhaps have been too optimistic with our assumption of what landings will be this coming year, the year we're in.

MR. CARUSO: Yes.

DR. PIERCE: In other words, abundance will be low, therefore we will likely not hit the TAL that we set for ourselves for 2006. Right? Okay.

CHAIRMAN GIBSON: Other board questions for Paul. Okay, seeing none I guess we need to return back to the state proposals, in particular the block proposal for the four states, Julie.

MS. NYGARD: Based on the findings of the technical committee the four states have agreed to submit proposals for a 30-day extension which is one-half of a wave for each state in the region. And those likely extensions were September for Massachusetts and June for Rhode Island, Connecticut and New York, although that

will be finalized in the coming weeks.

CHAIRMAN GIBSON: Thank you. So we probably could use a motion to get that discussion started. Eric Smith.

MR. ERIC SMITH:

**I move that the board approve the four state proposal for same regulations as were in 2005 with the addition of an additional 30-days at the discretion of each of the four states, either before or at the end of each of the seasons, period. And, actually, and that extra wave would be at the 25-fish per angler limit.**

CHAIRMAN GIBSON: Thank you. Is there a second to that? Gordon Colvin. Okay, does the board understand what this motion is doing? Any questions for the maker, comments from the board on the motion which is an addition of a 30-day half-wave at the discretion of the state either at the beginning or at the end of the existing program and that wave would operate under a 25-fish possession limit. Rick Cole.

MR. RICK COLE: Thank you, Mr. Chairman. I just had a question. I don't know, maybe Paul could answer this. Have these management options been analyzed relative to this projected lower TAL that has come out of this regression analysis? In other words, will these management measures achieve that lower target and not exceed it?

CHAIRMAN GIBSON: Paul.

MR. CARUSO: First, it doesn't lower the TAL. It just estimates the harvest and catch. And using either method it would fall far below that TAL.

CHAIRMAN GIBSON: Other questions or board comments on the motion. Seeing

none, do we need time to caucus on the motion? I should have some -- sorry, audience. Is there audience comments on the motion? Anyone wish to speak to this motion before the board caucuses and acts? Tom Fote.

MR. THOMAS FOTE: Since it's listed under summer flounder, scup, sea bass, why didn't you just put the name of the species that it's basically for. It's not in the motion.

CHAIRMAN GIBSON: Thank you, Tom. We can correct that. I don't think the maker or the seconder will have any problem with that. Thank you, Tom. Anyone else for the audience wishing to comment on this motion? Seeing none, back to the board.

Do we need time to caucus on the motion? Doesn't look like it. Okay, all those in favor of the motion please signify, raise your right hand; any opposed; abstentions; one abstention; null votes. The motion carries. Next item, review and consider approval of Draft Addendum XVIII, final action, Toni Kerns.

## **Review and Consider Approval of Draft**

### **Addendum XVIII**

MS. TONI KERNS: Thank you, Mr. Chairman. Currently staff is passing out to you the summary of the public comment. I apologize this wasn't on the CD but the public comment period only ended on Friday so I was not able to get that out to you prior to the meeting. I will try to go through the summary as thoroughly as possible.

Thirty-five e-mailed comments were sent in to the commission as well as 13 written comments including comments from five organizations: the Rhode Island Party and

Charter Boat Association, the Coastal Conservation Association of North Carolina, the Manasquan Fishing Club, the Jersey Coast Shark Anglers Inc. and the Jersey Coast Anglers Association.

Some of the general comments that were heard throughout these e-mailed and written comments were that the proposed option rewards those states that exceed their targets and punishes states that have been more conservative.

The proposed option only enforces states to continue to exceed their harvest target. The proposed option will increase the risk that the recreational fishery will exceed their 2006 target and the burden shifts to constraining the coast-wide target to the states committed to managing within their own targets.

There will be an increased risk that the states will utilize by their ability to liberalize when they otherwise would not to prevent the distribution of savings to others states. This adds risk that the 2006 coast-wide target would be exceeded.

The short comment period had prevented states from consulting with their constituents. Sharing savings would be a violation and a discredit to the commission's vision. States are required to reduce harvest in excess of their target and to rebuild the resource.

The savings should go back to the resource and not to the states that have abused their targets. And New York fishermen have already faced strict enough regulations for arbitrary reasons and they should not have to face more restrictions.

In these written comments 37 were preferring status quo and only 1 preferred

Option 1, altering the management process. Three states opted to have a public hearing and those three states were: North Carolina, New Jersey and Rhode Island.

In the North Carolina hearing there were five attendees. All those attendees favored status quo. They believed that the addendum appeared to be a quota grab by the northern states, that six other states had fallen within their allocations and these three states would -- would these three states agree to distribute extra fish to North Carolina if they were facing a reduction?

These states are basing their argument for higher recreational allocation by overfishing and the addendum sets a bad precedent. These states need to make modifications to avoid exceeding their targets. And the recreational sector continually over-harvested for many years and then this addendum gives the perception that over-harvesting is okay.

At the New Jersey hearing there were 16 attendees. Four of them that spoke were in favor of status quo and three were in favor of Option 1. General comments that we heard were that some would support another addendum to the plan that would say that all states could just remain status quo or we should not punish the New York fishermen for the actions of their commissioners in lowering the TAL.

And we should help them out by a situation they were put in because of bad MRFSS data and an unjustified lowering of the TAL. And then some of them also said that they did not want to give New Jersey's underage to the other states.

At the Rhode Island hearing there were 30 attendees. All of the attendees at the hearing were in favor of status quo. Some of the

comments that were expressed were the idea of giving the underage to these three states undermines the idea of conservation equivalency.

The proposed option rewards those states that exceed their targets and punishes states that have been more conservative. The proposed option only enforces states to continually exceed their harvest targets.

Sharing savings would be a violation and a discredit to the commission's vision. States are required to reduce harvest in excess of their target to rebuild the resource. The savings should go back to the resource.

The people of Rhode Island are sick of giving parts of their allocation to states that abuse the regulations and harvest targets. And Rhode Island has taken steps to be conservative and they should not have to bail out the states that do not take these same steps. And that is the end of my summary of the public comment. I will take any questions if there are any.

CHAIRMAN GIBSON: Are there questions for Toni on the public comments and hearing process? Jack Travelstead.

MR. TRAVELSTEAD: Thank you. Toni, a lot of the comments you summarized and a lot of them that I glanced at here in the package seem to be under the assumption that approval of this addendum will for those states who stayed at status quo will somehow result in a reallocation of their quota to the other states and that then we end up with a lower quota. And I know that's not true but can you clarify that for the record and make sure everyone understands that.

MS. KERNS: You know, that was something that I was very concerned that at

each public hearing people understood that they would not lose any of their 2006 quota, that no one's 2006 targets would be adjusted. And so that is true.

If you were to stay status quo with your 2005 regs you would not lose any of your target in 2006 if you were to give your savings to any of the three states that exceeded their 2005 target. But the comments still came as they were being punished.

CHAIRMAN GIBSON: Other board comments or questions on the public hearing. We have a wide range of comments, some of them quite lively, a controversial topic. Other board comments on the public hearing proceedings.

Seeing none, we need action on, final action on this addendum so we should have some board discussion on the addendum. Any board member wish to speak to the addendum? David Pierce.

DR. PIERCE: I support Option 1 to the -- well, let me make a motion then I'd like to speak to the motion, Mr. Chairman. I would **move that the board adopt Option 1.**

CHAIRMAN GIBSON: In keeping with the audience comments, do we want to identify Option 1 to what addendum?

DR. PIERCE: All right, that the board adopt Option 1 to Addendum XVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

CHAIRMAN GIBSON: Thank you. Is there a second to that motion? Eric Smith second. Dave, comments.

DR. PIERCE: Yes, if I may, Mr. Chairman. I think Option 1 represents a very fair,

appropriate effort by the board to deal with the problems that frequently are created by our being obliged to use MRFSS data. And we all know very well that MRFSS data can be quite uncertain. We've discussed that time and again.

This does not represent a penalty to any particular state. It represents other states helping those states that went over their allotments. It helps those states reduce the severity of the percent reduction. And the reduction, the overages that occurred in the different states, New York, Connecticut and Massachusetts, were overages that were not purposeful, clearly.

The regulations that we implemented in 2005 were implemented with an understanding that there would be a high probability of our staying within the bounds, that is staying within the target that we had established for ourselves.

So, in good faith we moved forward, adopted those regulations. The other states adopted theirs. We all believed that they would do the job. In this particular case once again because of our needing to use the MRFSS data from these three states we were over.

Therefore, with the other states agreeing to maintain status quo regulations, we're put in the position in a cooperative manner, a family of states, ASMFC states, we're put in a position of minimizing the impact that would occur in the recreational fisheries and in these three states.

So I think it's a good effort on the part of ASMFC to work together for a common purpose which is to attempt to minimize the impact on any one state.

CHAIRMAN GIBSON: Thank you, David.

Do other board with to comment on this?  
Eric Smith.

MR. SMITH: Thank you. I support the motion, obviously. And in the context of the kind of public comment we received I just, I guess at another time I'm going to want to write something or say something on the nature of how these kind of allocation arguments are, we're starting to consume our own and that's going to be very destructive to the commission process.

But time is short so I guess to speak just to the addendum, this is a very benign addendum. It takes nothing from anyone. It's voluntary. It's one year only. Our obligation in the future, in 2007, is that we still have to track ourselves based on 2006.

The reason I support the addendum is, you know, you can't be up there with this randomness of MRFSS forever without it bouncing back and some other state being the one that has this mysterious rapid rise and another state having a mysterious rapid decline.

And I'm guessing our number has to come up sometime. This is a way to ease the magnitude of that very bouncy result that happened in 2005 without harming any state that has chosen that they're going to be satisfied to keep their regulations as they were in 2005.

The public comments, frankly, might be more relevant to the way this whole thing transpired. And if you recall, from December to January we were talking about an entirely different vehicle. It was an addendum that would say we would take this away from these states; we'd give it to those states.

And of course that, you know in retrospect

that was a bad way to do it and it got people jangled. And I'm not so certain that the comment isn't still thinking back with the wounds open on that earlier approach. But this addendum is not that approach.

My third point, each of the states are still going to have to take a really healthy cut. In Connecticut without the addendum passing we have to cut back on our anglers' opportunities by 35 percent. If the addendum passes, we have to cut back on 25 percent. Either way it's a big chunk. But I would rather have to deal with a 25 percent reduction than 35.

