

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

Marriott Seaview Resort  
Galloway, New Jersey  
November 2, 2005

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF  
William Adler, Governor Apte. (MA)  
Mark Gibson, **Chair**, Rhode Island DEM  
Gil Pope, proxy for Rep. Naughton (RI)  
Eric Smith, Connecticut DMR  
Lance Stewart, Governor Apte. (CT)  
Gordon Colvin, New York DEC  
Pat Augustine, Governor Apte. (NY)  
Brian Culhane, proxy for Owen Johnson (NY)  
Bruce Freeman, proxy for Martin McHugh (NJ DFG&W)  
Erling Berg, Governor Apte. (NJ)

Ed Goldman, proxy for Robert Smith (NJ)  
Rick Cole, proxy for Patrick Emory (DE)  
Howard King, Maryland DNR  
Bruno Vasta, Governor Apte (MD)  
Russell Dize, proxy for Sen. Colburn  
A.C. Carpenter, PRFC  
Jack Travelstead, Virginia MRC  
Kelly Place, proxy for Sen J. Chichester (VA)  
Preston Pate, North Carolina, DMF  
Damon Tatem, Governor Apte. (NC)  
Jamie Geiger, USFWS  
Harry Mears, NMFS

### Ex-Officio Members

David Simpson, Tech Chair  
Rob Winkel, LEC rep.

### ASMFC Staff

Vince O'Shea  
Bob Beal  
Julie Nygard  
Toni Kerns  
Nancy Wallace

### Guests

Karen Wall, Asbury Park Press (NJ)  
Jeff Burst, NJDFW (NJ)  
Tom McCloy, NJDFW (NJ)  
Brandon Muffley, NJDFW (NJ)  
Michael Luisi, MD DNR (MD)  
James Fletcher, UNFA (NC)  
Mark Canale, NJDFW (NJ)  
Joe Meyer, NJDFW (NJ)  
Rob Winkel (NJ)  
Columbus Brown, USFWS (GA)  
Sean McKeon, NC Fisheries Assoc. (NC)  
Shaun Gehan, Collier Shannon Salt (DC)  
Bob Ross, NMFS (MA)  
Wilson Laney, USFWS (NC)  
Bill Goldsborough, Chesapeake Bay Foundation (MD)  
J. Koegger, Reroh Charter (NJ)  
Dan Furlong, MAFMC (DE)  
Tom Siciliano, Manasquen Fishing Club (NJ)

Bruce Smith, Sand Hook Bay Anglers (NJ)  
Paul Diodati, MA DMF (MA)  
Peter Burns, NMFS (MA)  
Steve Meyers, NMFS (MD)  
Dan Dugan, RFA (DE)  
Micheal Doebly, RFA (NJ)  
Michael Pentom, NMFS (MA)  
David Hata, Virginia Tech (VA)  
Larissa Graham, Virginia Tech (VA)  
David Benson, Press of A.C. (NJ)  
Mary Lee Benson, TRW (NJ)  
Karl Benson, fisherman (NJ)  
David Hardie, fisherman (NJ)  
Frank Poveromo, fisherman (NJ)  
Roy Miller, DE DFW (DE)  
John Merriner, NMFS (NC)  
Russ Dodge, The Cumberland (NJ)  
Gene Kray, recreational fisherman (PA)

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So I will make a motion to amend the 2006 quota from 33 million to 23.59 million pounds..... 20

I'd like to move to amend the motion and my amended motion is to move to amend the 2006 summer flounder quota from 33 million pounds to 26 million pounds and set the 2007 and 2008 quota at 26 million pounds. And as I will indicate, this is either the same or very similar to the Mid-Atlantic motion that was passed. .... 28

MR. PATE: Thank you, Mark. And following up on the point that Bruce just made, as seconder of the motion I'd like to offer a friendly amendment for him to consider that we change the wording of the motion to say that the 26 million pounds set for 2007-2008 be no higher than 26 million pounds. That gives us some clarity that the intent is to stay at that level but some flexibility to go lower were we to find ourselves at a more dismal point next year than we are right now. .... 31

MR. COLE: Mr. Chairman, I move that the 2006 quota be 23.59 million pounds. .... 38  
I think we need more information. I think we need more time and input. And I think we need to see the Federal Register notice. And with that in mind I am going to move to postpone this motion until the next meeting of the board at its joint meeting with the Mid-Atlantic Council in December. .... 41

And I think staff has done a good job of translating the subcommittee's intentions into the text of a proposed addendum. I believe the next step here is to approve the addendum for public review and comment and on behalf of that subcommittee I do so move..... 46

So with all that said, you know, citing the urgency as we see it to deal with this issue in a timely manner I would move that ASMFC in conjunction with the Mid-Atlantic Fishery Management Council, initiate an amendment to the Scup, Sea Bass and Summer Flounder FMP to define a rebuilding program for scup and reallocate unharvested scup from a commercial Winter I period to the Summer period -- so that would be unharvested scup from the commercial Winter I period to the Summer period -- to be divided equally between recreational and commercial fisheries. And if I get a second I'll elaborate a bit more, Mr. Chairman..... 53

MR. TRAVELSTEAD: Mr. Chairman, I want to move to postpone the motion until such time as the staff of the council and commission can meet and determine how this affects all of our other processes and report to both the commission and council at the joint December meeting. .... 57

ATLANTIC STATES MARINE  
FISHERIES COMMISSION  
64<sup>th</sup> ANNUAL MEETING  
SUMMER FLOUNDER, SCUP, AND  
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Galloway, New Jersey  
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- - -

**Call to Order**

The meeting of the Summer Flounder, Scup and Black Sea Bass Board of the Atlantic States Marine Fisheries Commission convened in the Salon C of the Marriott Seaview Resort and Spa, Galloway, New Jersey, on Wednesday, November 2, 2005, and was called to order at 1:45 o'clock, p.m., by Chairman Mark Gibson.

CHAIRMAN MARK GIBSON: We're going to get started on the Summer Flounder, Scup and Sea Bass Board, if all the board members could take their seats. I don't see anybody from North Carolina here, though, unfortunately.

Welcome, everybody, to the meeting of the Summer Flounder, Scup and Sea Bass Board. We have until 6:00 to conclude some pretty important business and we'll try to stick to the time schedule. The first business before the board is the agenda which has just been passed out, the revised agenda.

Are there any changes or additions to that agenda? Seeing none, is there any opposition to approving the agenda as it is written? None, then the **agenda stands approved as written**. The next issue is public comment.

Oh, yes, proceedings. Sorry, the proceedings from August 2005. There were distributed with the CD. Is there any comments or changes to the proceedings from the August 2005 meeting? If not is there a motion to approve?

MR. PATRICK AUGUSTINE: **So moved**, Mr. Chairman.

**Public Comment**

CHAIRMAN GIBSON: Approved by Pat Augustine; seconded by Eric Smith. Any objections to that motion? Seeing none, the proceedings from August 2005 stand approved. The next agenda item is public comment.

At this opportunity or juncture it's customary for boards to take public comment to the board. There will be additional opportunities for public comment when board action items or motions are on the table.

Can I see how many individuals would like to address the board at this time. Toni has reminded me that this comment to the board should be for items other than what are on the agenda right now. Okay, I had -- there you are.

MR. JAMES FLETCHER: James Fletcher, United National Fisherman's Association. The board is going to be presented some

scientific evidence today on a number of species and imbedded in that science is the hook and release mortality of these species.

I went to the SARC and pointed this out so you're the second or third group to get it. The science that we're using does not account for predation of those fish that are caught and released in the wild.

The science is based on the survival of fish that are put in a pen or held in tank and there is a tremendous amount of difference between the two. So I would request that the board ask their scientists to incorporate in natural predation from released fish, regardless of the species. Thank you.

CHAIRMAN GIBSON: Thank you, Jim. I thought I saw another hand in the audience. Yes, right there.

MR. FRANK POVOROMO: Good afternoon, everybody. I'm a recreational fisherman. My name is Frank Povoromo. I came down because I've read some articles and I've had a rough fishing season.

The limit that was set at 16.5 inches made it very difficult for any of the surf casters, which is what I do, to allow them to take any fish. I caught quite a few fish over the season but I only took home about five in total, far less than I normally would.

Now, I only eat the fish that I take home. But it was a disappointing season because everybody was complaining about the fact that we caught an awful lot of short fish and had to throw them back.

The feeling was that everybody should be entitled to take at least a fish or two after a day's fishing to make it an enjoyable recreation. The only thing that I came down here to do was to point out that I feel that

it's somewhat of a moral obligation that the state should allow recreational fishermen to take home a few fish.

The way the law was set up this year, most people couldn't take home any. If commercial fishermen are allowed to take 14-inch fish and yet the recreational fisherman has to take 16.5, my feeling is that it would be much simpler to allow the recreational fisherman to take home at least two fish at 15 inches and then after that, after the two if you wanted to make it 16.5-17, whatever it is, at least you can bring home a meal after a day's fishing.

That's what it's really all about. I saw the president, I think it was Herbert Hoover state here many years ago he enjoyed fly fishing. It's the right of people, of the taxpayers, to enjoy some recreational time. And you're killing it for me.

If I can't take home the fish it's somewhat disappointing. You struggle all day to catch a keeper and you can't get it. Therefore, I guess that concludes what I have to say. I hope that there are some fishermen in the group here. With a show of hands can I see how many people are fishermen here?

MR. AUGUSTINE: Do you want both hands up? (Laughter)

MR. POVOROMO: One is good. Okay, well, then, I hope that it makes sense to you as well. Thank you.

CHAIRMAN GIBSON: Thank you for your comments. Where did you say you were from? What area do you fish? I didn't catch that.

MR. POVOROMO: Sandy Hook.

CHAIRMAN GIBSON: Oh, thank you.

Other comments from the public again on issues that are not on the agenda. Tom Fote.

MR. THOMAS FOTE: Mr. Chairman, I'm just trying to find out, are you going to set the specs for summer flounder, the total quota today or are you postponing that until the December meeting?

CHAIRMAN GIBSON: No, it's on the agenda for action today.

MR. FOTE: Okay, and we'll have time to comment before you basically?

CHAIRMAN GIBSON: Absolutely. When motions are on the floor and the board has, you know, discussed them then the audience will have a chance to comment.

MR. FOTE: Thank you.

### **Summer Flounder Specifications**

CHAIRMAN GIBSON: Any other comments from the audience at this time? Okay, seeing none we'll move on to the item that Tom Fote has just introduced for me, summer flounder specifications.

You have an information or perhaps we can call it a "guidance" memo from Bob Beal dated October 28<sup>th</sup> which gives some of the background information on past council or Mid-Atlantic Council and ASMFC actions or lack thereof and some options for board consideration. And Toni Kerns will speak to that.

MS. TONI KERNS: Thank you, Mark. Today we are looking at amending the specifications for the 2006 summer flounder season. In 2004 we set the TAL at 33 million pounds. We looked at -- this 33 million pounds had a 75 percent probability of meeting the F target.

The board chose the 75 percent probability because the 50 percent probability quota was not predicted to reach the rebuilding target in 2010. At the August council meeting the council recommended to the Northeast Regional Administrator a 26 million pound quota over the next three years. This would be a constant harvest from 2006 to 2008.

The Regional Administrator stated at that meeting that the constant harvest strategy of 26 million pounds would not meet the court-mandated minimum probability of 50 percent and it's a standard that the service would be constrained to. And at the very last page of this memo from Bob is a letter from Pat indicating what I have just gone over.

We have put together a list of options that the board could choose from. You're obviously not limited to these options but this gives an idea of what each TAL would reach in terms of the F target.

Option 1, the constant harvest strategy of 26 million pounds in 2006 would reach about a 25 percent target in 2006. Option 2 is the 50 percent probability which is 23.59 pounds. And Option 3 is the 75 percent probability which is 21.73 pounds.

This next graph gives the board an idea of where we will be with each of these harvest strategies in 2010. We are mandated to have rebuilt summer flounder by that year and it's just a reminder that there are only four years left and the under-reported landings and poor recruitment in any given year will generate the need to substantially reduce harvest in future years to reach that 2010 target.

So the first, Option 1, the constant harvest strategy, would bring us to a biomass of

204.2 million pounds in 2010 which, that would mean we would achieve our rebuilding goals. Option 2, the 50 percent probability, would bring us to 191.6 million pounds which would not achieve our rebuilding goals.

And Option 3, the 75 percent probability, it would bring us to 209.4 million pounds and that would reach our constant harvest strategy. And these are just for the 2006 quotas if we were to go with each of the options presented. And those are the general information in the memo. If anybody has any questions I'd be happy to answer them.

CHAIRMAN GIBSON: Thanks, Toni. I guess just for the benefit of the board I just wanted to bring to the table what we talked about earlier. It's clear that Option 1 reaches the rebuilding target by 2010.

Option 2, sticking with the 50 percent probability, doesn't. But there are other options possible, for example, starting with a 50 percent probability quota in 2006 and then shifting across in later years to a 75 percent F schedule. We don't have any options before you now that project out where those biomasses would end up.

But is it my understanding that that's possible, setting a 23.6 million pound quota in '06, getting updated stock assessment information then shifting over to a lower F with a higher probability of success in a later out year?

MS. KERNS: I can't tell you if that definitely will meet the rebuilding goal but because there is the 209.4 million pounds which gives us a little cushion there is, I would say there would be a pretty good probability but I don't have those statistics with me, but we can figure them out.

CHAIRMAN GIBSON: Okay, thank you, Toni. Questions from the board. I saw Dave Pierce.

DR. DAVID PIERCE: Okay, Toni, the biomass target is what? Two hundred and four thousand?

MS. KERNS: You're correct, 204.

DR. PIERCE: Two hundred and four thousand at the biomass target.

MS. KERNS: Million.

DR. PIERCE: Million, sorry. Okay, I keep thinking in metric tons. Why didn't, why doesn't that table show for Option 2 the kinds of quotas we would need in 2007 onwards to get us to the biomass target?

MS. KERNS: It's the standard runs that come out of the VPA from the stock assessment. And if we chose 50 percent probability in each of those years after 2006 this is where we would be. So, it's just a continue on at the 50 percent probability.

DR. PIERCE: Okay, so using the 50 percent probability values we don't get. Okay, so the point, therefore, is that we would have to then, if we wanted to get to the target by 2010, jump from Option 2 to halfway down maybe to Option 3 in order to get to that particular target. Okay, all right. Thank you.

And, Mr. Chairman, while I've got the mic I assume that we'll get a little bit of background regarding how we got to this particular point in time, what the Mid-Atlantic Council, you know, has done and why it did go with the 26 million pounds, just to make sure we're all up to date as to where we've been and why we're here today making this decision.

CHAIRMAN GIBSON: I thought Toni had done that in her introduction but if not, maybe you need to restate that for him before we go on to the next speakers. I have Eric and Bruce.

MS. KERNS: The Mid-Atlantic Council at the August meeting recommended a constant harvest strategy for the next three years of 26 million pounds so in 2006, 2007 and 2008 they would go with 26 million pounds.

But the regional administrator has not come out with the proposed rule yet and so we don't know if they're going to accept that. But this letter from Pat Kurkul indicates that that is highly unlikely.

DR. PIERCE: And if I may, Mr. Chairman, just a quick follow up. It would be helpful if all could be reminded as to why the Mid-Atlantic Council felt this particular strategy was appropriate, even though it was resisted by the regional administrator and why she made a compelling case for her not accepting it.

CHAIRMAN GIBSON: Dan, would you like to speak to that?

MR. DAN FURLONG: Yes, Dan Furlong from the Mid-Atlantic Council. The basic logic was that if you take a constant harvest strategy in the first year you are not achieving the 50 percent likelihood that is the court-ordered requirement but the second and third years you exceed it and over the course of the three years the probability is greater than 50 percent that you would achieve it.

And in that construct the council under those considerations decided to go with a constant harvest strategy for three years at 26 million

pounds, even though the regional administrator had said and cautioned the group that in the first year of that three-year constant harvest strategy you're not meeting the legal requirement but over the three years we think you'd still get to the 2010 rebuilding target of 204 million pounds.

CHAIRMAN GIBSON: Thank you, Dan. Rick Cole, do you want to address this, too?

MR. RICK COLE: Just a quick add on here for those people that weren't at the meeting. The vote was very contentious. It only passed by one vote. So there was no clear majority of the council in the position they took.

CHAIRMAN GIBSON: Thank you, Rick. I had Eric Smith then Bruce Freeman.

MR. ERIC SMITH: Actually I think I'll comment, Mr. Chairman, when we get around to motions. The question I had you answered in your explanation and talking to Toni about Column 2 and what we would need to do to hit the target in 2010. Thank you.

CHAIRMAN GIBSON: Bruce.

MR. BRUCE FREEMAN: Thank you. I need to question the rationale that the service provided. When that court case was litigated we only had annual specifications. There was no such thing as multi-year specifications.

And as Dan Furlong has indicated, the discussion at the council was that so long as we meet the target, and this was a three-year regime which the council voted on, that indeed it would meet and exceed the 50 percent probability.

And I know this issue wasn't discussed with

NOAA Council, Joel McDonald, but I could very well interpret this differently. Obviously the service has indicated that each year it has to meet the target but I can't see the court being so rigid that if this ever got back to the court it would be something the court could not agree to.

Another issue is when council staff had done the calculations it was my understanding that at the end of the period, again, it would meet or exceed the 50 percent but in this letter from Pat Kurkul to Vince there is an indication that the science center staff indicated that the TAL would result either only in a 25 to 30 percent probability.

I'm assuming that's only in the year 2006. It doesn't go beyond that. And I was one on the council who voted for the 26 million pounds and one of the reasons I did this is that we've heard time and time again from industry that they want stability.

One of the things that's very disruptive is this herky-jerky going up, going down, going up, going down; and they wanted some at least stability for a business plan for several years, two years certainly a minimum but three preferably, where they would be fairly well assured what the quota would be.

And it seems after agreeing with the concerns that the service expressed of having reduced the administrative burden of doing the regulations -- and they argued for multi-year specifications to reduce that administrative burden -- we're right back doing the same thing we did.

It seems like we're going around in a big circle. And it seems we're totally defeating the purpose we start out to accomplish. And, again, I argued at the council and will continue to indicate that in my opinion a

constant harvest strategy that meets the targets in three years is very doable. Many people don't like the 26 million but I'm looking for stability and it seems that it's still a very logical path to follow.

CHAIRMAN GIBSON: Thank you, Bruce. Harry Mears, did you want to respond in any way or address the service's letter, the regional director's letter?

MR. HARRY MEARS: I think the letter from Pat Kurkul is very explanatory and frankly puts out the predicament we find ourselves in based upon our own general counsel.

Bruce, Mr. Freeman, referred to Joel McDonald, presenting general counsel, at the recent meeting. I'm not about to refute his legal position for that. I assume he has fairly sound ground upon which he's basing his opinion. So, again, I think Pat Kurkul's letter speaks for itself.

CHAIRMAN GIBSON: Thanks, Harry. I had A.C. Carpenter and then Pres.

MR. A.C. CARPENTER: Yes, I keep hearing three years was adopted by the Mid-Atlantic Council and I'm looking at a table that has four years in it here. Which is it? Is it three years or four years that we're dealing with and what's the difference?

MS. KERNS: It was three years that they adopted but the predictions that Chris Moore put out to the council in his memo was a constant harvest strategy through the rebuilding period.

CHAIRMAN GIBSON: Pres, you're next.

MR. PRESTON P. PATE, JR.: Thank you, Mr. Chairman. It's just interesting to me that we can be guided by the court decision

that seems to be forcing the National Marine Fisheries Service into accepting nothing any lower than the 50 percent probability of reaching their goal when that chart shows that abiding by that court decision is going to be counterproductive to our opportunity to choose something that appears by those calculations to have the potential of being much more successful at the end of the rebuilding period.

I just think it's a shame that we find ourselves in a position of having to be managed by that court decision which, as has been noted by others, may be, may have been made at a time when the management strategies that we're using now are totally, were totally different, totally less effective and less predictably successful than they are today.

CHAIRMAN GIBSON: I guess just to try to clarify, my read of this is that they're being bound by the 50 percent probability of achieving the F standard in 2006, that they have to do that and that you would have to do that in subsequent years and there is an expectation that there would be adjustments made to stay on course after 2006, just as there would be for the Option 2. Bruce, Howard, and Dave.

MR. FREEMAN: There is an issue I meant to raise originally. It just came back to me. When the retrospective analysis was recently done it showed that the fishing mortality we were projecting was an underestimation of what actually occurred and the recruitment was an underestimation. And that led us into this reduction. Again, we had estimated we'd be at 33 million rather than the number we're at.

Prior to that, three years prior to that a retrospective analysis was done for summer flounder and it showed just the reverse. In

other words, we were overestimating F and — I'm sorry — yes, overestimating F and we're underestimating recruitment.

In other words, diametrically opposed to what occurred this year. And I'm just curious if the retrospective analysis is done three years hence what it will show. Is it going to be that we were more conservative or something else?

It is just somewhat concerning that you know this model has gone both ways or at least projections have gone both ways. And it is somewhat concerning that we're seeing that much variation.

CHAIRMAN GIBSON: I'd like to have the technical committee respond to that. Dave Simpson.

MR. DAVID SIMPSON: Yes, Bruce, yes. I think the summer flounder assessment has been pretty consistent in the retrospective pattern in that it does tend to overestimate F and underestimate stock size so there are some years where it's not as bad as others. But the direction of the error has been pretty consistent over time.

CHAIRMAN GIBSON: Dave Pierce, you were next on my list.

DR. PIERCE: I certainly don't like the outcome. I don't like being here to discuss having to drop it down from the expected 33 million down to some much lower number, potentially 23.59. We discussed the surprise with the assessment provided at our last joint meeting of the committee and the board.

Nevertheless, that's the way it is. The assessment results are out. There is a strong retrospective analysis. And now we have gotten the message and this is more than a

message; I think it's pretty much a foregone conclusion.

Even though the NMFS representatives can't state it that way it's a foregone conclusion that the National Marine Fisheries Service is going to go with the 23.59 million. Therefore, if we go in a different direction as a board we'll have different quotas.

We've been that route before of course with scup and that caused some grief. Scup, we had to actually catch up afterwards and do something rather dramatic to get ourselves back on the same page.

There are legal concerns, of course, and we can debate those legal concerns. And that has already happened to some extent. Is it really a legal concern? Well, the legal advice provided by NMFS' attorney is that there is a legal concern.

I'm certainly not going to challenge that advice from those attorneys within NMFS' office. But I think there is another reason why NMFS is doing this and frankly it's a compelling reason and they haven't stated it in the document and maybe they forgot to do so.

But in the National Standard, guidelines for National Standard Number 1, the National Marine Fisheries Service has, to its credit, tried to, well, it is in the midst of putting the emphasis on controlling fishing mortality and taking some of the emphasis on spawning stock biomass, recognizing that we can control fishing mortality but we really can't control recruitment, hence, spawning stock biomass.

I like that approach. I think it's the right way for the National Marine Fisheries Service to go. Control fishing mortality and

then you get a little bit of slack with your spawning stock biomass.

And I like that slack because if we don't have that slack we may end up in court being sued because we're not hitting our targets at the required times. At least that's what I expect would happen at the federal level.

So, I applaud the National Marine Fisheries Service for that. Because I applaud their effort, I find myself in a difficult situation in that I recognize socio-economic impact. We must consider that. It's very important.

But I'm drawn towards the 23.59 million pounds for no other reason than, again, it keeps us below the fishing mortality rate target for the coming year. That's attractive. With regard to stability, that's also attractive.

And Bruce Freeman has indicated he wants stability. We all want stability. We thought we were getting stability and that didn't happen. But I fear that if we go with the 26 million pounds for 2006 we have, as a percent probability of actually keeping ourselves to the fishing mortality rate target, maybe 25 percent probability, which is a pretty terrible probability.

I would wager that we'll find out next year that, okay, we adopted a quota that gives us a 25 percent probability of hitting our target. We didn't hit our target. I wonder why? Twenty-five percent probability.

Therefore, we'll find ourselves potentially in 2006 looking at the need to play with the numbers again, drop the numbers down because we went with a very low probability for hitting our target, our fishing mortality rate target.

So, you know, for that reason or those reasons, despite the fact that I don't like dropping from 33 down to 23.59 I'm drawn in that direction. And I'm also attracted to the point that, to the fact that we do eventually get ourselves up in 2008-2009 to 30 million or so, 33 million pounds in contrast to 26 million.