My fourth point, let's not forget that on a coast-wide basis we came in just about on the button with the coast-wide, the harvest TAL. In other words, when you add up all states, all fisheries, where the availability was, what the harvest target was versus what all the states' catches harvest were, we came out about on the button.

It was a little bit under. With the quota change there is a little bit. That's why the three states still have to absorb some cut. So it's not like we're jeopardizing conservation of the resource.

On a coast-wide basis the number of fish that were supposed to come out of the stock due to fishing came out of the stock due to fishing and that's about the best you can get.

And it emphasizes how, the aggravation we all feel by these bouncing numbers, trying to do things on a state-by-state basis when we don't have the information that really can have us do that. So all things considered you know I support the addendum and I hope the board will approve it. Thank you.

CHAIRMAN GIBSON: Thank you, Eric. Other board. Gordon Colvin, then Rick

Cole.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman. Dr. Pierce and Mr. Smith have made the vast majority of the points that I would have made. And I appreciate them doing that and I won't repeat them. I would like to just mention a couple of things.

One, to emphasize -- and largely because I know that there are some board members here today who were not present during the two prior board meetings at which this issue was discussed -- to emphasize the fact that we see this as a unique situation and have proposed both the predecessor addendum and the current addendum because of that unique situation where the states were confronted, three states were confronted, with a combination of a unique midcourse unexpected decline of about 20 percent in the overall quota with an exceedence of their harvest quota for the preceding year in the case of New York and Connecticut.

We would not have proposed this had it not been for those two factors coinciding. We would not have proposed this simply because we had a significant overage as we did two years ago. And I just want to reemphasize the fact that we see this as a unique situation in that regard.

All else I will do at this point, Mr. Chairman, is to once again thank the board and the commission staff for the effort that they've put into considering this matter that we requested. We recognize that an extraordinary amount of your time and patience has been invested in it. And we really do appreciate it and believe me, so do our anglers and our recreational fishing businesses. Thank you.

CHAIRMAN GIBSON: Thank you,

Gordon. We know you had to come a long way today to be here so thank you for your efforts.

MR. COLVIN: Those were probably the most expensive words I've ever said on the record.

CHAIRMAN GIBSON: Rick Cole.

MR. COLE: Thank you, Mr. Chairman. What concerns me about this path that this Addendum XVIII would lead us down is that there is absolutely no conservation associated with this particular addendum.

And this is at a time when the stock is over - - when overfishing is occurring in the stock and when we've had to take reductions in the harvest cap because of this overfishing. And the reason I say there is no conservation associated with this process is that we know that it's estimated that over 200,000 fish were exceeded over harvest last year by New York and Massachusetts.

These fish are gone. They didn't contribute to the spawning stock this past winter. They have been lost. But, in addition, if we follow this process in Addendum XVIII those fish would be ignored. That's just too bad they're gone.

But in addition we're talking about transferring "savings" of over 300,000 fish to these states that could potentially be harvested in 2006 and over and above what the status quo would have permitted if we maintained the status quo.

So the way I look at this, we potentially could have at least a half million fish totally removed from the spawning stock biomass by this particular approach. And, again, this is not the time to do that when overfishing is occurring in the stock.

The stock is not increasing at the rate we thought it was. And there is nothing to at this point in time to guarantee that we're going to have an increase in stock size for 2007. When the assessment is updated this year we may find that, heck, in fact the stock is continuing to decline.

And this process is not going to help us rebuild that stock. Now, if we find out that the stock continues to decline based on the 2007 update or 2006 update, then we're all going to be impacted again.

So don't be deceived thinking that this is not going to impact because potentially it could. If we don't get this stock rebuilt at a higher rate than what we've seen here recently, we could be looking at further reductions in the harvest cap.

And again this particular approach doesn't address this rebuilding issue. And to me it's not the way at this point in time to go forward. And the comment that the recreational fishery has, we've had problems getting it under control.

I think in the 13 years we've been under a quota-based management approach I think the recreational fishery has exceeded their harvest cap eight times. And just recently I was encouraged, I have been encouraged by the improvement in the conservation equivalency process, the status quo, if you will.

And I was just beginning to think that maybe this is all coming together until this year. And I cite the good work that the technical committee has done this year in evaluating the state proposals.

The commission staff provided each state with a detailed approach on how to fashion

their management measures to meet the target. And the technical committee did an excellent review. We've got a memo. We'll be looking at that later.

And I thought the process was well on the way to being able to get this recreational fishery under control. But then here we go. We're looking at a deviation here. And if you say it's only a one-year process, well, I don't look at it that way. We're setting a precedent.

And I don't know how you could allow this to happen this year and not allow another state in the future that might be in a similar situation to basically take the easy path out. So, these are my concerns. Given the current status of the resource I can't support the motion.

CHAIRMAN GIBSON: Thank you, Rick. David Pierce.

DR. PIERCE: Yes, just for the record, Rick, I appreciate your comments. Your concerns are of course understandable. I believe you said that Massachusetts last year exceeded its target contributing to the problem that we have overall with fluke rebuilding and I wanted to correct that.

In 2005 our target was 263,000 fish and we ended up with 238,000, approximately. So we were under our 2005 target. Our rules and regulations were effective in constraining our harvest. I'm sure there were other factors as well but they were, as far as we can conclude and we have, that they have been effective.

So, the purpose of this action is to again minimize the severity of the socio-economic impact on the recreational fisheries in those states that find themselves now because of our having to slash the entire quota for 2006

to minimize the impact of the nature of some of these reductions such as 37.61 percent for New York which is a very significant reduction.

It will have a huge socio-economic impact on New York. And as Gordon has already indicated, he is still going to have to come up with I think around a 25 percent reduction if this amendment passes as is.

So it's a reasonable approach. It's an approach that's sensitive to the socio-economic impact in at least three states. And it's a request by these three states in particular for some support from the other ASMFC states involved in fluke management.

CHAIRMAN GIBSON: Jack Travelstead.

MR. TRAVELSTEAD: Toni, what are the actual numbers? If this passes, what are the actual numbers of reduction that the three states will have to make?

MS. KERNS: Hold on one second. The Wave 6 estimates have come in since I've done the original looking at this and so they will be slightly different.

If the states of Maryland, North Carolina and Virginia remain status quo and if status quo means automatically giving your fish to the three states, then Connecticut would have to reduce by 24.2 percent; New York would have to reduce by 26.2 percent and Mass would have to reduce by 10.19 percent.

MR. TRAVELSTEAD: Thank you. Could I make some additional comments, Mr. Chairman?

CHAIRMAN GIBSON: Yes, please.

MR. TRAVELSTEAD: I will support the motion. I think it's a reasonable response, as has been said earlier. I think we need flexibility when we have problems like this. And this is a good example of allowing some flexibility.

Having said that I do have a couple of concerns. Virginia, for one, has been in this situation before and the board was reluctant to allow this kind of thing from happening. But that aside I still support the motion.

I do hope, though, that the memory of this board is long so that as sure as I'm sitting here three or four years from now Virginia is going to be in this situation. And I want you to remember this type of solution to the problem and look favorably on it then as I hope you do today.

I think it is a reasonable solution and it might benefit all of us down the road, even though it hasn't been available to us in the past. The other issue I would raise, because no one else has, is I am a little bit upset because some of the people that will benefit from this motion if it passes are some of the same people who are now suing this agency over the flounder quotas and I don't appreciate that too much.

But I'm going to set that aside for the day and vote in favor of the motion. And I would say that if that type of thing continues to happen I might change my mind on future motions along this line.

CHAIRMAN GIBSON: Thank you, Jack. I had Pat Augustine and then Pres Pate.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. Mr. Travelstead, we will have a long memory on this and we won't forget. We've been here before. Both Gordon and myself and Brian have made



presentations on behalf of the dilemma our fishermen have been faced with. And we indeed have done our damndest to restrict, refine and control our catch harvest.

But every time I go back and look at the distribution and how the fishery prosecution has changed, at least where the prosecution is occurring in terms of numbers, it always leads one to believe that we've got to use a different approach than what we're doing.

And I, on the record, as Gordon did, we thank you all for your consideration and deliberations in this matter. And there will be a time until the system changes that each and every one of you states around this table are going to be faced with it.

And I think somewhere in time we've got to look at being a little more flexible but still stay within the confines of the ethical and moralistic commitments we've made to this plan and dedication to making sure these fisheries come back. So again we thank you for your support on this motion.

CHAIRMAN GIBSON: Preston Pate.

MR. PATE: Thank you, Mark, an observation and then a question. If as Pat said it is inevitable that we will be back before this board with other states making similar arguments in the future then I submit that this is probably a subject for consideration at the policy board level because the principle involved here cuts across many plans and quota management for different species.

We could make the same argument at some point about overages for the commercial harvest or harvest by any sector. And these are very important issues that are before the commission that set some precedent and really need some discussion outside of the

pressures that are on two or three states or for an individual species. So that's a placeholder for future discussions at the policy board.

My question to someone would be a further clarification of what the automatic transfer would be if North Carolina, for example, were to propose status quo with its recreational measures for next year, and in fact we have.

Does that mean that our savings of 80,000 fish from last year would automatically go to the three states? Or would we have the discretion for making a second decision to allow that to happen?

CHAIRMAN GIBSON: Toni and I had a sidebar on that so do you want to deal with that, Toni?

MS. KERNS: I'd like some clarification. That's a question that came up from some of the commissioners at the last, after the last board meeting. And so I think we need clarification from the motion makers that put together the addendum in the first place which would be I believe Gordon and Eric was the seconder.

CHAIRMAN GIBSON: Eric Smith, do you want to tackle that?

MR. SMITH: Yes, if I understand the question correctly, any state that decides this spring that it is going to change its rules so it is going to try and set rules that capture its 2006 harvest target, those fish would not be available for the three states.

But a state that decides to keep the same regulations it had in '05, then those fish are essentially left on the table, if you will. And the addendum is designed to then say the three states that have that need would then

design regulations to meet, like in our case a 25 percent cut instead of a 35 percent cut.

In that sense, it's automatic because the state, in this case North Carolina in Pres' example, would have decided to maintain status quo regulation. But if they go back to their commission in a couple of weeks and the commission says, no, we want to decrease the size limit or increase the creel limit or whatever to capture those fish, then that means voluntarily its less fish available for the three states.