Now, this particular point was discussed at our joint meeting of a couple of months ago -- I think it was a couple of months ago -- where there is a lot of lost poundage over the upcoming three years or so by sticking with the 26 and not getting ourselves into a position where, potentially -- nothing is ever guaranteed -- potentially we'll be at 30.92 and 33.62.

I'll make one final point and that is, yes, with Option 2, a 50 percent probability, which some people would still consider fairly low but we use it, 2010 biomass, 192.6 million pounds, that's below the target.

Well, I'll reveal my bias here, my views regarding that particular target. I think it's set too high anyways. But nevertheless it is the target that we must try to achieve.

And, frankly, I think that if we're successful in keeping ourselves to the quotas, 2006, '07, '08 and '09 under Option 2, we might very well find ourselves at the biomass target by 2010. That's still a ways off, about five years off. And we saw what happened in 2004 relative to 2005 and how quickly things can change, how we can be surprised.

I'd like to be hopeful and believe that we'd be surprised and find out that with Option 2 we'd end up with 2010 biomass at the target. So I'm not prepared to make a motion, Mr. Chairman, but I just wanted to make those points known, that we go with Option 1 at, I

think at our peril.

CHAIRMAN GIBSON: Thank you. I'm going to ask Toni to just remind us what action would be needed to adjust the quota.

MS. KERNS: Because the board set this quota in 2004 we'll need a motion to amend the quota and then it will be a majority vote or two-thirds majority vote to amend the motion.

CHAIRMAN GIBSON: Okay, thank you. Howard King.

MR. HOWARD KING: I just wanted to clarify my understanding. The regional administrator's letter is explanatory but it's not absolutely clear to me. But the way I read it the National Marine Fisheries Service is interpreting the court order as meaning on an annual basis but that the court order does not actually state that.

And so we're reacting to an interpretation of the National Marine Fisheries Service, I presume. Could anyone answer that for me, or clarify that?

CHAIRMAN GIBSON: Harry, can you respond to that?

MR. MEARS: Just a statement that I made before, that we're going on the basis of our own general counsel and we've made the statements, the regional administrator made her statements in the letter based upon that guidance.

CHAIRMAN GIBSON: Thank you. Other board comments. Yes, Rick Cole.

MR. COLE: Thank you, Mr. Chairman. We've talked about the legal issues here but we haven't touched much on the actual status of the resource.

And the findings from SAW 41 that was done last year to update us on the status of the stock had some very disturbing information in it that I think needs to be brought out here today. And I'm sure it will guide some of the board members' decision on the level of quota that they endorse.

I think some members may know but some may not but the findings from SAW 41 indicated that the 2004 fishing mortality rate was .4 which is quite a bit above the F target that we were trying to achieve at that time, an F of .26.

That, of course, is part of the reason why we found ourselves in the situation we are in right now. We removed more fish from the stock last year than we should have. And then even more troubling in my mind is the consensus finding that the level of recruitment for 2003 and 2004 are below average.

And if you look at the state surveys that are used to generate those young of the year indexes up and down the coast, it's quite clear that we're not getting recruitment into this stock that we need to be getting into it.

We're not getting average recruitment so, that's going to be problematic down the line. I don't think we're in a position where we can adopt a quota that is anything above the 23.59 that has the 50 percent mortality or 50 percent ability to achieve the target given the status of the resource.

It's not recovering at the rate that we had hoped it would be. It's currently considered not overfished but overfishing is occurring. And we need to make every effort we can make to slow that overfishing process up. Thank you.

CHAIRMAN GIBSON: Thank you, Rick. Jack Travelstead.

MR. JACK TRAVELSTEAD: Picking up where Rick just left off, he mentioned poor recruitment in the stock for the last couple of years, what assumptions are made about recruitment in determining those 2010 biomass projections?

CHAIRMAN GIBSON: Dave Simpson, can you speak to the recruitment projections?

MR. SIMPSON: Yes, average recruitment over the last 10 or 15 years, I can't remember exactly the duration but the expectation is that the recent historical average is what we will get off into the future.

And obviously it's, to Dave Pierce's point, a very important part of the rate of rebuilding. And reaching that 2010 target becomes very heavily dependent upon what recruitment we actually do get. So, the only thing that we really can control is current year fishing mortality.

MR. TRAVELSTEAD: So the biomass numbers up on the screen are probably inaccurate projections if recruitment remains poor? There are overestimates?

MR. SIMPSON: They're based on an assumption of average recruitment so if future recruitment is below average then the trajectory will be lower than projected. And if they're higher, they'll be better.

MR. TRAVELSTEAD: Thank you.

CHAIRMAN GIBSON: Eric Smith.

MR. SMITH: Thank you. Two points, one entirely procedural and then some others based on the meat of what we've been

talking about. I'd asked the staff to consider this point that maybe you hadn't when you thought about the two-thirds, the super majority.

The addendum that we passed that established multi-year specs also contemplated that on an annual basis we might change them if scientific information, a new assessment, whatever, changed. I would argue that by doing the addendum that way and having that caveat in there, which I'm pretty sure is there, that we don't need the super majority to make that change.

It's not the same thing as changing a pure previous action that we took and now we came back and had different thoughts and we want to change it. It's making a change on an annual basis in the context of what the addendum requires. So, while I talk about the substance of the issue, maybe Toni or Bob can look that up and be sure.

The substance of the issue, much as I hate the aggravation that we'll go through with a substantially lower quota I think we ought to set it at 23.59 for 2006. We can see from the slide that's on the screen that we may have to cut into the kind of quota we would set for the subsequent years in order to build our biomass to the target by 2010.

Nevertheless, if you add up those figures, which I managed somehow to do, there is something like 10 or 11 million more pounds of fish available under the strategy under Option 2 than there is under the constant harvest strategy.

Admittedly, you forego 2.4 million pounds of fish in 2006 and that's painful, knowing or thinking that we were going to get 33 million, but the recovery begins fairly quickly.

In 2007 based on those numbers you end up with a million pounds more than you would have in '07 under constant harvest. And you look through the next two years, it goes up again and again. We talked about that in August.

I want to remind ourselves of that, that as often happens if you take your conservation early some good things can happen a little later. The question is how do you bridge the gap between where you are now and getting to the improved side. So, there is a couple of reasons.

My final one, and I agree, well I agree. The interpretation since August has been the court action on the plan requires us to meet our fishing mortality target on an annual basis with a 50 percent probability.

If we want to argue about that now, I mean I think that's too late. We have to make our decision today. Somewhere between August and now, you know, dueling attorneys could have weighed in and looked at the court decision and looked critically and said, as Bruce opines, that you know maybe there is the opportunity to make the argument that three years wasn't contemplated but it's a plausible legal argument.

But that argument wasn't made so I think we kind of have to go with NOAA General Counsel's read of that decision because they know it best on the legal sense of it.

My final point is you know I don't want to seem trivial about this because I know the impacts that sport and commercial fishermen face with this kind of thing but you really, we have to get to a mode of living by the survey and the assessment and dying by the survey and the assessment.

For the last three years our quotas have gone

up because survey indices and the results of the annual review of stock conditions allowed us that opportunity and we took it. And that's exactly what we should do.

Well, when you use the same exact survey and the same exact assessment methodology, admittedly updated with the new major assessment this past spring, if you've allowed yourself to accept the increases over the last three years, we have to allow ourselves to take the reduction when the same science advises us in that direction.

We can't have it both ways. So I think all things considered we need to go with the 23.59 and hope that we get past that year somehow and then we get back into the increasing mode. Thank you.

CHAIRMAN GIBSON: Thank you, Eric. Bob, were you ready to? Not ready to discuss the super majority issue? Okay, we'll come back to that. Just a comment from the chair, I find the potential for future larger yields pretty compelling in some of the arguments that Eric and Dave Pierce have advanced at this point.

But I would point out it seems that we would have to do some mixing and matching here to simultaneously maintain our annual F probabilities over 50 percent and achieve the 2010 biomass as well. So I don't think we really know what the future yield benefit might be in exact terms but there has got to be some there. Other board discussion. Yes, Ed.

MR. EDWARD GOLDMAN: Thank you, Mr. Chairman. I was just, a few points here I'd just like to bring out real quick. Dr. Pierce brought out that, you know, did we set the target too high and I was kind of wondering that.

I guess it's a question on the target, can the target be changed to a more realistic target and also can the timeline be changed? We had a gentleman just under public comment tell us that you know he can't take home a fish at the sizes we're at and the direction we're going he's not going to get any relief. So, I was just wondering about that.

The other point I would like to bring out is, I don't think it was brought out today but it was in August, the three-year probability I think was about 90 percent probability which is pretty high.

I'd also like to point out you know not all states took those increases. We in New Jersey, you know we saw the increases. They were not that great and we stayed conservative so, you know. And we haven't really been rewarded for conserving. And we're talking about people's livelihoods. And I think we really need to keep that in mind and, you know.

And my last thought is I'm not really that familiar with the legal process, not at all actually. I was wondering if anybody had approached the judge and ran this little question by the judge as how he would feel about this.

Or do we have to wait for a lawsuit for that to happen. And if somebody does sue us, I figure by the time they sue us the year will be up and we'll be in 50 percent probability anyway. Thank you.

CHAIRMAN GIBSON: I think Toni can address your first question on the ability to change reference points.

MS. KERNS: The reference points were just changed this year. We looked at the reference points at the 35<sup>th</sup>, no, I guess it

was the 41<sup>st</sup> SARC. And we were at about approximately 234 million is the target. And this year it dropped down to 204 million pounds. So they were just adjusted. And if it needs to be looked at again, we look at it through the stock assessment process.

CHAIRMAN GIBSON: Gordon Colvin, you're next.

MR. GORDON C. COLVIN: Just I had a question but I wanted to ask a question of Toni based on what she just said. Toni, did we also get an adjustment this year of where we are at present, the current biomass?

MR. SIMPSON: We have. I can't recall what it is, frankly.

MR. COLVIN: I think it went down a little, too. I think if I recall the gap between the two narrowed but they both went down.

MR. SIMPSON: Right, yes, both did go down.

MR. COLVIN: Kind of to complete the picture for everyone.

MR. SIMPSON: Yes, the retrospective pattern includes an overestimation of F and an underestimation of stock size. And, yes, the estimate of current stock size was sort of found to be lower than we believed it was last year.

That's the way to put it. And the other point I wanted to make about the revision or lowering of the ultimate target biomass is that that was based on a more recent look at recruitment and a lowering of expectations of what average recruitment would be.

So, it was essentially taking out that very high recruitment that we saw in the early

'80s, '82-'83 era where we were seeing 78 or so million recruits per year. Those came out and the averages dropped a few million so that we're expecting now you know more like 38 or 40 million fish instead of you know 45 or more million.

MR. COLVIN: Thank you. I've a question for -- anybody can answer it, probably Harry -- when do we expect to see the Federal Register notice for the proposed '06 regs?

CHAIRMAN GIBSON: Harry.

MR. MEARS: It should be very soon. I mean it's in the final stages of being made available for public comment, in the very final stages.

MR. COLVIN: My other question or request for some discussion is what are the ramifications of adoption of different '06 TALs between the commission and the federal service? I think we ought to just get that on the record here before we go any further.

CHAIRMAN GIBSON: Toni is going to respond to that.

MS. KERNS: Well, those people with, depending on if we had a higher TAL or a lower TAL then the feds, those people with state-only permits would have to abide by the commission's TAL and those people with federal permits only would have to abide by the federal TAL.

And if the, say the federal government had a, the federal permit holders had a smaller TAL there would be inequities between those two permit holders because the state permit holders could continue to fish while the federal permit holders would not be able to. And so we would have inequities

between guys that potentially were fishing side-by-side on the docks.

MR. COLVIN: I also wondered and this gets kind of hypothetical but I'm trying to understand it, going forward with recreational specifications if we went with the same approach we have with state quotas the last couple of years in a default, how would that relate to the default to kick in?

Let me suggest that it would seem to me difficult for the commission to certify to NMFS that each state's plan was consistent with the, you know the current framework and therefore it would almost seem that it's possible that we could be in a default situation from the get-go. But I'm not sure and that's why I wanted to raise the question.

CHAIRMAN GIBSON: Bob.

MR. ROBERT E. BEAL: Well, I'll just give you one perspective, Gordon, probably my opinion more than anything else and that's if, just a review of the process. The states put together their conservation equivalency proposals.

Those proposals are based on the commission's recreational harvest limit or having a reasonable chance of the states achieving or not exceeding the state recreational harvest limit. And if we, once the states implement or this board has approved the recreational management programs for each state we compile those.

And if we send those off to the National Marine Fisheries Service and there is a substantial difference between the target that the package of state regulations are trying to achieve and the target that is in place at the federal government, I think the regional administrator would likely have a difficult

time endorsing those sets of recreational regulations for federal permit holders in federal waters.

And that would also result in those federal permit holders in the party and charter boat industry being bound by those regulations in state waters.

MR. COLVIN: So, there is a possibility that they could be stuck with the default. I'm not sure. I lost you right at the end, Bob.

MR. BEAL: Yes, I believe that's — yes is the short answer.

MR. COLVIN: Now, taking it one step further, boats can get out from under that if they relinquish their federal permits and fish only in state waters. But they would have to relinquish all their federal permits. Correct?

MR. BEAL: That I'm not sure what the rules are in giving up permits.

MR. COLVIN: That one I think is right. I think they'd be bound by one, by one-by-all. I just think we all need to kind of think about that and what it might mean.

CHAIRMAN GIBSON: Other board discussion. I need like a couple minute sidebar here with the commission chair and the executive director on his super majority issue. Can we take like a five minute break?

(Whereupon, a short recess was observed.)

CHAIRMAN GIBSON: Can I have your attention, please. We're going to call the board back into session. Okay, we're going to resume the business of the Summer Flounder, Scup and Sea Bass Board.

Based on my review of Addendum XIII and consultations we can proceed with a simple

majority on adjusting the 2006 quota. And so we're going to need a motion here at some point. Pres Pate.

MR. PATE: Well, thank you, Mark. I'm not prepared to make a motion yet. I guess I wanted to make some observations and share some thoughts that have been going through my mind through the last few minutes and express the conflicting emotions and opinions that I have about the subject matter.

And I find myself hard to disagree with any of the points that have been made today because I think in their own rights they are each valid and each justified. I'd also like to point out a couple of things for clarity that were included in David Pierce's earlier remarks.

He made note of the instance in the past when we found ourselves with different quotas set by the ASMFC and NMFS for scup. He has obviously forgotten the train wreck that occurred when we did the same thing for summer flounder.

I forget exactly which year it was but that was an awful situation and we really had to expend a lot of energy to try and get that train back on track and we did so by yielding to the quota that had been recommended and ultimately adopted by the service.

He also, I would like to make the observation that the year in which this lawsuit occurred that set the legal precedent for our having to adhere to the 50 percent probability of meeting the target, we had a projected 18 percent probability that year. But, guess what, we hit it. Tin ring, right dead center.

And what concerns me so much is that we

find ourselves because of that decision with a lack of ability to take into consideration a lot of important factors that must be included in the final decision for setting these quotas, such as the needs of the fishermen and the economies that surround their livelihoods and their businesses.

And I think that's what Bruce was trying to speak to when he was making a point about the predictability of future years. I guess this is an unfortunate consequence of having a joint plan. And it's unfortunate because I see more and more trend of the joint plan creating not a partnership but one of, "I must lead and you must follow."

And I don't think that's good management, to be quite honest. I think the states are being subservient to the federal government in this case. And maybe there is nothing that we can do to prevent it but I'm not -- well, I am. I'm a fairly strong state's rights person, regardless of my liberal political bent.

And I think there needs to be some better consideration for the roles that states have in managing this resource. And I, believe me, thoroughly appreciate the points that Rick Cole made today about having to take into consideration the needs of the resource.

But there is some confusing information about the rebuilding strategies that are projected for each one of those three options that make it hard for me to resolve all these problems that I'm trying to explain.

It just seems to me like that we are in a situation where we don't have any choice. We know that if we adopt something different from NMFS that it's going to create an untenable situation like we had in previous years where we all ultimately had to yield to a consistent strategy that was set

by the service.

And in spite of what I might feel about the benefits of the constant harvest strategy I find myself compelled to try and be optimistic about the opportunity that Option Number 2 yields for, Option Number 2 indicates for increased yields in the future years.

I'm a little bit concerned that those projections don't for the purpose of clarity and understanding of everybody in the room today meet the 204 million pound target in year 2010.

So, I'm not making a motion because if I did it would probably be wrong because I don't know what I want to do at this point. I just wanted to get those on the record and share my thoughts with the rest of the board.

CHAIRMAN GIBSON: Thank you, Pres. Gordon Colvin.

MR. COLVIN: Pres just did a really eloquent job of expressing the conflict that's in my mind and I suspect others as well. And I couldn't say it any better than he did.

There are pros and cons to the 26 million multiple year commitment and to the options that go to 50 percent or 75 percent year by year, regardless of any court decision, precedent, NOAA General Counsel opinions or anything else. And unfortunately a lot of our discussion ends up focusing on the latter instead of those pros and cons.

But putting that aside for a moment, I almost feel as though if it were the will of this board that on merit apart from what the National Marine Fisheries Service may or may not decide, that it was the will of the board, the opinion of the board, that the 26 million was the best way to go, that I would

almost want to say let's take that position and our lawyer and a delegation of our senior leadership to the National Marine Fisheries Service and sit down with them and tell them why we think they can, should and really ought to, in the sake of partnership, follow our lead on this.

And I think that as has been indicated here earlier today, there is some legal rationale that supports doing this, that suggests that the way we're managing now with a specific development of a multi-year option framework and addendum, enables one to look differently at this earlier court decision than we have and that the service is now doing.

And I believe that there are people in NOAA General Counsel who feel that way, too, frankly. So, I sort of feel the same way Pres does. I'm frustrated that the decision seems to be driven by the opinion of one anonymous attorney and not what we all think is the right thing to do.

CHAIRMAN GIBSON: Thank you, Gordon. Just a couple of board comments. I know there are people in the audience that want to comment and I'm trying to get to a motion on the table for board discussion and then audience comment and I haven't gotten to that point yet.

Now that everybody is back in the room I just wanted to reiterate that based on the nature of the original setting of the 2006 quota, the shift in scientific information and the wording in Addendum XIII, it's the chair's opinion that we can proceed with a simple majority vote to change that quota. So with that I'll go to Dave Pierce.

DR. PIERCE: I've already stated a long list of reasons why I think the 26 million pounds is inappropriate for the next fishing year. I

am not going to focus on the legal aspects of it. That's not my concern.

Primarily that's not what is driving me in the direction of the 23.59. It's the fact that the analyses that has been presented to us indicates that it's a 25 percent probability at 26 million pounds.

And I don't see how this board can support a quota for next year that gives us a 25 percent probability. I can't recall any other plans, recently, anyways, where we've actually selected a quota that low in terms of the probability of achieving where we need to be.

**So I will make a motion to amend the 2006 quota from 33 million to 23.59 million pounds.**

CHAIRMAN GIBSON: Thank you, Dave. We'll get it up on the board and then see if we have a second.

DR. PIERCE: I believe it's 33 million. If I'm incorrect please correct me on that.

CHAIRMAN GIBSON: Okay, we have a motion made by Dave Pierce. Is there a second? Eric Smith seconded that. Okay, to the motion. Bruce Freeman.

MR. FREEMAN: I'll raise once again the issue that if this is a one-year quota it's correct. But the proposal and the position supported by the Mid-Atlantic Council would be a three-year rebuilding plan so the issue that Dr. Pierce raised of only 25, less than 25 percent or approximately 25 percent probability of reaching the target for one year is correct but not for three years. And I simply would have to speak against this motion.

Again, my position is, look, if we're going

to go with a 23.5 let's stop wasting our time and the council time. I mean, why are we here? It's going to be set by the agency so no sense having our advice.

CHAIRMAN GIBSON: I noticed on my list I bypassed A.C. Carpenter.

MR. CARPENTER: I was hoping to get my comment before this motion and my comment does, having this motion on the floor complicates my comments so I'll withdraw now.

CHAIRMAN GIBSON: Thank you. Other board comments on the motion. Harry Mears.

MR. MEARS: I would support this motion. I would also support, again, as other people have mentioned around the table, the comments made by everyone. I also strongly believe we need in fact to find a better way to do business where we have joint state and federal regulations.

But in terms of this motion, without looking at the jurisdictional issue or the turf issue or however you want to look at it, I believe that Mr. Cole's comments about recent declining recruitment as well as the short pay-off period where in fact the industry does benefit -- not sometime into the future but as soon as one to two years after the current year -- makes this a very strong option to support. Thank you.

CHAIRMAN GIBSON: Thank you, Harry. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. I had a question. At the board meeting that we just concluded this morning there was quite a bit of discussion about the lack of a peer reviewed stock assessment and the concerns

that were raised about that regarding management action.

We heard that from both the board as well as people that were in the audience. I was wondering for Dave Simpson, the numbers that we're now confronting this afternoon, this board is confronting, what is the origin of those numbers? And what sort of review has that document had? Thank you.

CHAIRMAN GIBSON: Dave.

MR. SIMPSON: In terms of the current estimates, it went through the SARC 41 peer review process.

EXECUTIVE DIRECTOR O'SHEA: Thank you.

CHAIRMAN GIBSON: I think I'd like to go to some audience comments now. And I know your name is Herb and I know you've been waiting. Just as we get into some audience comments, I have 30 minutes for this agenda item and there needs to be more board discussion so please be as quick as possible.

MR. HERBERT MOORE: Herb Moore, counsel for the Recreational Fishing Alliance. Thanks for the opportunity to comment, Mr. Chairman. We've looked at the 2000 decision from NRDC v. Daley very critically.

And I'd like to follow up on a couple of the comments made by Gordon Colvin of New York and Preston Pate of North Carolina. The 2000 decision was made at a very different time. And we submit that it was made under very different circumstances and, therefore, that decision isn't binding upon this board.

It was a decision made at a time when the

summer flounder stock was overfished, overfishing was occurring. That's no longer the case. It was a decision binding upon NMFS in regard to their responsibilities under Magnuson, not the commission.

Perhaps most importantly, it was a decision that was made completely in the absence of a constant harvest strategy. That was not anything that was presented before the court. Therefore, the court did not rule on that strategy. So the commission is not bound by that decision.

I'd like to emphasize how much of a drastic change dropping from 33 million pounds to 23.59 million pounds would be for the recreational sector. And I strongly urge the members of this board to vote against the motion that's on the table.

Changing from 33, dropping from 33 to 23.59 million pounds is going to be extremely damaging to the public confidence in the summer flounder fishery management system. As I think we can all recognize, is a system, not just summer flounder, not just the ASMFC, fisheries management in general is a system that depends upon public confidence.

And we're reaching a very critical juncture, in my opinion, in the Atlantic states as far as public confidence in the fisheries management system goes. We're reaching a point where the public is seeing tremendous numbers of summer flounder.

Each one of us would be hard-pressed to convince members of the recreational fishing community that the summer flounder stock is in trouble. We've reached a point where keeper to throwback ratios in the Atlantic states often exceed 20 to 1, throwback to keeper ratios.

The discard rate is extremely high. And the public confidence is certainly, it's lacking in the system. And to be told that the board has approved a 33 million pound total allowable landings for 2006 one year, then the next year to be told that the total allowable landings have been dropped to 23.5 million pounds, it's going to be a drastic shock to the public.

So I'd just like to really reemphasize those points and urge the board to vote against the motion that's on the table. Thank you.

CHAIRMAN GIBSON: Thank you, Herb. Right here and then Tom Fote after you.

MR. RAY BOGAN: Ray Bogan, legal counsel for United Boatmen. I won't go over everything. Sure, Ray Bogan, B-o-g-a-n, legal counsel for United Boatmen. I won't go over everything that Herb just went over but I'd just like to say that first of all we do not support the 23.59 million pound motion that is before you, nor do we support the 26. We've always supported the status quo of 30.3 million pounds.

But, be that as it may, in support of the first option, for those who would try to move that forward, I would suggest to you that that would indicate some form of partnership between you and the council, you and the Mid-Atlantic Council.

Right now, as was stated before, there is no partnership that we can see. There isn't. NMFS has told you, you have a choice: go with us or go lower and make it even more damaging, otherwise, we will make the decision ourselves.

And it does raise questions with the public why would you folks go through these exercises? All of you work hard in this management process. You're all to so many

meetings; you all do so many things and you say to yourself, "what am I here for if I must do only what NMFS tells me I must do?"