Now when we cut that decision off I guess is a question we have to know because we all have to adopt regulations to be in place for the season that's coming up. And I'm kind of presuming I understood that that was the nature of Pres' question. If it was different then I guess I'd have to hear a clarification.

CHAIRMAN GIBSON: I think Toni wanted to -- did you want to ask another question?

MS. KERNS: The other question that I had was at the last meeting Gordon indicated that it would be, we would only take savings from those states that indicated at this meeting they would be remaining status quo. And I want to make sure that that holds true.

And that was, the reasoning that Gordon had given for that justification was that the states needed to go forth and come back to the TC with new proposals with the adjusted reduction in harvest and the TC had to approve those and then those proposals would have to be approved by the board. So I need to make sure that it's only states indicating they are staying status quo at this meeting savings would go to the three states.

MR. PATE: Thank you and thanks to Eric for clarifying that. And I think his answer

exposes for me another argument that hasn't been made yet and that is the increasing aggressiveness by those states whose delegation might in principle oppose this motion.

For example, if -- and you can see from the comments that we received during our public hearing that status quo is the preferred option. That's also the comment that was sent in by our marine fisheries commission.

I think if they had realized that they could oppose the motion in a different way by putting forth a proposal to increase the or to liberalize our recreational measures and save North Carolina's fish they might have done so.

But we're perfectly comfortable with the regulations that we have in place now. They're working. They're keeping us below our target. And I would resist liberalizing those for the reasons that Rick Cole enumerated in his comments earlier.

We've gotten to the point where conservation equivalency is working. It has gotten us off of the track of unacceptable overages by the recreational harvesters over the years.

And I'm concerned that this may be a signal that we've gotten too comfortable with our use of conservation equivalency and now want to start making adjustments on an annual basis that are I think unprecedented. I can't remember that we've done anything like this in the past. And I agree with all of those that have spoken about the need to work in a flexible atmosphere.

But I just admonish the commission to be very, very thoughtful in your vote about what that flexibility might mean down the

road and not get too carried away with our successful use of it in one case without being aware of the potential for it being unsuccessful and damaging to our efforts sometime in the future. Thank you.

CHAIRMAN GIBSON: I'm not sure we have a resolution of Toni's question on the time certain of declaration of status quo. It was her understanding it was to be this meeting and it's important because some states have, Rhode Island, for example, has proposals which are imbedded in a status quo option as well as some liberalization options.

So I think we need to know the board's intent about what today's time certain is. And I think that Eric has characterized it as the states that have declared as of today. Harry Mears and then Tom McCloy.

MR. HARRY MEARS: Thank you, Mr. Chairman. I'm going to abstain from this vote. I initially looked at it as primarily a state allocation issue; however, I feel very uncomfortable doing so partly predicated on some of the compelling comments which Mr. Cole made in terms of the long-term implications.

My impression upon coming to this meeting was that this was a one-time fix to alleviate some socio-economic impacts upon fisheries in several jurisdictions, three jurisdictions and at the same time stay generally within the quota rebuilding provisions of the resource.

Since that time I've heard now that we can expect to see this continue into the future when other states face this same situation.

I'm not so sure now that it is in fact a very minimal impact upon the longer-term rebuilding prognosis of the resource if we

continually now have before us a one-time addendum that sounds like it's going to become a standing addendum if this should approve.

I feel very uncomfortable about that. I don't think we've had a technical review that I'm aware of by the technical committee in terms of what the longer term implications might be in terms of playing with overages and underages in terms of quotas like this.

I don't think it's the way it's meant to be and I certainly think it's not the way conservation equivalency is supposed to work. Nevertheless, I am going to abstain. Hopefully this will be a one-time deal. But I do have severe concerns over the longer term implications. Thank you.

CHAIRMAN GIBSON: Tom McCloy.

MR. TOM McCLOY: Thank you, Mr. Chairman. As you can tell from Toni's report there were varied and mixed comments coming from New Jersey fishermen, as you would expect on just about any issue.

New Jersey is in a position at this time to support this motion but at the same time if we need to have a decision today as to whether we're remaining status quo or not, that's going to be extremely difficult to provide, Number 1, because although I know where we're headed our marine fisheries council which has the ultimate decision in this issue does not meet until early March and so there is no guarantees that could be given at this point in time.

CHAIRMAN GIBSON: Vince, you were next.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. I just

had a question and I'm not sure if it's for Paul Caruso or perhaps Toni on how this is going to work. The premise behind this is that the 2005 sector harvest was close to what it was supposed to be.

So my question is in 2006 if there was a significant overage in the sector what would the impact be to all of the states? And the reason I'm asking that question, it wasn't too many years ago that we were dealing with a five or a six million pound overage in the sector. And I'm just, I don't understand under this proposal how that overage would be allocated through, across all the states.

CHAIRMAN GIBSON: Just so the chair understands, your question is if we proceed with this action and the recreational fishery goes off in 2006 and generates a big overage, what happens then?

EXECUTIVE DIRECTOR O'SHEA: Yes, and I guess I'm thinking that doesn't that overage then reduce the TAL for the, I mean the TAC for the next year and then based on that we allocate per state? Or is the overage allocated to individual states? And that's what I'm not sure of.

CHAIRMAN GIBSON: Toni or Paul, can you?

MS. KERNS: The coast-wide TAL would not be affected by states' overages but each individual state would have to payback -- or not payback, I'm sorry -- would have to adjust their harvest in the 2007 according to the overage that they had in 2006. And that would be based upon their 2006 target as is right now. That target will not change, no matter what happens in this addendum.

EXECUTIVE DIRECTOR O'SHEA: So you're saying it would, the overage would be allocated only to the states that go over,

that there is no way that the states that stay within their percentage would be harmed by a significant overage?

MS. KERNS: No, they would not.

EXECUTIVE DIRECTOR O'SHEA: Thank you.

CHAIRMAN GIBSON: Other board comments.

MR. SMITH: Yes, I just wanted to point out my understanding of the way the addendum works in the sense of Tom McCloy's concern. If New Jersey hasn't been able to commit by this date or whatever date we decide to be the effective date of this, then those fish effectively stay in the ocean.

They don't go to the three states. Because if all of the states that didn't have overages had, if all of those fish went into this pool, so to speak, then Connecticut wouldn't be facing a 25 percent cut.

We projected this based upon what we knew about what states were going to maintain status quo as of about this date. They haven't decided yet. To use Rick Cole's analogy, those fish stay in the ocean for conservation if you want to look at it that way. But they don't at a later date get folded into this because their decision couldn't be made.

CHAIRMAN GIBSON: As I understand it and Toni can verify this, there are three states that now have status quo intent on the table. There are several other states that could end up there but those fish are, frankly, they aren't available at this time.

MR. SMITH: Unless we change that date today and we're not proposing that. But

that, one of the other two states could.

CHAIRMAN GIBSON: Other board comments. Preston Pate.

MR. PATE: Thank you, Mark. Harry Mears' comments reminded me of a question that I wanted to ask either Paul or Toni and then a follow up. And he made the observation that this had not been looked at by the technical committee. Is that correct?

MR. CARUSO: As far as the future impacts, no. We did look at Toni's math, so to speak, and it did check out but there was no technical analysis as to how it would affect things in the future, how it would affect the stocks.

MR. PATE: Okay, thank you. May I continue, Mr. Chairman?

CHAIRMAN GIBSON: Please.

MR. PATE: Thank you. My observation is that you may remember, many may remember, that we've tried unsuccessfully for years to get the council and the commission to agree to some limited amount of carry forward of underages of the commercial harvest to allow us to more efficiently manage our trawl fishery, winter trawl fishery that actually starts in November and runs continuously through March.

But we've been unsuccessful in doing that because the stock assessment scientists have said that the carry forward confounds the stock assessment. My question is, using North Carolina's example as put forward in the Option 1 if you have 80,514 fish that potentially will be redistributed among the other states, those fish, if those fish had been caught off of North Carolina they would have weighed  $\frac{3}{4}$  of a pound apiece.

If those 80,000 fish are caught in New York and New Jersey they may very well weigh 3 or 4 pounds apiece more. And I'm not a very competent stock assessment person -- I let other people on my staff deal with those high math issues -- but I have a hard time understanding how something like this doesn't confound the stock assessment as significantly as a minimal amount of carry forward from one year to the next.

CHAIRMAN GIBSON: Paul, do you want to comment on that, differential weights between regions and how that will affect the resource assessment?

MR. CARUSO: Well, I don't want to speak for a committee that's not here and can't weigh in on it. The only thing I can point out is that these numbers of fish are calculated on the mean weight, I believe the coast-wide mean. So that's about the best I can tell you about it right now.

CHAIRMAN GIBSON: Any more comments from the board on the motion before I get some audience comments? Okay, we'll go to the audience. Comments on the motion. Tom Fote.

MR. FOTE: Tom Fote from the Jersey Coast Anglers Association. You have our written statement in the packet. Remember, when we talk about the hearing was held on Valentine's Day so you had to make a decision whether to spend time with your spouse or spend it at a fisheries meeting and a lot of people opted to spend time with their spouse.

And also, when you start talking about comments you talk about clubs. And clubs are not just one individual. Clubs are basically like Manasquan Fishing Club represents 300 fishermen; Jersey Coast

Shark Anglers, a couple hundred fishermen; and Jersey Coast Angler's Association, there was actually 25 clubs present when this decision was made on the position.

Having said that and having talked about the New Jersey Coast's position, which you could read, there is real problem here. I hate to disagree with Rick Cole because we agree a lot of times together on the stock assessment, this is not a declining stock.

Rick I think misspoke. It was not declining. It is not growing fast enough to reach a point in 2010. We have basically been increasing the stock every year for the last couple of years. As a commissioner sitting here I basically have tried to help New York out in 2003 and 2004 and fought very hard to try to come up with innovative solutions.

If I had the purview right now and I was sitting on this board I would make a motion that we forgive Massachusetts, North Carolina and New York to start from a point zero where they think they can basically go to reach the quota they're supposed to have for 2006.

The problem you have with transferring quota, Tom says it. We have a marine fisheries council meeting coming up. And there is, you know, a lot of support for status quo. Jersey Coast went, sat in and advised at the meeting.

But that's what the idea that we have been under for the last year. One year we were slightly over but allowed for that increase. But we didn't think about a transference to another state.

We wanted to say, hey we are so afraid to go, you know, over because people were pushing paybacks and we always had the fear or paybacks, an amendment would

come back, that we want to make sure that we stay over so we have not been aggressively coming close to the quota.

And that's what fishermen should be doing. We should be staying there. This sends the wrong message. This says we should be pushing the limits now because if we don't use it somebody else does.

North Carolina commercial fishermen basically, I don't want to speak for North Carolina but I will speak about their catch, about 500,000 pounds if I understand it right under on their commercial catch.

New Jersey's commercial fishermen are about 500,000 pounds under on their commercial catch for 2005. That's a lot of fish saved. That's also a lot of economic loss to both the commercial fishermen of New Jersey and North Carolina.

Why were they under? Because they put conservative regulations because they didn't want to go over in the winter fishery and they couldn't predict the weather so they got shut out of a fishery and they basically fell far short.

They made a decision. But are we going to basically say to them now, oh, somebody else went over so because you were conservative in the way you harvest fish, because you were so afraid of going over your quota we should basically relieve somebody else's problem?

No, I would better approve a motion that would say because North Carolina was under by 500,000 because they were afraid to go over they should use that 500,000 pounds next year. But the plan doesn't allow for it.

As Preston put out, the stock assessment

says that's not possible because we don't know the impacts of that on that. It's a tough question. I think it sends wrong messages out to the public. I also think it pushes people over the edge.

I think we should find another solution to deal with it and simply forgive North Carolina, I mean Massachusetts and Connecticut and say let's see what you can do for next year. Come up with a proposal that you think will meet what you should be and we'll accept it because you're going to do it in an honest and fair manner and we're not going to use the overages.

That would sit well with people. Now you can't approve that because it's not going fly. But that's what I would feel comfortable supporting and to basically try to come up with a solution. Thank you for your time.

CHAIRMAN GIBSON: Thank you, Tom. Does anyone else from the audience with to comment on the motion before the board? Seeing none I will move back to the board. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I think Tom presented all of this rather simplistically and I think -- and I don't mean to disagree with him but I do on occasion and we agree at other times.

But the reality of it is unless someone can show us that we and the other states have actually arbitrarily set our season, bag limit and size at levels that far surpass those of the other folks who are in this fishery, then shame on us.

But I'm not sure that's the case. What appears the case when you looked at this chart, for those of you that have it, there is a definite indication that the population has either expanded or shifted. And it's not that

we're doing anything wrong. We don't see a major increase in our fish or fishermen.

But we do see a great shift in the southern states continuing to go higher and higher in terms of underages getting higher and higher while the states to the north seem to be getting to the line where we're in the red. And so I think it's a much bigger problem.

The other side of it is that the way our system is set up we cannot make arbitrary changes to the plan without going through an extensive process. Fortunately ASMFC has a little more flexibility than we have or than we do have in the Mid-Atlantic Fishery Management Council.

As most of you are maybe aware we've been trying to get some amendments passed to review, for instance, the break between commercial and recreational fishermen to see if the quota is right.

There has been some undercurrent to look at is the quota distribution appropriate for the states in view of the fact that the trend appears to be that, again, the population has shifted. So, we're in a dynamic situation here. This isn't the only fishery that's dynamic. But this one seems to be more dynamic than any of them.

And so I just wanted to put that on the table that once I looked at this chart and passed it through our fishermen, the first point that came up was have the fish changed their location? Has the population expanded? And the question is what has caused this redistribution of fish?

And do we have to continue in the northern states to become more and more restrictive while our states to the south can either have a little more freedom to expand or is there an easier solution to this whole thing? So I

surely do hope that you take all the comments around the table into consideration and support this motion. Thank you.

CHAIRMAN GIBSON: Thank you, Pat. Other board comments before we caucus on the motion? I guess not. Are we ready to caucus? Everybody has sufficient clarity on the nature of what states' savings are on the table and the time certain?

Okay, a moment to caucus. I have a request that we need more discussion on the issue of the deadline as to when fish will be, savings will be available. Did New York want to speak to that?

MR. COLVIN: I think so, Mr. Chairman, because I think our record is just a little fuzzy. And maybe I can start with a question to Toni that might help.

I think the intent of the discussion at the last meeting was that we would have indication from the submissions that states made for technical committee review and some other form of communication what the intentions were relative to status quo and, but I got a different impression when I heard the comments that Chairman Gibson made a couple minutes ago.

So, I guess, Toni, when you indicated that in response to an earlier question about what the percentages would be I think you said if North Carolina and if Virginia and if Rhode Island maintained status quo and not other states that you could have said. Is that a reflection of the submission those states made to you for review by the technical committee?

MS. KERNS: Yes, it was my understanding that unless a state said here at this meeting today, I'm going to stay status quo or we are

staying status quo, then those states' fish were off the table to this addendum.

And the only three states that have made a status quo proposal as their only proposal are the states of North Carolina, Virginia and Maryland. There are other proposals out there that are status quo but they have multiple proposals and I won't know what those states are doing until a future date.

MR. COLVIN: That kind of conformed to my understanding. And I think what that suggests to me -- and I'll suggest this as with kind of the board's thinking on this at this point unless someone sees it differently -- that in the event that the motion passes and the addendum is approved, that is what we are limited to is the percentages available from those three states, period.

CHAIRMAN GIBSON: I think that's what we said earlier when I was speaking with Eric and that was his intent. Does everyone on the board understand that? Okay, are we ready to vote? Have we caucused enough?

Okay, I'll call the question. All in favor please signify by raising their right hand; all opposed; are there abstentions and null votes? The motion carries. Tom, a question on that action?

MR. FOTE: No, a comment -- and I'm not talking about whether the vote is right or wrong. I think the problem is greater than just what happened with New York. I think as we basically get better and better data or more accurate data other states are going to pick up anglers and other fish that are not being caught.

It doesn't mean New York has caught more fish or how does New York go from 500,000 anglers for a 20 year period to a 900 and now a million anglers. They are



picking up anglers they never picked up before.

We've been underestimating their catch so we've been underestimating the stocks. When we start looking at a coast-wide survey and we get better information we need to come up with a way of interpreting it.

I've been screaming that for seven years, if we get and count every fish because we're underestimating the catch. We can't just walk through a state and say, you overfished; we say we've underreported you and how do we deal with that?

And that's how we would deal with New York's problems and Connecticut's problems. And that needs to be a long discussion by this board of how we're going to do it, not just with summer flounder but other species because we're going to wind up with the same problem.

CHAIRMAN GIBSON: Thank you, Tom. And from the chair's perspective I think this problem is bigger than this data in summer flounder as well. And several board members have spoken to that and I've had sidebars with Pat Augustine.

There needs to be some form here at the commission where these allocation issues, equity issues, equity over how regulations affect different states, needs to be a venue for all those to be discussed.

And we keep talking about that. It doesn't happen and consequently we have these addendums come forward continuously to try to fix problems. So I would encourage some people to think about that prior to the policy board meeting and find a way to address that. Pat, did you want to speak to that?

MR. AUGUSTINE: Yes, I would, Mr. Chairman. There is no question that we've got to identify -- as you and I discussed earlier we've got to identify a group who will address this, the allocation issue, on a regular basis as a sub of the ISFMP Board.

And in this particular case I think it's critical that we elevate our concern as a line item for the meeting and the agenda for the ISFMP Board before we leave this session. So if you could take care of that I'd appreciate it.

CHAIRMAN GIBSON: Any objection from the Flounder Board? That's the sense of the board, that the policy board needs to take this up this week? Is there any objection to us requesting that at the policy board? Seeing none we'll proceed with that action. Next on the agenda is, I guess we have some actual recreational proposals to approve that require action. Toni Kerns.

MS. KERNS: There are two things that I'll need to do here. One is to get agreement from those states that will benefit from these savings to agree that in a very timely fashion they will have new proposals to me so that they can be reviewed by the TC over a conference call and then we will have to have a board vote to approve those proposals either a via conference call or an e-mail vote.

So, just to give you guys a heads up I will probably need those proposals within a week-and-a-half to two weeks. The TC met in January to review a set of proposals for the 2006 summer flounder fishery from each state. All the proposals were approved by the TC at this meeting.

## Summer Flounder Recreational

### Specifications

As you know, North Carolina, Virginia, Maryland, and the Potomac River Fisheries Commission will propose remaining status quo so they will keep their 2005 regulations. Delaware, New Jersey and Rhode Island have options that include status quo plus liberalized or relaxed regulations.

Delaware is allowed to relax their regulations by 41.15 percent. Their most liberal proposal proposes the use of approximately 20 percent of this increase. You will note in that the TC approved Option 1 through 4; and Options 5 through 6 they approved with an associated risk due to the uncertainty in the size composition of the catch and discards that we looked at to evaluate that fishery.

In New Jersey they were allowed a 9.73 percent increase. Their most liberal proposal proposes to use 9.04 percent of this increase. Rhode Island was allowed a 22.89 percent increase and their most liberal proposal would use 203,715 of those fish — 2,315, sorry about that. And New York, Connecticut and Mass submitted proposals which are now obsolete and we will re-look at this proposals.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. If we go back to the Rhode Island proposal is there a way to convert the increase that they were allowed to the numbers?

MS. KERNS: I asked Paul to do that for me earlier and we didn't have one of the numbers that we would need, and so therefore we can't do that.

EXECUTIVE DIRECTOR O'SHEA: But I presume it's within the 22.89 percent?

MS. KERNS: Yes, and it doesn't use all of that percentage. I do know that.

CHAIRMAN GIBSON: Okay, the state proposals, does the board wish to take these on a state-by-state basis or a motion to approve all of them? Pat Augustine.

MR. AUGUSTINE: Yes,  
**I move to approve all of them**  
unless someone has a glaring reason why not.

MR. TRAVELSTEAD: Second the motion.

CHAIRMAN GIBSON: Who seconded that? Okay, motion by Pat Augustine, seconded by Jack Travelstead, to approve all the state proposals as submitted and reviewed by the technical committee. Board discussion on that motion.

Seeing none, is there comments from the audience on the motion before the board to approve the state recreational summer flounder proposals? Seeing none, back to the board. Do we need to caucus on this motion?

Doesn't look like it. Okay, I'll call the question. All in favor please signify by raising your right hand; all opposed; none; abstentions; null votes. The motion passes unanimously. Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. Now that deals with the states that weren't, that have already submitted proposals. And Toni mentioned that the states that have yet to have their proposals approved would submit them in a few weeks for further review.