I'm not saying for those who agree with NMFS; I'm saying for those who have questions. Think about that. Why would you be here if you didn't have some ability to raise a point and to try to carry forward a fisheries management concept?

If I could read a couple of things very briefly from this decision -- I've cut out a lot of what I wanted to go through -- a couple of things that this appellate court said. And, as Herb mentioned, this court did not address the issue of multiple year specifications.

Moreover, this court cannot. It is basic principle. And wherever your attorneys are, I'm confident they will agree as to one thing. When a court does not have an issue before it, they do not decide the issue.

Courts do not offer recommendations or decisions. From a legal standpoint they only address in the most narrow means possible what it is that they have to make a decision on. That's what they did here.

And the court stated things such as, "We are left only with the service's unsupported conclusion that the incidental catch provision increases the probability of meeting the target F. Approval of the final rule to implement the '99 specifications for summer flounder are manifestly insufficient."

It went on to say, "As we noted at the outset of this opinion, the service's quota for the '99 summer flounder harvest so completely diverges from any realistic meaning of the Fishery Act".

You folks, those of you who sat on the

council when you made that vote, you acted consistently with what you saw to be the ultimate goal of that plan and the court says NMFS' decision in '99 didn't in any way comport with that goal of the plan.

Chris Moore did a somewhat detailed analysis of how you folks were going to meet it on the council level. You didn't diverge from the law. You never diverged from this case. NMFS, the entity that lost this lawsuit, is now being relied upon as the ultimate entity that will tell you here is what you will do and here is how it will be interpreted.

Respectfully, they were wrong then; they're wrong now. And I would hope that you folks would take it as saying, listen, if they made that mistake let's try to take a step towards trying to correct a problem with the management system. The final thing that they said just before the conclusion.

CHAIRMAN GIBSON: I need to move on to another speaker. Thank you. I think you made your point very clear.

MR. BOGAN: Well, there are other points we want to make with regard to the partnership. If you're shutting me off, I'm shut off.

CHAIRMAN GIBSON: Well, I'm trying to give everybody a reasonable amount of time but this board is backed up in terms of its workload so I'd like to go to Tom Fote.

MR. BOGAN: But while you're backed up the problem is the decision you make has an immediate and unstoppable decision that reflects and ultimately impacts everybody sitting in this room.

CHAIRMAN GIBSON: I think this board is very aware of the significance of the

decision they're going to make today so I'd like to move on to the next speaker. I thank you for your comments.

MR. BOGAN: Well, we should be able to put it on the record so I'll leave because you're telling me to but we should be able to place that on the record.

CHAIRMAN GIBSON: Yes. Tom Fote, next please.

MR. FOTE: As a commissioner if I was sitting at this table as I have for 16 years I would have just spoken up and said let's let the counselor finish what he came here for, for another two minutes and put it on the record.

I mean, this is unbelievable that we're not letting people speak on a thing that affects an industry so dramatically. The public has made a dramatic attempt to attend here, come to meetings, and now we're being shut down. I guess I'm going to lose my time because I basically am saying that.

I basically agree with everything that Herb Moore and the RFA just said. I agree with what Ray Bogan said. What I also was listening to a lot of stories go around this table. Boy, facts get mixed up. They really do.

We were at 26 million pounds. We were at 26 million pounds. We were at 26 million pounds. The only time we saw an increase was this year when we went to 30 million pounds. So, we didn't see an increase for the last couple of years.

And at 26 million pounds for the last couple of years, the recreational community has not harvested more fish than they did in 1994 when the stocks were collapsed. It's very easy to say you're going to see the benefits

of an increased quota but let's look at the facts.

The number of fish the recreational community has taken is about the same as they did in '94 and some of the years have been less. Yes, they're fatter fish. They're bigger fish. But there is less fish. So that means fewer anglers are being successful catching summer flounder.

Herb Moore is, I've heard it at every dock and every pier. I don't care what they, the people are telling me. And I'm really disappointed because this is a system I worked hard and had a lot of credibility for the last 15 or 16 years, especially because of striped bass and because of a few other things. It is starting to lose that credibility.

When fishermen and fisherwomen lose confidence in the system they start doing whatever the hell they want and you can't enforce the regulations out there. I'm not promoting breaking the law but I hear it's going to happen.

I didn't support going to the 26 million. I thought we should have stayed status quo. As a matter of fact, I think if this was a joint plan that's probably what we would have done like we did in weakfish. We wouldn't be jumping through hoops.

This stock has increased. You know we say, we're talking as if this stock is collapsing. The curve has been up, up, up for the last years. We're seeing more.

The spawning stock biomass if I remember right is larger now than it has been in the last 15 years, so is the total biomass than the last 15 years, so this is not a stock and the curve keeps going up. It has not turned around and gone the other direction as some other species. And I guess Mark you're going to

cut me off. Thank you.

CHAIRMAN GIBSON: I'm not trying to cut anybody off. Let me reiterate: this board has important work to do and they're well aware of the importance of it, the significance of the decision. And there are a lot of people that want to speak and we're trying to get to them. I have Gene Kray next and then Jim Donofreo.

DR. EUGENE KRAY: Thank you, Mr. Chairman. My name is Gene Kray. I'm a recreational fisherman and I'm also a member of the Mid-Atlantic Council. I wanted to add one more piece of information that hasn't been discussed today in the constant harvest strategy.

When Chris Moore gave us those figures back in August, they talked about a 25 percent probability at 26 million pounds for 2006. In 2007, 26 million pounds would give a probability of 65 percent. And in 2008 it would give us a probability of 90 percent.

I think those figures speak for themselves. And as Ray Bogan indicated before, we're talking apples and oranges in terms of decisions by lawyers and courts. I think they're altogether different. I don't think this protocol has been considered, certainly not by the courts. And I would strongly urge you to move with the 26 million pounds. Thank you.

CHAIRMAN GIBSON: Thank you, Gene. Jim.

MR. JIM DONOFREO: Mr. Chairman, thank you. Jim Donofreo representing the Recreational Fishing Alliance. I appreciate you know how hard all of you work on this very complex issue of fisheries management, as witnessed yesterday at the

horseshoe crab meeting which went on for a long amount of time.

Mr. Chairman I have to say, you know, cutting off, you know, public comment on an issue that, especially summer flounder, we need to put the time. It's a frustrating process.

And Mr. Bogan drove up here from his office today as counsel for United Boatmen and also counsel for RFA on issues to specifically point out to some of the members here who were ready to rubber stamp 23 million pounds based on a letter from Pat Kurkul.

And then furthermore he had some other scientific arguments he was going to make because he dug into this plan. He took the time in his office and dug into it. And yet we're cut out of the public comment period.

So I want to get that on the record. I'd like the executive director to look into this process because we have challenged this process before as far as a public process and I think it has to be as long as it takes.

And, yes, if people are being disruptive and you want to throw them out of here, that's fine. We'll agree with that. But we have people of substance here that have a lot of things to say about livelihoods. I think we need to be heard. Thank you.

CHAIRMAN GIBSON: Thank you, Jim. Other comments from the public. Yes, please come up and identify yourself and if you represent somebody please say so.

MR. TOM SICILIANO: My name is Tom Siciliano, a member of a few recreational fishing clubs, Saltwater Anglers, Bergen County and Manasquan Fishing Club. Just a couple of quick comments and a little math.

It's difficult to convince the anglers of Jersey that there is a shortage of fluke, enjoying some of the best fluke fishing in years. Can't keep a whole lot but there is great fishing. If the fish were not there the recreational people would not be catching them.

There is this huge credibility gap in the minds of recreational anglers with the fishing management system. The stock assessment data, I just did a little quick math here. The recreational catch for 2005 was 12 million pounds.

Just take about two pounds of fish, that's 6 million fish, ratios as high, higher than 20 to 1. I had two days this summer. I had 70 fish without a keeper. Twenty to 1 times 6 million pounds is 121 million fish. A lot of these fish are very close to that 16.5 inches.

Figuring a pound a fish that recreational catch alone accounts for all of your data in your stock assessment, 120 million pounds. You need better data, more data, and use all of the data that is available. Thank you very much.

CHAIRMAN GIBSON: Thank you, Tom. Yes, over here. I've forgotten your name. I'm sorry.

MR. SHAWN McKEON: Shawn McKeon, North Carolina Fisheries Association. I think in short this is an insult; 23.59 million pounds is an insult I think to this commission and I think it's an insult to the commercial interests represented here.

I think that if you're talking about joint management I concur with Pres Pate, the head of our division in North Carolina. This is not joint management at all. Based on that one particular letter, based on one

decision, interpretation of a decision, to allow yourselves to be railroaded into supporting this, I find it insulting. I really do.

I also would concur with the comments of the previous gentleman before me that this process should take as long as it needs to take and people should not be told they have two minutes or five minutes or three minutes.

There are a lot of people who have a lot of things to say and there are a lot of people whose livelihoods are at stake while we're up here enjoying tea time and golf time and tours of Cape May. We need to take the time to make these decisions correctly. Thank you.

CHAIRMAN GIBSON: Thank you, Shawn. Additional comments from the public at this time, before I go back to the board. Yes, the gentleman right here.

MR. POVOROMO: What percentage — Frank Povoromo. What percentage of the total poundage that is up on the screen actually represents what the recreational fishermen takes? What do your figures show?

CHAIRMAN GIBSON: Dave Simpson, please.

MR. SIMPSON: The recreational/commercial allocation is 60 percent commercial, 40 percent recreational so it would be 40 percent recreational.

MR. POVOROMO: Forty percent.

CHAIRMAN GIBSON: That's what would be allocated to the recreational fishery under that number.

MR. POVOROMO: And does that mean? It sounds like the way the proceedings are going that the size limit would have to increase because the poundage is going to be decreased. Am I correct?

CHAIRMAN GIBSON: Well, the recreational specifications would be taken up at a later commission meeting but it's possible both they and commercial regulations would have to be adjusted within the states in order to stay within this poundage.

MR. POVOROMO: It sounds like all of the objections are coming from the recreational sector and it seems to me that the recreational fishermen is not taking that percentage of the total poundage that's up there.

The 40 percent that you talking about, I fish quite a bit. Everybody is agreeing that they're not taking fish so I think that number is the number that's the real problem, that percentage of 40 percent.

Maybe there should be a special, a change for the recreational fishermen. The suggestion that I made before about letting them take a couple of fish would greatly change the attitude of the recreational fisherman and probably not affect your numbers very much. That's what I have to say. Thank you.

CHAIRMAN GIBSON: Thank you, Frank. Yes, over here.

MR. HAL HAGERMAN: My name is Hal Hagerman. I'm a party boat up in Atlantic County, the Sea Tiger. I'm also with United Boatmen. I find it kind of an insult and a slap in the face that I took a day off to come down and fight for my livelihood to have Mr. Bogan come up and say something that

makes sense and he knows what is going on and you cut him short.

I mean you've got a flier out on the table out there that has the stocks and biomass going up since 2000, going up quite a bit every year. I don't know why you're cutting us way back if the stocks are going up.

Somebody writes a letter that was dated back in, I mean the lawsuit back in 2000 that you have to go by an interpretation of that law and why we're getting cut back so much. We threw thousands of fish back this year.

There are a lot of fish out there. But they're all short. We had to switch fishing from fluke to weakfish because people didn't want to go out and throw fish back all the time. We could keep some weakfish so we did that the last month of the fluke season. That's all I've got to say.

CHAIRMAN GIBSON: Okay, from the public over here.

MR. BOB RUSH: Bob Rush, Cape May County Party and Charter Boat. As I sit here and listen to all the comments made by everybody out here in the public and as I sit here and listen to all the comments that everybody has up here, everybody that's on this council does not have a socioeconomic impact that all of us out here do.

Our membership that I am with, we have over 250. I am also a member of other outfits in our state also, too. It's going to be very, very difficult to go back and tell people you can now keep two fish instead of eight fish or ten fish, or keep one fish instead of ten fish. Okay?

Socioeconomic impact, okay, we might have a gain in the future but in the future I'm out

of business and it's not just me; it's everybody else that's involved also, too: bait shops, fuel trucks, everybody else.

So, I find it very, very difficult going from 33 million pounds to what is up there on the board right now. I find it also an insult also, too, that public comment is cut off. And if that passes up there I can tell you right now there will be a lot of people out of business. And if it does pass and people are out of business, who is signing our paychecks next? Thank you.