And it may be helpful to identify a date so everybody's on the same page of when we can expect them and to coordinate that and still fit the timing requirements that those states are going to need to get their regulations in place before the start of the fishing year. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Toni, who are the states that are now involved in that process?

MS. KERNS: We will need proposals submitted by the state of New York, Massachusetts and Connecticut.

CHAIRMAN GIBSON: What is a reasonable time-certain for those states to produce those and you know get them into the pipeline in time to meet our deadline? Eric.

MR. SMITH: From our perspective the one-and-a-half-weeks or so that Toni talked about is fine because the technical committee had approved the methodology that we used to meet the 35. We'll just be juggling it to meet the 25 but it will be the same methods.

CHAIRMAN GIBSON: How about New York? Does that work for you? And Massachusetts? Sounds like all three states. Toni.

MS. KERNS: So I'd like submissions by March 3<sup>rd</sup>, please.

CHAIRMAN GIBSON: Okay, did everybody hear that? Submissions from those three states to Toni by March 3<sup>rd</sup>.

MS. KERNS: And then I need to request from those states that had multiple proposals -- that would be the states of Rhode Island, Delaware, and Maryland -- to please send

me their state regulations as soon as possible.

I know that for each state, such as especially Delaware, you have a longer process from which you agree to your regulations. We are supposed to send a conservation equivalency letter to the National Marine Fisheries Service by March 1<sup>st</sup>.

Obviously we are not going to make this date. And we rarely make this date. And so I'd like to be as close to this date as possible. So please make sure you send those in, in a timely fashion.

CHAIRMAN GIBSON: Okay, thank you, Toni. We reversed the agenda items so we're at Agenda Item 8, Rick Cole.

MR. COLE: Just for the record, Mr. Chairman, given the administrative procedure policies that we have to follow in the state, there is no way that we'll have a finalized decision before April 10<sup>th</sup> at the earliest and more likely it will be May 10<sup>th</sup>. So that's the way it is. That's the best I can do.

CHAIRMAN GIBSON: Thank you, Rick. Agenda Item 8, we recycled or moved ahead of 7. That's a review of Amendment 14 and 15 Draft PID. A.C., you had an issue.

MR. A.C. CARPENTER: Yes, Mr. Chairman. Back to the regulations. I apologize. I had to step out of the room for a moment on a call. But the Potomac River Fisheries Commission has already adopted status quo for 2006 regulations and I don't know whether that was covered in my absence.

CHAIRMAN GIBSON: Okay, that has been covered. Amendment 14/15 Draft PID. Who is going first on this? Toni or Julie.

MS. NYGARD: Thank you, Mr. Chairman. A draft public information document is being distributed to you right now. If you could --

CHAIRMAN GIBSON: Does everybody have these? They were passed out earlier in the week I think. If anybody doesn't have one raise your hand. There you go.

### **Review Amendment 14 & 15 Draft PID**

MS. NYGARD: This public information document will cover Amendments 14 and 15 in the interest of consolidating timelines that overlap for the beginning parts of the amendment process. It is important to note that after this phase of the amendment process the timelines will diverge and the rest of the documents and timelines will be completely separate.

The proposed timeline for Amendment 14 should be up on the screen now. And as noted the PID will be available in March. Hearing, public information hearings on this PID will be conducted by ASMFC staff in March and April. And the public comment period will close in April.

The document will be, the public comment will be incorporated in May and the council and commission will approve the draft document in June, more public hearings in July and with a scheduled final approval of Amendment 14 in August 2006.

Amendment 14 is covering the scup rebuilding plan which is required under the Sustainable Fisheries Act for council fishery management plans to address, to define criteria for overfishing rates and for defining overfishing as a rate or level of fishing mortality that jeopardizes the capacity to produce maximum sustainable yield on a

continuing basis.

Currently the determination of overfished and overfishing is assessed by estimating biomass using a three-year average of the Northeast Fisheries Science Center Spring Trawl Survey and that average is measured against the biomass threshold of 2.77 kilograms per tow.

The three-year average for 2004 was 0.69 kilograms per tow, well below the threshold; thus, the stock is considered overfished and the council is required by the SFA to develop a rebuilding schedule. Because scup is jointly managed by the commission and council we will be developing a rebuilding schedule as well in conjunction with the council.

The two issues covered in Amendment 14 will be the schedule of fishing mortality rates which will allow for stock rebuilding to the target biomass; in addition, the incorporation of gear restricted areas currently administered through the annual specification process will be incorporated into the amendment. That's it.

MS. KERNS: For the timeline for Amendment 15, we will start obviously with the PID in March then we will have hearings in March and April. Then the PID will close in April and then the council and the board will review scoping comments and identify management issues at the August joint meeting.

Then we will develop a draft amendment document which will be reviewed in January of 2008. Then there will be public hearings on the draft amendment in February through June of 2008. And then the commission and council will have a final approval of Amendment 15 in August of 2009. That number is incorrect up there. I apologize.

You have before you all the potential issues that could be a part of Amendment 15. These issues came about through brainstorming sessions that we had at council meetings and a couple other meetings so these may not be all the issues that are incorporated.

Remember that this is a public information document and issues can be added and issues also can be taken away. I'm just going to go through issues that are incorporated for all three species in the interest of time.

All three species will be looking at commercial allocations. For summer flounder and black sea bass they're interested in exploring other management strategies and allocation of the quota.

For scup we're exploring modifying the allocations for each period and/or transferring quota from the winter to the summer periods. All three species are seeing overcapacity in the commercial fleets and in the recreational fisheries for all three species or we'll be looking at that issue.

The biological reference points for all three species will be looked at. They were last evaluated for summer flounder in 2005 and for black sea bass in 2004. For discards in summer flounder, commercial discards have been low but concerns have been raised in the scallop fishery where there are low trip limits and also in the groundfish fishery when there is low trip limits.

In the recreational fishery for summer flounder we assume that there is a 10 percent mortality rate. And this has been a concerning number with the increase of the number of B2 fish.

For scup and black sea bass the commercial discards are difficult to quantify. In the scup recreational fishery the discards are assumed at a 15 percent mortality rate and for black sea bass it's assumed a 25 percent mortality rate.

For the management of the recreational fisheries we're looking at all three species to be able to potentially separate by mode, meaning the party and charter, the shore and the private boat were to have all their own allocations and regulations.

Data collection requirements and protocols will be looked at for all three species. And for all three species we'll be looking at rolling over any unused quota for both commercial and recreational fisheries. Other issues include the commercial and recreational allocation for summer flounder. We'll explore allocating a percent split based at 50/50.

And for scup we'll explore a modification of the methodology to catch fish allocations to landing allocations and the potential for transferring unused commercial quota to the recreational fishery on an annual basis. And those are all the issues that are included in the Amendment 15 portion. And we can take any questions.

CHAIRMAN GIBSON: Thank you. And the action we're looking here from the board is to send out the PID for public comment and possibly adding additional issues. Questions for either Julie or Toni. Gordon Colvin then Tom McCloy.

MR. COLVIN: Not a question, Mr. Chairman,  
**I would move to approve the PID for public review and comment purposes.**

CHAIRMAN GIBSON: Thank you. Is

there a second to that? A hand stuck out down there and I couldn't see who it was. Was that Pres? Seconded by Preston Pate. Thanks. Tom, did you want to comment on this?

MR. McCLOY: Thank you, Mr. Chairman. I just had a question on the timeline for Amendment 15. I believe you said, Toni, when it was up on the board that the '06 date was wrong but I thought you said '09 but this document says '08 so where are we on the final plan?

MS. KERNS: I might have misspoken. It might be '08. Julie is going to double check for me really quick. I'm sorry.

MR. McCLOY: Thank you.

MS. KERNS: It is a long time, though. It is '09. It is '09.

CHAIRMAN GIBSON: January 1, '09.

MS. KERNS: But it's January 1, '09. I apologize.

CHAIRMAN GIBSON: Jack next.

MR. TRAVELSTEAD: Julie or Toni, is the list of issues under Amendment 15, are these identical to what the Mid-Atlantic Council approved?

MS. KERNS: Yes, they are.

MR. TRAVELSTEAD: Because that, well, I recall an issue that had been raised at the council meeting. It was as a result of a letter from Harry Dornte that raised an issue about vessel transfers or vessel upgrades that I thought had been agreed to add to the list.

And I don't see it here. If it wasn't added by the council, then that's fine. But I'd like

you to just check and if it was you know make sure that both documents are identical.

MS. KERNS: We took the list out of the council's scoping document but Jessica Coakley from the Mid-Atlantic Council is in the back of the room and she can confirm that that issue was not in the scoping document.

CHAIRMAN GIBSON: Yes, Jessica.

MS. JESSICA COAKLEY: Okay, hi, Jessica Coakley, Mid-Atlantic Fishery Management Council. These 27 issues were taken from a draft scoping document. The scoping document has not yet been finalized on the side of the council

Actually part of the reason why I'm here today was to listen to some of the potential brainstorming ideas for what else could be included to include into our draft. So that is certainly something that could be added.

Just a clarification, also, on the Amendment 15 timeline. The council, the last item listed in that timeline, the commission and council final approval of amendment, August 2008 is a correct date.

That's about when we'd anticipate approving the document but it then needs to be submitted to NMFS. And then you have that public comment period through their process in the Federal Register so we'd be looking at a January 1, 2009 implementation is how that schedule would follow.

But, again, the council document isn't finalized. If there are other ideas that are brought up here they certainly could be included in our document as well.

CHAIRMAN GIBSON: Thank you, Jessica. Harry Mears is next.

MR. MEARS: Thank you, Mr. Chairman. This may have already been covered by either Julie or Toni but relative to the timeline, we today are it seems voting on the public information document for these two actions.

Will the public hearings for the states be held concurrently with availability of the final scoping document from the council or will there be a disconnect between the availability of those two documents?

MS. NYGARD: The scoping document will be, they will be held in conjunction. They will be together.

CHAIRMAN GIBSON: Thank you. I have Pat Augustine next. Pat Augustine, you had a comment?

MR. AUGUSTINE: No, call the question.

CHAIRMAN GIBSON: Eric is ready to comment then we will.

MR. SMITH: Just very briefly, I was surprised at the response to Jack Travelstead's question that these are identical documents because I got the sense in reading this one there were a couple of things in here I hadn't realized were in the council's document that I think are very beneficial and am happy whoever brainstormed them brought them into the document and that's the items that are management of various fisheries, shore fisheries.