CHAIRMAN GIBSON: Thank you, Bob. Any further comment from the public before I go back to the board? And I'll come back one more time for the public. Board discussion on the motion. Vince, you wanted to speak.

EXECUTIVE DIRECTOR O'SHEA: Yes, thanks, Mr. Chairman. I had a question. I'm not sure if it needs to go to perhaps Rick Cole or maybe it goes to National Marine Fisheries Service, but what are the consequences of not meeting the rebuilding target in 2010? What happens?

MR. COLE: As I understand it, Vince, the National Marine Fisheries Service would take over sole responsibility for getting that job done.

CHAIRMAN GIBSON: All set? Gordon Colvin.

MR. COLVIN: Well, just looking at the big picture, long-term options of that nature, it occurs to me that there is one other and that's that we could follow the red drum model and petition to have the federal FMP withdrawn and have the federal EEZ fishery managed under ACFCMA under an ASMFC management plan. And I have to tell you that I can't sit through many more of these

meetings without getting ready to make a motion to do just that.

CHAIRMAN GIBSON: A.C. Carpenter

MR. CARPENTER: Thank you, Mr. Chairman. After listening to all of the other comments I think that what I was going to say earlier I will say now. I'm troubled by the choices that I have to make here and there are no good choices.

The 26 million pound number, the constant harvest strategy, if I truly in my heart believe that this group and the council would stick to that, put that number in concrete and we would not adjust it simply because the stock assessment or the turn of the crank showed us that we've got three more fish to catch, then I'd say it was worth Gordon's plan of taking a group to the council and to the NMFS and say this is a new strategy and we mean what we say.

Unfortunately, every time that I have been involved in summer flounder we are arguing over two or three fish or a million pounds here or 500,000 pounds there and we are constantly changing the number.

So, I still don't know how I'm going to vote on this issue but I would really, if I had the confidence that three years or four years, meant three years or four years of uncommitted, solid quota, constant quota, I'd jump on that in a heartbeat.

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. To A.C.'s point, A.C., if you recall when we set the 2005 quotas there was in most cases opportunity for states to increase their quotas because they were under the target. Now this is not all states but the majority.

And it's my recollection that every state that had that opportunity to increase their quota did not do so to the full extent. So, I think we were aware of what occurred in the past when we tried to go to the very last fish.

But I believe we looked at it much more conservatively and didn't necessarily take that opportunity to increase it that 1 or 2 percent or 3 percent as the case may be. So, my opinion is we certainly are very concerned about utilizing the amount that we can utilize but not to the point of overdoing it.

**I'd like to move to amend the motion and my amended motion is to move to amend the 2006 summer flounder quota from 33 million pounds to 26 million pounds and set the 2007 and 2008 quota at 26 million pounds.** And as I will indicate, this is either the same or very similar to the Mid-Atlantic motion that was passed.

CHAIRMAN GIBSON: Is this a substitution motion or a motion to amend?

MR. FREEMAN: Yes, a substitute motion.

CHAIRMAN GIBSON: Is it up on the board? Is there a second? Second by Preston Pate. Okay, Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I wanted to second that because I believe that all the comments that were put on the table were valid. I believe the comments that Preston Pate made relative to where we were going and the dilemma we were faced with was very valid.

As a matter of fact, it helped sway my decision to go this way. The comments that were followed on by Gordon Colvin were very positive and also helped me be swayed,

as well as Mr. Freeman.

There is no question if we're going to go down this course, down this road, that we must follow through the suggestions and recommendations that both Mr. Pate made and particularly Mr. Colvin in bringing together a group of our executive, the director of staff, if you will, and go forward and have a meeting with our lawyers and with the other parties involved here, including the National Marine Fisheries Service.

One final comment is the difficulty I think the public is having more than anything is the fact that they do see more fish. They do have a lot of throwbacks. In New York on the South Shore we have 1 to 25, 1 to 30 throwback ratio.

Early on in the year it's better than that. But as you get into the second or third month, those throwbacks get higher and higher and as you know as the temperature goes up it increases the death rate of those fish that are thrown back.

But not realizing what the plan is that we, as the commission, and also the council have to live by and is the basis of the Magnuson-Stevens Act and I will not pontificate but I would remind you all that we are set on a track by the federal government that we will get these stocks rebuilt within a 5-7-10 year period of time.

And as Mr. Cole had pointed out, the options that you have if you do not meet that rebuilding schedule, no matter what the reasons are that we have and hopefully if we don't meet one we have valid reasons as to why, could be very detrimental to the states.

As far as going over quotas, we in New York, we're there last year. And it is pure

hell to have to present to this board and to go to the MRFSS folks and the National Marine Fisheries Service to state your case only to know that you're going to be slam dunked at the end of the day and at the end of the second or third trip.

So, the importance of us as a body moving forward with quotas and options and so on that will keep us in line with what the requirements are of Magnuson-Stevens and our guidelines are paramount. As Mr. Colvin stated further, we could always go the next route.

We don't need many more of these meetings before the red light goes on and we take another approach and we put a motion on the table that moves us toward ACFCMA and ASMFC being responsible for this. Thank you for the opportunity to comment.

CHAIRMAN GIBSON: Thank you, Pat. Other board comments to the substitute motion. A.C. Carpenter.

MR. CARPENTER: I have a question and your ruling a little bit earlier today that to change an outlying year would require a simple majority, is that going to be true this time next year when we want to take this motion and change it from 26 to 28 million pounds?

CHAIRMAN GIBSON: Yes.

MR. CARPENTER: See, I'd have been a lot more comfortable if I had had the commitment that it was going to take a two-thirds majority to change that in outlying years. That's what I was looking for in terms of that commitment and the difficulty with which we could change this number in different years.

CHAIRMAN GIBSON: The rationale

would be the same. The addendum doesn't compel us to set a constant TAC from year to year but we can respond to changed scientific information as it comes to the fore. William Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. First of all, I had a couple of questions which have a bearing on what we're doing here. Is it the biomass continuing to go up according to the graphs that you have? It looks like it is. Okay. Did the catch go up so far that it went over the overfishing? And did they exceed the quotas?

CHAIRMAN GIBSON: Dave or Toni, want to respond to that? It's in the SARC 41 findings. I think we had a fishing mortality rate of .41.

MR. SIMPSON: Yes, the stock has continued to go up. The fishing mortality rate, though, exceeded the target level and, as was mentioned earlier, it was more like .4 than the target so we've exceeded it somewhat. And Toni is checking the statistics. It appears the commercial fishery exceeded their limit slightly and the recreational did not.

MR. ADLER: Okay, the recreational did not.

MR. SIMPSON: In 2004.

MR. ADLER: In 2004, but the biomass in 2005 is up further than it was in 2004. I don't know why I'm arguing here about 26-23 or 33 or 30 when it didn't look to me that this fishery needed a drop.

And I don't care about the feds. I don't care about the judge. I don't care. I don't see why we're arguing over these drops to low figures with the figures all going the other

way. I'm sorry.

CHAIRMAN GIBSON: Vince, you had your hand up and then Bruce, I have you.

EXECUTIVE DIRECTOR O'SHEA: Yes, Mr. Chairman, my question was either to the maker of the motion or to you, the chair, but with this motion what is contemplated next year if, for example, we're told that the removals were greater than what we expected? Would there then be an adjustment to next year's quota anticipated in this? An adjustment down?

CHAIRMAN GIBSON: That's my understand, we would be responding in the same fashion we are now to updated scientific information and working within the framework of Amendment XIII that sets the ability to adjust based on that information.

EXECUTIVE DIRECTOR O'SHEA: Thanks. And then just a follow up if I could to the question about reported recreational, I mean the recreational removals and the commercial removals that Dave Simpson just talked to us about.

Those were reported recreational removals. The biomass went -- we have information that the biomass was less than what we thought it would be so what could account for the biomass being smaller than what the scientists had thought it was going to be?

MR. SIMPSON: That goes back to the retrospective pattern that we have a tendency to overestimate stock size. And so when the quotas were set last year for '05 and '06 or late in '04 for '05-'06, the belief was that the stock was higher than it actually turned out to be.

And while the stock is still increasing it's

not as large as we thought it was and it's not increasing at the same rate that we expected it to increase.

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. To A.C.'s point, my desire, A.C., in making this motion if we see, if this motion passes and we see in 2007 that our 2006 stock is higher than what we estimated, I do not contemplate any change in this.

My desire is to hold this steady. I mean we've heard this over and over again at our public hearings, at the council and the commission is a constant harvest strategy.

We went to great extremes — I won't say great extremes but we went to administrative extremes to put in a multiple year specification, certainly from the council perspective, at the urging of the agency so they don't have to go through this exercise each year to come up with a constant harvest strategy.

And we determined a three-year period would be reasonable. And my desire would be to hold this at that 26 million pounds. Now if for some reason we find out that indeed that is too aggressive as our chairman indicated, then we're compelled to take an action.

So there could be an action taken next year but it wouldn't be the fact that we underachieved. We'd have to find out that that stock was considerably lower than what we anticipated. Then we'd be compelled to do so. But I think everyone needs to understand if we buy into this system that we're going to have to hold it.

Now, at the end of three years if we find that indeed we could have had a higher quota,

then we could move this whole plateau up. But my desire is to keep it at some constant harvest strategy for several years at a time.

The worst thing we can do is move this up and move it down the way we have in the past. I think we've all experienced difficulties with that. So, again, this isn't an easy way out in my way of thinking. We're going to have to make a commitment to hold this. But, it seems it's a reasonable way to go.

CHAIRMAN GIBSON: Thank you. Preston and Eric.

**MR. PATE: Thank you, Mark. And following up on the point that Bruce just made, as seconder of the motion I'd like to offer a friendly amendment for him to consider that we change the wording of the motion to say that the 26 million pounds set for 2007-2008 be no higher than 26 million pounds.** That gives us some clarity that the intent is to stay at that level but some flexibility to go lower were we to find ourselves at a more dismal point next year than we are right now.

MR. FREEMAN: I would agree to that wording, Mr. Chairman.

CHAIRMAN GIBSON: That's okay with you, Bruce? Okay, can we reflect that change so it would be. We have a friendly amendment to the motion. Eric Smith.

MR. SMITH: Thank you. I'm glad Pres said that. I think that was Gordon Colvin's language in August. And as we went through the same debate that's how we concluded it. It didn't pass but that was a beneficial change.

I wanted to get back to A.C. and Bruce's point about -- and it gets back to this super

majority thing -- it seems to me that if we set it at 26 million pounds for the next three years and there is new science next year or the year after that would be a reason under the addendum to change without having a super majority.

But as A.C. I think was concerned with, if we just kind of get "loose around the knees" next year and we say we really want to make it 28 million and we have no scientific basis for that, which I took to be the kind of concern he was talking about, to me that kind of change would require the super majority because the addendum doesn't call that out as a reason to change.

Now, I don't know if that helps him in dealing with the motion but I think it has -- whether you need to do the super majority or not depends on whether the action in the addendum is contemplated.

CHAIRMAN GIBSON: I agree with that. Gordon Colvin.

MR. COLVIN: Mr. Chairman, I just need to think out loud here for a second. And it reflects the, I think the difficulty we're having and will have assessing how to vote on this motion.

In effect the tenor of this last bit of discussion quite appropriately addresses the, "are we really serious about a constant harvest strategy question" or are we just trying to get to 26 million next year and then we'll address trying to go up you know hopefully if things look "cheerier."

And that's a very appropriate discussion for the board to have. What makes it tough, then, is that it suggests that a vote for the substitute motion ought to represent a commitment on the part of the state who votes for it to not raise the issue about going

up.

And that's what makes it tough for us. Some of us have seen our Wave 4 numbers. Our numbers are a total train wreck, awful, worse than two years ago, particularly when coupled with the consequences of this assessment, whether it's 23.6, 26, 28 or whatever, anything less than 33.

And that makes it difficult for us to assess the best course of action for our fishery in the long run. And it's not an easy decision and, frankly, we're going to need a few minutes for caucus time before we vote.

But I just wanted to throw that out there and make folks aware of it. New York is "dead meat" in 2006 no matter what happens if that number, if the number that's out there stands up. And I, the consequences of it I can't begin to understand yet.

It's quite daunting. So, as far as I know, I mean I haven't looked at any of the rest of you and you either looked at your numbers or you haven't. The only thing I can say is bear it in mind.

We need to think about whether we're better off in the long run taking a whammy one year and hopefully trying to ease our way back from the abyss in the following years with an increase that doesn't come from the substitute motion if we're really serious about making it a three-year plan. Thank you.

CHAIRMAN GIBSON: Thank you, Gordon. Just looking over Toni's shoulders at the Wave 4 numbers for New York and all the states are there so I take your point. Jack Travelstead.

MR. TRAVELSTEAD: When the friendly amendment was offered to add the words

“no more than” it sort of clicked in my head. I’m wondering if we’re really talking about a constant harvest strategy. It seems to me we probably are not.

I mean we would like 26 million in the first year but — and tell me if my logic is wrong — but we’ve heard that recruitment for the last two years has been poor. We’ve heard that the probability of hitting our targets if we go with 26 million the first year are only 20 to 30 percent.

So, you know, with those kinds of factors playing in it seems to me we might, if we go with 26 million next year, there is actually some reasonable probability that we won’t be able to stay at 26 million the following two years because of those factors. Have I missed something or not?

CHAIRMAN GIBSON: I don’t think you have but I’ll ask Dave Simpson if he wants to tackle where he thinks we might be when the assessment is run again the next time.

MR. SIMPSON: I think you made some good points.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: The 26 million number was generated by analysis that Dr. Chris Moore of the Mid-Atlantic Council did. And it was my understanding that these concerns were considered by Dr. Moore when the original numbers were run. And, Dan Furlong is in the audience.

And I’m just curious, Dan, if you can shed any light on Chris’ calculations of the 26 million pounds. It seems, as I indicated, it seems that indeed he did take these factors into consideration when he ran those numbers. And in the past he has always done a very thorough and detailed analysis

and I’m assuming this is the same in this case. Do you want to comment?

CHAIRMAN GIBSON: Dan, did you want to respond to that and then Toni may have some information as well.

MR. FURLONG: Not really. I’m not a scientist so I can’t comment on Chris’ work. But I do know that he is very active with Mark Terceiro in the Northeast Fisheries Science Center when he goes through this process and he uses the monitoring committee.

So these are not numbers that, you know, he would just pull out of the air. These are things that have been vetted through the monitoring committee as well as the Northeast Fisheries Science Center.

CHAIRMAN GIBSON: Bruce Freeman next and then Pres Pate and Jack again.

MR. FREEMAN: I don’t need to speak anymore.

CHAIRMAN GIBSON: Pres.

MR. PATE: Thank you, Mark. Just a point of clarification of a statement that Jack made. He characterized the recruitment -- Dave, you need to listen to this I think. Jack had characterized the recruitment as being poor which led to the recommendation for the lower TAC. And I couldn’t remember exactly what the assessment said. I wanted to say it was average or maybe slightly below.

MR. SIMPSON: Yes, I think it was, as you say, average or slightly below. I think somewhere around 35 million recruits is my recollection. And average is closer to 40 million. So, not poor certainly in the sense of the 1988 year class that really got

everyone's attention with this species. It's probably slightly below average.

But the problem has been an initial estimate, initial higher estimate of recruitment and then a subsequent realization that it isn't quite as high. And that could continue, potentially. That current year class estimate next year looking back may be even lower. But you're right. Currently it's viewed as slightly below average.

MR. PATE: Thank you.

CHAIRMAN GIBSON: Jack Travelstead.

MR. TRAVELSTEAD: I'm just having real trouble coming to some conclusion on this. And I don't know. If Dr. Moore were here would he be able to help us? I mean can we get him on a conference call? Can we delay the meeting for 20 minutes or?

CHAIRMAN GIBSON: I don't think that we're going to get anywhere with that. Want to speak to the information?

MS. KERNS: I think that everything that Dave is saying Chris would tell you the exact same thing. The information that Chris Moore had from the constant harvest strategy came from the VPA outputs that Mark Terceiro put together. And that's where the constant harvest strategy came from.

And all of the stock recruit information all comes from, I have it right in front of me, all from Chris Moore's memo and David is giving you guys the exact information that Chris would give you. So, I think that you wouldn't have any new information from him.

CHAIRMAN GIBSON: Eric Smith.

MR. SMITH: Yes, much along the same line, when we had our joint meeting in August we had it at that time because we waited for the updated, most recent assessment and then the monitoring committee meeting that took all of the most recent assessment information into effect and then calculated these various strategies.

And out of that one of the options was the constant harvest strategy. So I suspect it includes everything that, nothing else could be further updated now. So, if you buy into that approach and you project 26 million pounds a year for, well, four years -- that's the first slide that Toni showed -- you hit your target.

You know, really the question still gets back to are we comfortable as a commission doing that knowing we set up kind of a test of wills with the fisheries service because they're marching to the beat of a different drummer? Thank you.

CHAIRMAN GIBSON: Okay, I'll just remind the board that because this is a substitute motion and because I got beat up by the audience for not enough commentary time I'm going to have to go back to them again for this substitute motion.

So are there more board comments before I do that? I'm going to go back to the audience. That doesn't mean I can give you a lot of time but I have to go back through again. Tom Fote.

MR. FOTE: Tom Fote, Jersey Coast Anglers Association. Again we've had a constant harvest in place for three years before this year. We had 26 million pounds in 2001, 26 million pounds in 2002 and 26 million pounds in 2003.

Because of the projections made on that we

went to 30 million pounds for 2005, 33 million pounds for 2006. That was the recommendations. What happened was it didn't project out that we're going to rebuild that fast.

That's understandable. It can happen. But it also can happen the other way around as we've seen with weakfish, striped bass. All of a sudden one year we go from .6 to .3 back to .6 again. Also, when we did the three years at 26 million pounds the biomass was smaller than it is now.

That biomass has been growing all along for these last couple of years. So we have more fish at 26 million pounds actually participating in the spawning stock biomass. So that means it is actually more conservative than we were three years ago as we were rebuilding this stock.

Again, you know, I don't support 26 because I thought we should have gone to 33 or actually stayed at least at 30 million. But if you think about it, we were at 26 for three years with a smaller biomass than we have now and we rebuilt, we kept on going up, up, up to the point that this board in good faith with the Mid-Atlantic Council in good faith and NMFS in good faith went to 30 and 33.

Now we've got a bleep. It basically shook up. I think if the commission was doing this by itself it would have looked at this and said, maybe this is the same thing that happened with striped bass; maybe we should wait a year to see what happens.

But we're not allowed that luxury because this is a joint plan and we have to make some kind of decision. Also, we shouldn't second-guess the Mid-Atlantic Council. They've gone for 26 million pounds.

We're just supporting what our council member has done. And if NMFS comes out with something else, we can always come back in December and iron it out then because you've got a meeting to basically do the reg specs. Thank you very much for your time and patience.

CHAIRMAN GIBSON: Thank you, Tom. And I had Jim Fletcher next.

MR. FLETCHER: In the early '80s there was a gentleman at the center called Chang that predicted that we could harvest 33 million pounds of fish under true science. In 1990 we came in with a precautionary approach and science went out the window.

If you look at the number of 33 million pounds, we had finally reached what true science had said. Sitting in the audience I realized what the cause was. The council and the commission has failed to utilize the fish that could be harvested. They have seen them go in to discards.

And what problem you are facing today and has never been addressed is the payback of the overages or the reduction of the discards. If you look at your figures, and I asked the lady up there to look at them, what are the dead discards at 10 percent?

And as I brought to you earlier today, what would the dead discards be at 25 percent, figuring natural predation into it? And there is where the problem is. You have not addressed either the dead discards or the payback of overages on one sector of the fishery. Thank you.

CHAIRMAN GIBSON: Thank you, Jim. Mr. Bogan.

MR. BOGAN: Thanks, Ray Bogan, United Boatmen. One of the points that I had

wanted to raise earlier and that is that recruitment was not poor, it was below average but not poor and that was an issue that had been emphasized by those who supported the 23.59 million pounds.

Consistent with the lawsuit, the 26 million pound motion again, we, as the United Boatmen, support the idea of status quo being roughly a little over 30 million pounds. But consistent with that motion that is before you, the substitute motion, it meets the target of the plan and specifically the rebuilding goal by 2008.

Regarding the conclusion that fishing mortality exceeded the restrictions in the plan which is based both upon MRFSS as well as landing data of the commercial fisheries, the head of NMFS has told I think just about everybody --I'm fairly confident that he's told you folks -- he has urged you to average you on MRFSS issues.

He has told you that MRFSS cannot be used as it is being used. He has told me until he is blue in his face, we cannot be using it at one year. We have to use it over a three year period at least.

And if you consider the impact that it has had on states such as New York, as Gordon pointed out, that type of use of that data, both in the context of making decisions such as this as well as restricting New York has had an extraordinarily negative effect.

One of the other things I want to point out with regard to Option 2 and that's the first motion if you folks go back to that, and that is there is a projection that was shown before that it would go from 23.59 million pounds up to about 27 million pounds the next year and then higher the year thereafter, the result of which would be a lower biomass in 2008.

But the second thing is there has been a suggestion or an implication that somehow that's a done deal, that you're going to be able to go up to 27. And that isn't a done deal. There is no assurance that we'd go beyond 23.59 million pounds because I think you folks would agree that we ultimately have to meet some target within a time period.

And if you set the target on the annual basis, then it would be difficult to meet that. On the other hand, if you have that three-year averaging you're going to meet it based on the projections that are already before you.

I would like and hope that, although my preference of 30-point-some-odd-million pounds will not be adopted I would hope that in lieu of that that the 26 million pounds constant harvest over a three-year period would be considered.

CHAIRMAN GIBSON: Thank you.

MR. BOGAN: Thanks.

CHAIRMAN GIBSON: Right behind you.

MR. BRUCE SMITH: My name is Bruce Smith. I'm a member of the Sandy Hook Bay Anglers and JCAA. And if you will permit an old man a few minutes I'd like to tell you I've been a recreational saltwater fisherman in New Jersey for 65 years. And I won't tell you how old I am, (Laughter) but I started at a young age, regardless.

It seems to me that there is a self-fulfilling prophecy in this whole approach to fluke management. Every year you say we overfished our quota so the answer to that is to increase the length, reduce the bag limit, and then wonder why we overfish the quota again.

And the next year we increase the length again or almost every year. And it's a self-fulfilling prophecy that we keep going over because it seems to me that the assumption is that we catch the same number of fish. So, if the fish are bigger we're catching more fish so the poundage goes up.

And as the poundage goes up and as the target length goes up, the returns are greater and the mortality is greater and you plug that number in and say, you know, we've got to cut you back again but your poundage went up.

It seems to me we're trying to pull the horse with the cart. And what you ought to do is take a look at reversing it, lowering the length and reducing mortality and letting everybody go home with a fish to eat or two fish or even if it's eight fish. If your discard rate is 20 to 1 and your mortality is 40 percent, if you save that 40 percent it's eight fish.

Seems to me that if you told the public that if they could keep anything over 14 inches up to 16.5, you take your first eight fish and put them in your bucket and you go home. Everybody would be happy.

You'd reduce the mortality and maybe you'd solve your problem because with the fish that you took your total weight, if you follow my analysis, would be that you'd be down to 26 from 30 or 33 or whatever the number is.

And there would be a lot more happy people out there and you wouldn't be punitive to entire fishing communities, bait and tackle shops, you know the whole list of people who are affected.

And maybe you just need to put your

thinking cap on differently and approach it from a different angle. If in fact my first premise was correct, okay, then why don't you just plug the number in, whether it's 18 inches or 19 inches or whatever the number is, factor in the mortality and say the limit is one and you can fish for one day.

And then you wouldn't have to sit here and waste your time. So give it a little consideration. Try, you know, to think outside the box and give that a whirl. Thank you.

CHAIRMAN GIBSON: Thank you, Bruce. Other public comments on the substitute. Jim.

MR. DONOFREO: Thank you, Mr. Chairman, I want to support what Mr. Bogan had to say regarding the maintaining status quo. But in light of what we're seeing here I am urging support of this motion here.

Furthermore, I recognize that this body has voted against a three-year average but I can tell you, as Mr. Bogan said recently at the ICAT meeting which Ray and I are both advisors, Dr. Hogarth had said that he is going to reach out to many of you.

And I know he has had some fishery emergencies and maybe he has not had the chance but he said he recognizes the MRFSS system is broken. They're trying to fix it. They've got the research council looking at it.