One of the key things the states are facing is what is happening to the repositioning of shore-based fishing opportunities versus boat-based fishing opportunities. It's clearly a subject that's right for discussion in a scoping document.

I hadn't seen it in the previous Mid-Atlantic Council draft so if it's there as well that's great but clearly I'm glad that it's here in our document. Thanks.

CHAIRMAN GIBSON: Okay, before I go to the board, anybody from the audience wants to speak to this motion? And then, Jack, you've got the last word.

MR. TRAVELSTEAD: Well, I just want to make sure that both documents are identical. If the council hasn't finished its work -- and I understand the desire to get this thing out of here, I don't want to slow up the process by any means but -- can we allow some latitude for the two staffs to get together and make sure that all of the issues are outlined equally in both documents?

CHAIRMAN GIBSON: Julie is saying the council is waiting for this meeting to end to see if anything else comes out of this that they would then add to their shopping list.

MR. TRAVELSTEAD: Okay. Well, it would just be nice to have a single PID for the public to comment on instead of two different documents.

CHAIRMAN GIBSON: I think that's the intent so if nothing else comes out of here I don't think Jessica is going to go home with anything. She's there so -- Pat, to that point. Was it to that point?

MR. AUGUSTINE: Yes, it was to that point. I was going to reiterate what Jessica said but I think she's at the mic so if she could please clearly state what her intention was here and what her intention is when she goes back.

MS. COAKLEY: Okay, well, at the January council meeting we did present a scoping

document and I believe there were 17 issues that were presented in that document. And based on the council members' recommendations I expanded that list to 27.

And that list of 27 is what Toni and Julie have in this document at this point. So if there are other issues that need to be added, we can work together and add those and come up with a document that are very, very similar in form.

CHAIRMAN GIBSON: Everybody is all set? Jack is signaling he is okay with that. Pat's okay so I guess we're ready to call. Do you need a caucus on this? We've already called for audience comment and there wasn't any. I don't think so.

Okay, all those in favor of the motion please signify, raise your right hand; any opposed; any abstentions; any null votes. The motion carries unanimously. Thank you. The next item, the delayed implementation measures is now Number 7. It's 8. It used to be 7. Who is speaking to that? Julie, sorry.

## **Review & Consider Approval of Draft**

### **Addendum XVI**

MS. NYGARD: Again, this is to review the public comment from the hearings held for Addendum XVI, delayed implementation management measures. Four public hearings were held in Connecticut, Rhode Island, New Jersey and New York with the most attendees in the New Jersey hearing, ranging from December 20<sup>th</sup> to January 10<sup>th</sup>. We received ten e-mails and two letters.

In the interest of time I'm going to mention the issue and then summarize from each state any specific comments regarding each of those issues. Under commercial regulations the first issue is failure to adopt

annual adjustments to minimum fish size for summer flounder, scup and black sea bass.

Connecticut, Option 3 was favored for days closed. And in parenthesis you will notice that they say one in favor. That implies that one person specifically spoke in favor of that option and not that the other two were against it, only that that was the specified option.

In New Jersey they asked that there should be another option that would penalize the stage agency or the state itself and not the fishermen. And one person was in favor of that. And written comments from the CCA and one individual supported Option 3, days closed.

Failure to adopt Winter I trip limits by January 1<sup>st</sup> and Winter II trip limits by November 1<sup>st</sup>, in Connecticut one person favored Option 3, reducing the trip limits.

The next issue is failure to adopt reduced scup trip limits when required due to established triggers. In Connecticut one person was in favor of Option 2 which was delaying the season start. The other states there was no specified options.

The next issue, failure to close the black sea bass fishery after the state quota has been reached, in Connecticut one person favored status quo. And written comments from the CCA and one individual support Option 2 which is an adjustment, a quota overage adjustment.

For recreational regulations issues, the first one is failure to adopt board approved size limits for summer flounder, scup and black sea bass. In Connecticut one person is in favor of status quo and noted that it would avoid frequent changing of recreational regulations within a season.



In New Jersey one person was against increased Option 2 which is the increased minimum size and noted that if a state's minimum size decreases under an approved conservation equivalency plan but the state is required to compensate with an increase in fish size, it could result in no not increase in fish size or compensation by the state.

Written comments from the CCA and one individual were in favor of Option 2 but asked that the language time period written in Option 2 be clarified so that it, whether it meant the same dates as, the same actual dates as the delay in implementation or the same number of days at the beginning of the next season.

Next issue is failure to adopt board approved seasonal closures for summer flounder, scup and black sea bass. In Connecticut one was in favor of Option 2 with modifications. Option 2 was seasonal closures.

And this person felt that seasonal closures should happen at the end of the season which would make it better for tackle shops and bait dealers. Written comments from the CCA and one individual were in favor of Option 2. Again, that was seasonal closures.

Next issue, failure to adopt board approved possession limits for summer flounder and scup by the date that the current season opens. In Connecticut one was in favor of Option 2 which is decreased possession limits and noted that a state should not compensate for not being closed when fish are not in that area, basically meaning by wave.

In New Jersey two were in favor of Option 3 which is a delayed opening of the season. And written comments from the CCA and one individual noted that Options 2 or 3

were preferable to the status quo.

Next issue is failure to adopt board approved possession limits for black sea bass by January 1<sup>st</sup> or the date the current season opens, whichever is later. In Connecticut one person was in favor of decreased, Option 2 which is decreased possession limits and noted that this provides for more days fishing and is easier to get the word out to anglers about regulation changes before the season starts.

In New Jersey three were in favor of Option 3 which is seasonal closures and noted that the 500 fish trigger should be reconsidered because the way that MRFSS samples could mean that a state is actually well beyond 500 fish by the time that MRFSS estimates 500 fish. And written comments from CCA and one individual noted that they both prefer Options 2 or 3 over the status quo measures.

The administrative issues, maximum implementation period, staff from Connecticut commented that a maximum implementation period should not apply to changes covered in addenda or amendments and that only triggered changes, only to triggered changes and existing regulations.

In Rhode Island there was concern that seven days might not be sufficient to implement changes. Two people at the New Jersey hearing were in favor of implementing a maximum implementation period. And CCA and one individual in written comments noted that they prefer Option 2 which is implementing this maximum period.

For the minimum notification period, two people from the New Jersey hearing support Option 2 which is implementing a minimum notification period. And one written comment from an individual prefers status

quo for this measure.

General comments included that some people had concern that the impacts could be greater to commercial fishermen more so than recreational anglers. Two people specifically voiced support for general principles outlined in the draft addendum.

And several voiced concern that a maximum implementation period of seven days is not sufficient time for many states to implement changes. And the written comments were incorporated in the summary I just gave you. That's it.

CHAIRMAN GIBSON: Thank you. Are there questions for Julie. This is, we're looking for a final action here, selecting an option on each one of these issues. Questions on the public hearing comments.

No questions. Okay, again we are looking for a final action by the board so there needs to be options selected in each one of these issues. If no one has a motion on the whole package we'll have to proceed issue-by-issue. Okay, how about Issue 1. Eric Smith.

MR. SMITH: Actually let's see if I can accommodate the chairman's desire for efficiency. After going through all of the comment and thinking about how these things would actually play out — and mostly I think of that in terms of the recreational measures but also in some respects the commercial ones — it is mind boggling to me to think that we would have a season start that says okay for the first 25 days the size limit is going to be 14 and then it's going to drop back to 13 because something wasn't done in the previous year. And that's one species.

And then the next species there may be some different date or season or bag limit

combinations. And to me we're just going to tie ourselves in a real administrative knot trying to keep those things straight.

So while I endorse the concept of the addendum I'm backing up into the mode of saying it's really intended to make state agencies do what they're supposed to do on time. It's not a penalty to the anglers or the commercial fishermen.

However, they're the ones that bear the brunt of things that we don't do on time so they're the heat in the fire that keeps us trying to get things done so that they don't have to bear that burden.

Now, having pointed out that that's the real purpose of this is to make us do what we're supposed to do on time, I would suggest that we economize or we streamline this to basically say in both Issue 1 and Issue 2 for any of these alternatives or options we accept that, we pass this addendum using the delayed season start or alternatively an early closure which might actually be better and I'll tell you why in a moment.

The early season closure, if you use that as the standard thing that happens to a state that hasn't adopted its reg in time, it's kind of tough love because it's a much more restrictive rule than maybe just relaxing a size limit. But it would be consistent across both issues. It avoids this bouncy syndrome in the size limit and the creel limit.

But most importantly, if you didn't, there has been some discussion in the addendum that if you, a state might actually not have exceeded its harvest target, a recreational fishery or a commercial quota, even though it hadn't adopted the rule that it was supposed to adopt.

And if you keep your eye on the ball we

really want a state to come in at its target. It's not so much that we have to make a state obey what the rule was because particularly in recreational fisheries we're adopting that recreational set of rules each year blind, hoping that we come in hitting the target.

If the -- I don't want to, I'm trying not to say penalty here, if the consequence because of this addendum is that a state didn't adopt a size limit on time and the consequence of that would be in the subsequent year you would have an early closure at the end of the season.

You'd know by then whether they had hit their target or not and you could exempt them from that consequence simply because the real goal was to hit the target, not to have the regulation in effect.

That's kind of a convoluted way of saying is your objective to get to Berlin or is your objective to defeat Hitler? Keeping your eye on the ball is to meet the target. And we set the regulations in anticipation of not knowing whether you exceeded it in the past.

So if we use the early closure consequence of this addendum we can make a mid-season adjustment to avoid having a state having to accept that consequence if they in fact in a given year really did hit their target or come in under it. So that's why I prefer that and it's for Issue 1 and Issue 2.

I'm not ready to make a motion on it because it's kind of a new idea. It was only after reading the addendum and hearing the public comment that it dawned on me that might be a way to deal with this. So I'd like to see what other board members think.

CHAIRMAN GIBSON: Pat Augustine. Just before that I'm advised of some other

business. Dave Pierce asked me to find out how many NEAMAP board members are here. I guess they don't have a quorum for that meeting. And I would be one of those, so.

I don't know if Connecticut has a representative there. He asked me to identify them. We've done that. I don't know what else we can do. We have continued business going on so Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I thought I knew where you were going with that long dissertation, Eric, and then you lost me about three minutes into it and then by five minutes into it you finally said, well, we don't want to vote on the whole thing because I have concerns about the second one.

It obviously sounds like we've got to do this piece by piece and it's going to be a long, dragged out affair. Could you, Mr. Chairman -- I can't ask you directly, Eric, that's not appropriate -- Mr. Chairman could we look for a clear sentence or two in the option that Mr. Smith discussed in Item 1 so that we can get that behind us and then move on through the others? Because it's obvious we're not going to pass it all at once.

CHAIRMAN GIBSON: I think Eric was speaking to Issue 1 and Issue 2 and that in both of those he was suggesting that we go with the early season closure as the option to address both of those issues. That's what I was understanding him to say.

MR. AUGUSTINE: So, does Mr. Smith want to make a motion to that effect?

MR. SMITH: If I may, actually, Mr. Smith said he wasn't quite ready. It was a new

idea so he wanted to see if it resonated with people. If it did, I'll make the motion but it's helpful I think to hear how other people feel first.

MR. AUGUSTINE: Mr. Chairman, it resonated.

CHAIRMAN GIBSON: It resonated. Okay, we had one person say it resonates. I don't know if you're all on the same frequency or not but.

MR. SMITH: Okay, I need some backup here. And here is why. As I've looked through this I was very wary about picking Option 2, Option 3, because some of these things bounce back and forth. Option 2 is not always the delayed, in fact we don't even say early closures.

It's not in the document. It only says delayed season start or reduced trip limits or days closed. So as you listen to this motion you have to accept the fact that we're basically revising the fundamental thing that went to hearing because of, you know, afterthought on the basis of public comment.

Having said that I will move for Issue 1 and 2 the consequence of failure to achieve any of the actions identified under the issues as A, B, C, D, that consequence would be to use an early season closure that would represent the number of days that a state had not taken the required action.

Okay? So on Issue 1 and 2 use for any of the actions under A, B, C, D, etcetera, the consequence of a state failing to adopt the required action would be an early season closure of the same duration that they had not adopted the action. I'd better write it down because nobody can type as fast as I even speak slowly.

CHAIRMAN GIBSON: If you have it written down that would probably be helpful. Gordon, were you going to second or were you commenting? Okay.

MR. COLVIN: I just de-resonated.

CHAIRMAN GIBSON: I was worried about that.

MR. COLVIN: And this is probably fixable but the concern is that an early season closure that comes forward from the end of your current season -- you may not even have a closed season at the present time -- may very well be for a period of time in which the fish just aren't caught in your state so there is no effect.

There is a slight, I actually see the purpose of this addendum to include one important thing above and beyond what Eric mentioned. I mean, I agree with him. A purpose of this addendum is to create the incentive for the states to do things on time.

But there is also a purpose which is to keep the resource base whole, to assure that fish that have been removed from the biomass because of delayed implementation are restored to the biomass which we all share.

So, if you don't have that kind of equivalency in terms of closing a season when the fish aren't being caught, that second goal isn't going to be met. There is no effect. So I think it almost, I think a closure period needs to accommodate an equivalent period of impact to the delay period.

And that unfortunately I think kind of defeats one of Eric's purposes which was to keep this somewhat more straight-forward, less convoluted and having all kinds of complicated bookkeeping going on. I'm

sorry but I do see that as a bit of a flaw here.

CHAIRMAN GIBSON: Have we got an accurate motion? At this point we're still working on the motion I guess. I know, we don't have a second yet at this time but I wanted to make sure we had a motion. Eric, do you want to comment while we wait?

MR. SMITH: Once we clarify it you know and based on what Gordon said and the time of day, you know we've delayed this delayed implementation thing a couple of times but it might just be this is worth postponing to a subsequent meeting to give staff the opportunity to take this new concept and develop it more.

I mean I hate to do it because I really think we have to get on with something other than a formal non-compliance for states that don't adopt things on time but unfortunately this idea hadn't gone to hearing.

I think it's a good one. I haven't thought of all the ramifications of it and Gordon just pointed one out. We have a fluke recreational season right now that ends on December 31<sup>st</sup>. Well, the fluke are long gone. We just did that because we could. There was no harm.

I'm certainly not proposing that we would count back from December 31<sup>st</sup> because if it was a 30-day penalty it would have no meaning so that's not the intent. And so how we actually deal with that is not something we can fix today.

CHAIRMAN GIBSON: So do you want to withdraw that motion and propose something? Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, if you don't have a second to the motion here, I want you to resolve that, Mr.

Chairman, then I'd like to make a comment.

CHAIRMAN GIBSON: Okay, well, I guess I first want to know if Eric wants to proceed with the motion, see if there is a second or pursue a postponement.

MR. SMITH: Well, if it's helpful to have a motion on the table to discuss and then we move to postpone it for further work I'll keep doing that and keep writing.

If we just want to take the sense of this discussion and say it's 1:30, we've got another agenda item coming, maybe the staff has enough to go back and work through this. I don't care which way we do it. I just think we're not prepared to vote right now today.

CHAIRMAN GIBSON: My sense is that we're not prepared either at this time. Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, I guess I'll share another view and I, you know, I think it was correctly pointed out that we're now two years into developing a delayed implementation strategy that the policy board committed to.

And the issue of suggesting that you're going to send this back to the staff to fix it is a bit troubling to me in that we put together a policy level working group of state directors to bring something forward here. And you know, quite frankly if you felt that the work of that working group isn't completed yet that's one thing.

But I would caution against assuming that sending this back into the lap of the staff is going to come up with a resolution for you. It's a tough issue. I think it needs to be decided, quite frankly, by the state directors at the commission level, not the staff.

Thank you.

CHAIRMAN GIBSON: Okay, Eric.

MR. SMITH: That's actually a real good point. I had forgotten that link in this, that the last time we balked on this we sent it to the directors, a working group. I would suggest we send it back to them and try and make this more streamlined and capture the essence of this, just use the season issue.

You're quite right, the staff can write things up but they really need the guidance from the policy board to decide you know how it actually ought to work.

CHAIRMAN GIBSON: Okay, we've got a motion that I didn't call for a second but is there a second to this motion? Seeing none, the motion dies for fail for a second. Gordon Colvin.

MR. COLVIN: I sort of agree with Eric's suggestion he just made. I think it's going to be difficult for us here today with what we have in the available time, which we're already past, to walk through these issues one-by-one and resolve them.

But I do think that the ad hoc subcommittee which Bruce Freeman and Eric somehow conspired to make me chairman of can absolutely do that and present back to you a complete set of recommended options under each of the issues for final board action whenever.

You know, kind of in hindsight we probably could have done it for today if we'd, I think what some of us are struggling with is the need of a decision document, you know a set of definitive recommendations issue-by-issue to facilitate our decision making.

You know, if that committee were to

reconvene and I were to continue to be the chairman I guarantee you we'd come back to you with that ASAP.

CHAIRMAN GIBSON: Okay, I have Pat Augustine then Pres Pate.

MR. AUGUSTINE: Well, Gordon having said that, thank you, Mr. Chairman, it seems like we really have to, I want to say table this until a date certain which would be the May meeting to have a final document.

And if this committee, subcommittee is able to get together and get anything out to us, again, for the CD for the May meeting we'll all have an opportunity to review it. I think all our questions will be answered and we can move quickly through it so move to table.

CHAIRMAN GIBSON: You're moving to table.

MR. AUGUSTINE: To a date certain which would be the May meeting.

CHAIRMAN GIBSON: We have no motion.

MR. AUGUSTINE: Oh, no motion?

CHAIRMAN GIBSON: Pres, did you want to speak? I mean, my sense of what I'm hearing the board say is have this committee produce some sort of a guiding decision document that we would then apply to this issue at the next available meeting to walk us through and facilitate discussion. Pres, do you want to comment on that?

MR. PATE: Well, I guess just to underscore the comment that Vince said about the length of time that we've been dealing with this important issue. And we need to either do it or not. I'm tired of messing with it.

And I think anybody that's got any ideas that need to be considered by the subcommittee which Gordon chairs -- and did a fine job, by the way, Gordon in keeping us on track with that last meeting that we had -- you need to bring them up now and not at the next meeting.

Because if the ad hoc committee meets and we come up with another list of options that are inclusive of what Eric has suggested today then when we come back to the board at the next meeting as far as I'm concerned the train has left the station for any further modifications to that document. We just need to either make the decision we're going to do it or not and not keep messing around with it.

CHAIRMAN GIBSON: Thank you. Harry.

MR. MEARS: Thank you, Mr. Chairman. In the context of what Preston just indicated and assuming that this addendum will come back to the board at a date certain one concern I have was one that the service put in writing back in November of '04, that out of context when you look at several of the options they could in fact by some be perceived as a punitive measure in terms of in-season adjustments being delayed too late.

Upfront in the addendum there is some wording that delays by states to enact regulations could compromise actions by other states, consequently having an adverse impact upon the conservation of the fishery.

Now, thinking at such time this document were to be approved at the next meeting what I would suggest is upfront that there be an expanded narrative to make the case that these in fact are not intended as punitive measures but rather necessary steps that in

total are necessary for the conservation of the fishery over time.

Now the reason I indicate this is because in the event of a non-compliance action the secretary would have to make two determinations. One is the finding of non-compliance is necessary for the effective implementation of an interstate plan, which I think he can.

Secondly, it needs to pass a test that it's necessary for the conservation of the fishery which I continue to believe is a bit weak in the context of the current document but with some enhanced justification on why we're doing this upfront if the board decides to do that I think would be in the longer term beneficial to what's trying to be achieved. Thank you.

CHAIRMAN GIBSON: Okay, Vince, you wanted to.

EXECUTIVE DIRECTOR O'SHEA: Yes, thanks, Mr. Chairman. I almost think you can anticipate what I'm going to say and that would be we would, staff would certainly welcome the wording that you've just gone through and your assistance in making sure we get it included.

CHAIRMAN GIBSON: Thank you. Okay, we don't have a motion on the table. There seems to be a sense, part of the group anyways, to take this up at the next board meeting and in the interim have a guiding decision document for us to work us through these issues.

That makes sense to me. I don't think we're going to hack our way through these issues one at a time today. But I sense there is some concern on the part of the commission as well of the timeliness of this action, how long this has been dangling out there. So,

Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, I'll wait until you decide on what you're going to do here, Mr. Chairman, then I'd like to comment.

CHAIRMAN GIBSON: Well, my sense -- and I'm not seeing a lot of opposition to -- this will be on the agenda for the next board meeting which I guess is the summer meeting.

The subcommittee is going to work on preparing a guidance document to help us through these issues one by one and there is going to be some language supplied by the service to address the issue that they raised to staff. Is there any objection to that course of action? I don't see any but Eric wants to comment.

MR. SMITH: No objection but is the next meeting scheduled for the May meeting or summer which is normally called to August?

CHAIRMAN GIBSON: I'm sorry, it's the spring meeting, the spring meeting we'd be talking about. I got my calendar wrong. Okay, Vince.

EXECUTIVE DIRECTOR O'SHEA: You know I haven't decided that, Mr. Chairman. Maybe another thing we could do to help you would be instead of burying this as the last agenda item of the meeting, maybe in the next meeting we'll put this right after you approve the minutes. It's a difficult issue and I think it's worthy of your time and energy to get it resolved.

And, quite frankly, one of the reasons I'm sort of pushing this is if you recall that we have a number of other fishery management plans that are waiting for delayed implementation measures pending the action

of this board. So every time this board delays there is in fact an impact on other fishery management plans that we need to keep in mind. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. I think we're getting towards the end. An update on scup Winter I two-week trip limits. Julie.

## **Update on Scup Winter I 2-week Trip**

### **Limits**

MS. NYGARD: This is just one slide put up. At the January 18<sup>th</sup> board meeting I was asked to pull together how each state implemented the winter trip limits for scup. And you can see on there that the majority of the states implemented the trip limits starting on January 1<sup>st</sup> and the two-week time periods following thereafter, although it did differ in some states.

Virginia started their trip limits on January 2<sup>nd</sup> with two-week increments thereafter. And North Carolina's first implementation was January 29<sup>th</sup> to February 12<sup>th</sup> with two-week time periods thereafter.

CHAIRMAN GIBSON: Tom McCloy.

MR. McCLOY: I don't know why you don't have New Jersey up there but we essentially started January 1<sup>st</sup> and run Sunday through Saturday the following week.

CHAIRMAN GIBSON: Thank you, Tom. Any questions or comments for Julie on the implementation of the Winter I two-week trip limits? Okay, we've got an update from New Jersey so we have that. Under other business we have some advisory panel nominations to take care of. Toni Kerns.



## Advisory Panel Nominations

MS. KERNS: Thank you, Mr. Chairman. Staff is passing out the advisory panel nominations for the Summer Flounder and then the Scup and Black Sea Bass Advisory Panels. For the Summer Flounder Advisory Panel from the state of Rhode Island a recreational fisherman, Michael Plaia has been nominated as well as Bruce Bannick, a commercial trawler from Rhode Island has been nominated.

For the Scup and Black Sea Bass Advisory Panel Edward Baker Jr., a commercial trap fisherman from Rhode Island, and Ken Court, a recreational fisherman from Rhode Island, have been nominated to the Scup and Black Sea Bass Advisory Panel.

And then a second issue that we'll have to deal with is that there has been a request by Gordon to look at the feasibility of splitting the Scup and Black Sea Bass Advisory Panel into two separate panels.

And with the board's permission we'd like to go ahead and look into this. So I'm looking for approval of the nominated advisory panel members and your approval of looking into splitting the Scup and Black Sea Bass Advisory Panel.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I did notice on the two that were here, neither of the state officials signed off on them. And do we suppose or do we accept the fact that they approve of the nominees? We have one from Rhode Island and the other one from --

CHAIRMAN GIBSON: Yes, I'm delinquent. I didn't get these signed in time.

MR. AUGUSTINE: I didn't want to pick on you, Mr. Chairman, but as long as you approve of them.

CHAIRMAN GIBSON: That's all right. This has been a mild meeting for me. But we would like to recommend those two individuals. And the delegation concurs that those two should come forward so I'd like to see them appointed to the panel. We have multiple issues here, though. Go ahead.

MR. AUGUSTINE: Would a commissioner from Rhode Island make a motion and I would second it, unless you want me to do it. Thank you, Jerry. Welcome back.

**Move that we accept these two nominations to the advisory panel, Mr. Plaia and Mr. Bannick.**

CHAIRMAN GIBSON: Is there a second to that?

MR. GERALD CARVALHO: Second.

CHAIRMAN GIBSON: It was Mr. Baker and Mr. Court.

MR. AUGUSTINE: I stand corrected, Mr. Court.

CHAIRMAN GIBSON: Okay, and is there a second to that? Okay, Toni would you clarify these for us?

MS. KERNS: You're approving four people total from Rhode Island.

MR. AUGUSTINE: That's what I was trying to do. I got somebody else on there. Could we do all four? Thank you.

CHAIRMAN GIBSON:

**So the motion is to approve the four Rhode Islanders to the advisory panel.**

**MR. AUGUSTINE: Michael Plaia, Bruce Bannick, Mr. Baker, Ed Baker, and Ken Court.**

CHAIRMAN GIBSON: And there was a second to that? Jerry Carvalho seconded it. Is there any objection from the board to approving those four individuals? Seeing none, they stand approved. Now there is a second issue here to explore the feasibility of splitting the Scup and Black Sea Bass Advisory Panel. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. Actually I would like to make a recommendation that goes even further than that. The membership and the components, if you will, or the constituencies represented on the ASMFC advisory panels for summer flounder and the advisory panel for black sea bass and scup have kind of evolved over time in concert with the Mid-Atlantic Council's advisors so that you see kind of unbalanced, if you will, membership within some of the state delegations on one versus the other.

It seems to me that as we go forward with Amendments 15 and 16 that it would make sense to constitute an overall group of advisors that are providing input to those amendments to both the council and the board and that the states and the fisheries are appropriately represented by the combination of advisors in the two bodies.

And I would, I am actually recommending two things here. The first recommendation is that we recognize that there are substantial differences in many instances between the participants in the scup and sea bass fisheries and expand that into advisors that cover those fisheries completely by adding

members that reflect that.

And the second is that for all three species that we undertake a coordinated effort with the Mid-Atlantic Council to constitute a single council/commission or council/board advisory panel to work with us in the development of these two amendments and that reflect the combination of interests among all the states and all the fisheries.

It seems to me if we can get together on one page to do a PID and to start writing an amendment we ought to be able to get together and get on one page in terms of constituting a group of advisors.

CHAIRMAN GIBSON: Okay, so you're not talking about splitting the scup/sea bass advisory panel. You're talking about adding members to more fully reflect the diverse nature of the fishery and working with the Mid-Atlantic Council to set up a second panel that would address the forthcoming amendments?

MR. COLVIN: Yes, both. And I'm not suggesting necessarily that it would be inappropriate to split into three advisory panels, only that in some instances a state may feel that a person that they have there now does effectively represent both the scup and sea bass panels but in some instances they don't. And I can assure you of that.

So I think we want to offer the states and our constituencies and our stakeholder groups an opportunity to constitute advisory panels that do fully represent the important fishery input areas here. And I don't think we've got that right now.

CHAIRMAN GIBSON: Toni is going to comment.

MS. KERNS: Gordon, I just wanted you to

know when we do have advisory panel meetings jointly with the Mid-Atlantic Council they have a separate advisory panel and we have our advisory panel. And all members are invited to that meeting. Regardless if they're commission or Mid-Atlantic everyone is welcome to come and comment at that meeting.

MR. COLVIN: And that's as it should be. The problem is that when we get our periodic reminders from Tina that it's time to update our list of advisors this is what we get. And so we're looking at the ASMFC advisors but we're not at the same time simultaneously looking at the Mid-Atlantic Council advisors.

In our case just to give you, you know, an example, for summer flounder New York has a single ASMFC advisor, an inactive recreational fisherman. The Mid-Atlantic Council, I think we have three commercial advisors.

And that's the imbalance that I see. And I think that if we pulled all this together, made a collective effort to try to constitute a joint advisory panel, we'd have representation that worked. Right now it doesn't.

CHAIRMAN GIBSON: Vince, do you want to speak to this?

EXECUTIVE DIRECTOR O'SHEA: Yes, Mr. Chairman. I think one of the other issues, as long as we go into this with our eyes opened, if there is an issue -- there are two issues. One is to better coordinate the two panels to get a broader representation and perhaps some efficiencies in doing that.

I think that's a good idea. But also embedded in this is adding additional people to advisory panels and there is a cost implication to that. And I think we ought to,

you know, go into that with our eyes open and I'll frankly be watching that as an area of concern. Thank you.

CHAIRMAN GIBSON: Is there any objection from the board on staff looking into what Vince and Gordon have collectively just described to better, providing for a better mix of talent, for lack of a better word, on these respective panels as well as coordinating their activities? Vito.

MR. VITO CALOMO: I just have a question, please. Do the advisors show up? You have a list of advisors I've been reading up and down on many -- I'm just wondering. You have a list. Do they show up? And that's the question.

MS. KERNS: The attendance at the AP meetings have, the representation at the AP meetings has been mixed depending on the issues but, usually there is not a large representation of all the members, no.

CHAIRMAN GIBSON: Yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: So maybe embedded in that is what's sort of the reporting process for us to get back to the states when their AP members don't show up? Are we making the states aware of that? And could we do a better job in that?

MS. TINA BERGER: Yes, I did a full effort sent to all the commissioners, not only those people that were up for re-nomination but attendance records for all the advisory panels. You should have all received that. If you haven't, please let me know.

CHAIRMAN GIBSON: Bill Adler.

MR. WILLIAM A. ADLER: Very quickly - - Tina, don't go away. The reconfirmed,

when they say they're confirmed and then reconfirmed, do we have a set time that they have to be reconfirmed in? Wasn't there some time period?

MS. BERGER: I think the deadline I set was like January 2<sup>nd</sup>.

MR. ADLER: So I mean, well, I mean if somebody was reconfirmed in 2001.

MS. BERGER: It's a four-year term limit.

MR. ADLER: That's what I want, a four-year term limit. Thank you.

MS. BERGER: Yes.

CHAIRMAN GIBSON: Okay, my sense is that the staff is going to look at this issue. Vince is going to look at the cost issue of adding members for the purposes of improving the mix of individuals on these panels and their interaction with one another.

Does that satisfy the board? I don't know if Gordon heard me but that satisfies me so I guess that issue is taken care of. Any other business to come before the Summer Flounder, Scup and Black Sea Bass Board today?

MR. ADLER: **Motion to adjourn.**

CHAIRMAN GIBSON: There is a motion to adjourn. We stand adjourned.

(Whereupon, the Summer Flounder, Scup, and Black Sea Bass Management Board meeting adjourned on Wednesday, February 22, 2006, at 1:50 o'clock, p.m.)

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