And he wants to see the flexibility of the three-year averaging so we urge you all to reconsider this and support this motion that Mr. Freeman has brought. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Jim. I

need to go back to the board now. We're a half hour into scup time. Is there further board discussion or did we call the question? Are we ready to call this question?

Do you need time to caucus? Thirty seconds for caucusing. Do you need more than that? The board needs, the chair needs a biological break. (Laughter) Is the board ready for this question? A.C., before the vote.

MR. CARPENTER: Yes, Mr. Chairman, depending on the outcome of the vote on this issue I'd like the opportunity to put another motion on the floor if this one passes.

CHAIRMAN GIBSON: Okay. Thank you. Are we ready? Read the motion into the record? Whose motion is this? Mr. Freeman, can you read this motion in to the record for us.

MR. FREEMAN: Motion to substitute the 2006 summer flounder quota from 33 million pounds to 26 million pounds and set the 2007 and 2008 quota to no more than 26 million pounds.

CHAIRMAN GIBSON: Thank you. All those in favor of the motion please signify, raise your right hand; those opposed, same sign; abstentions; and null votes. The motion passes 5-4. A.C. you have a follow up motion.

MR. CARPENTER: Yes, Mr. Chairman. Based on the action that has just been taken I'd like to move that the chairman of the commission, the executive secretary, and the legal staff meet with the NMFS people to explain the rationale and with the regional administrator to explain the rationale that we've gone through, outline our thinkings on what this strategy truly means, and seek

their cooperation and understanding.

CHAIRMAN GIBSON: Do we have a second for that? Pat Augustine. I don't know that we have it completely written into the record yet.

MR. FREEMAN: Point of order, sir. We need to vote on the main motion.

CHAIRMAN GIBSON: I'm sorry. That was a substitute motion. Is that what is called as "senior" moment? Okay, do we need to caucus on what is now the main motion? No. All those in favor of the motion please signify, raise your right hand; opposed, same sign; abstentions; null votes. We lost a vote.

We have to see the votes again. All those in favor please signify, raise your right hand; all those opposed; abstentions; and null votes. Five-five. It fails for lack of majority. Okay, now we're back to the original motion.

MR. FREEMAN: No.

CHAIRMAN GIBSON: Okay, we have no motion. Do we have 33 million pounds? Okay. Mr. Cole.

**MR. COLE: Mr. Chairman, I move that the 2006 quota be 23.59 million pounds.**

CHAIRMAN GIBSON: Get it on the board then we'll look for a second. Is there a second to that? Eric, seconded by Eric Smith. Discussion on what looks like the original motion. Howard King.

MR. KING: Only that I would put million after 23.59. There you go. Thank you.

CHAIRMAN GIBSON: Thank you. Okay, to the board, comments. Discussion on this.

Seems like we've had a lot of discussion.  
Ed Goldman.

MR. GOLDMAN: Thank you, Mr. Chairman. I just have a question. I was wondering, the council has already passed 26 million and there is kind of an assumption being made here that they're not going to be allowed to do that.

And I was just curious if we passed this motion and they are allowed to do 26 million pounds, where does that put us? Does that mean we have 3 million pounds less than the feds?

CHAIRMAN GIBSON: Rick Cole, do you have a response for that or a comment to that?

MR. COLE: The only thing I can say is the regional director told the council that she could not support the 26 million at the council meeting. And like the federal representative indicated today, the process is still ongoing and the final specs have not been published. That's the best I can tell you.

CHAIRMAN GIBSON: Other council comments on this motion. We've had a lot of comments on it up to this point. We had comments on the substitute. We had a lot of public comment. And I know I'm going to get in trouble by trying to get some action here.

Does the council want to discuss this particular motion further? And I'll take a couple of comments from the public and then we're going to have to dispense with this. Mr. Bogan.

MR. BOGAN: My understanding is that NMFS is not yet done reviewing this therefore 26 million is still viable, is as

viable as will be 23.59 million pounds.

And you will therefore, if NMFS for whatever reason, either through Dr. Hogarth or whatever, comes up with 26 million averaging, you folks are going to be different than them which means that effectively you will have negated the decision of NMFS and the council.

CHAIRMAN GIBSON: Thank you. Mr. Donofreo. No. Tom Fote.

MR. FOTE: Because of that point I would recommend that you table this motion until the December meeting when you basically can decide what NMFS will have at that point. You can always vote on the motion then.

But why make the decision that the council might make a different decision. I mean I did talk to Bill Hogarth about two weeks ago when we were down in Florida at a meeting discussing this very point. And he said, "Well, I haven't made a decision yet."

And that decision hasn't been made yet so there might be a different feeling on that. So I would hate that we basically pre-dispose and all of a sudden set a direction that might force NMFS to go another way. Let's see what happens and let's basically wait until December.

CHAIRMAN GIBSON: I would just point out in the information document, memo that Bob Beal sent out, there is a timing issue relating to when states' commercial fisheries start, many of them January 1<sup>st</sup>. And they need to go home and set commercial specifications, allocate quotas across the year and so forth, just remind you of what is in that document. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman.

Just with respect to people's concerns about the process and the timing and the sequencing, I'm not concerned about them and this is why. And we kind of got, this resumes a process discussion that took place at the Mid-Atlantic Council meeting in South Hampton a few weeks ago.

The expectation and the hope that we had was that by the time we got to this meeting that the Federal Register notice would have already appeared and for reasons that are beyond the control of this board that didn't happen yet.

But what we do have is not just the statements of the Regional Administrator on the record at the council meeting but also a letter that was sent to us recently that reiterates the same point of view.

Now, I'm a Yankee fan and I know about Yogi Berra and I know what Yogi says. And let me offer a wild prediction that if the Federal Register notice comes out next week and sets the quota at 40 million pounds, that this board will have another meeting between now and the first of January and we will change our quota from whatever we approve today.

And so I think we still have that option. I don't think that passing any motion today locks us in a completely impossible position with respect to any unexpected action by the National Marine Fisheries Service.

But, on the other hand, we have every reason to think on the basis of the correspondence and the previously stated position of the regional administrator that the service is going to publish 23.59 million pounds.

CHAIRMAN GIBSON: Thank you. Comments from the board. Jim Donofreo,

last comment from the audience then we've got to dispense with this.

MR. DONOFREO: Thank you, Mr. Chairman. It appears to me there is an assumption here with some of the members of the board here that the NOAA attorneys, just because they're from NOAA, happen to be maybe brighter than our two attorneys that are in this room today, just because there is a letter from Pat Kurkul and everybody is locked in on what that letters says.

You've heard the interpretation from Mr. Bogan and Mr. Moore on the court decision. And to make these assumptions again based on this letter, that's what comes back to this letter again, has got me concerned here. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. Okay, to the board. Is there a need to caucus on this one? No need to caucus. I'm going to call the question. All those in favor of this motion or do we need to read this one into the record, Joe?

No, all those in favor of this motion please signify, raise your right hand; all those opposed; abstentions; null votes. The vote is tied. It fails for a lack of majority. Mr. Augustine, you have a way out of this?

MR. AUGUSTINE: I haven't made one of these in a while so I'll try. Hope I don't have a senior moment. Let's go the same lines, move that the summer flounder 2000 summer flounder quota be set at 26 million pounds, 2006.

MR. COLVIN: We voted on that motion already.

MR. AUGUSTINE: No, you had other caveats in it before. Before you had 2007

and 2008. I'm suggesting 2007 only, at least it keeps us. I need a second first.

CHAIRMAN GIBSON: Is it six or seven?

MR. AUGUSTINE: Two thousand, I said the previous motion had 2007 and 2008 in it. I want to clarify this for one year only.

CHAIRMAN GIBSON: Thank you, is there a second for that? Bruno Vasta. Pat Augustine.

MR. AUGUSTINE: The reason for that change is that I do sit on the Mid-Atlantic representing our state and I find that we had a very healthy debate about the 26 million. And we did hear from Ms. Kurkul.

And we had a very firm understanding as to where she was coming from. My personal feeling was that she, it was set at the number, 23.59, because of the implications of going to 26 and not being able to meet the target by 2010.

However, we got nowhere with 23.59 and I think the least we can do is try to be consistent with the Mid-Atlantic. Whether you agree with it or not, it is a joint plan. It is what it is. This may move us forward.

In the event that the Federal Register comes out and indicates 23.59 then I think we have to go back and address it. On the other hand, if we're very fortunate and they come through with 26 million, that's a whole different story.

In any event, the follow on motion that A.C. had made that has now been put aside, I do think that motion should be put back on the board if this motion passes.

CHAIRMAN GIBSON: Dave Pierce on the motion.

DR. PIERCE: On the motion because this is for 2006 only, leaving 2007 and 2008 somewhat in question regarding what it will be, I will reluctantly, you know, vote in favor of this motion.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: Two points, one is if this motion should pass I think it essentially would provide the opportunity for the agency to simply disregard it for it's only for one year. There is no indication that we'd meet the threshold or the target we're supposed to under the plan. And although I support what Pat is doing I don't see this doing it.

But, beyond that it seemed to me a point of order. We voted against the motion for 23.59. We voted against the motion for 2006 of 26 million. Does that, to bring this back up, does that require a two-thirds majority since it was defeated?

CHAIRMAN GIBSON: I'll refer that to. Is it the opinion that we can continue to function under a simple majority? This is just another option within the same framework that we're operating under. Gordon Colvin.

MR. COLVIN: Mr. Chairman, I'm convinced that as a result of today's deliberations the board is essentially at an impasse and unable to make constructive progress on the question of the most appropriate quota for next year and the immediately succeeding years.

I think we need more information. I think we need more time and input. And I think we need to see the Federal Register notice. **And with that in mind I am going to move to postpone this motion until the next**

**meeting of the board at its joint meeting with the Mid-Atlantic Council in December.**

MR. TRAVELSTEAD: Second.

CHAIRMAN GIBSON: Just waiting to get the full motion. Okay, was there a second to that? David Pierce? To the motion, Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I recall a few minutes ago that by us doing this it was going to create somewhat of a problem for I believe the commercial fishery in that their season starts January 1<sup>st</sup>. And I wonder what kind of impact does this, if we pass this motion, how negative an impact will it be on that? I don't know if Bob can answer or you, Mr. Chairman.

CHAIRMAN GIBSON: Again the question of the impact on states that start their fisheries.

MR. AUGUSTINE: Yes, that's it exactly.

CHAIRMAN GIBSON: Well, I just speak from Rhode Island's standpoint. You know we have a substantial fraction of the quota. We will have to make up for any adjustments at the tail end.

You know we allocate catch across four quarters of the year and we'll have to make up for adjustments at the tail end if we end up with less fish than we thought we were going to or more fish than we thought we were going to. I can't speak for other states.

MR. AUGUSTINE: I wonder how it would affect some other states that are in a similar situation where a very large portion of their catch occurs in the first quarter.

CHAIRMAN GIBSON: Probably a state with a smaller quota might want to respond because we have, larger shares have some ability to adjust. Eric, did you want to speak to that?

MR. SMITH: Because we're the perennial state with the low quota. We could cope with this if it means the decision we get is like no later than January or February just because of the way the fishery operates and the way we allocate our quota.

And I think most of the northern tier states kind of have that situation, too. The other thing, though, of course, and I'm surprised Vince didn't say it yet, we're supposed to be only debating the date of the issue and not the substance.

On the date I just would urge, joint meetings tend to, as a matter of fact joint herring, for those who don't know, the section meeting has been postponed because the council business got so overwhelming that it took up all the available time.

I would just make sure if we do this that we have plenty of time to finally come to a conclusion on this, even if it means we have to try and project overnight stays and so forth to pick it up the next day because you know how council meetings go.

Things can blow up on you and this is not an easy issue as evidence by the comments we've gotten today. So, assuming we can just take 25 minutes at the end of somebody else's agenda may not really work. Thanks.

CHAIRMAN GIBSON: Thank you. I just want comments again to the timing of the postponement. None. Is there a need to caucus on this? We're going to call the question. All in favor of the motion to postpone signify, raise your right hand;

those opposed; abstentions; null votes. The motion passes. That takes care of that agenda item.

### **Review of Draft Addendum XVI**

Our next order of business for the board is -  
- okay, can we have quiet in the back or discussions outside. I have to keep going. I have to plod my way through this. Next item is review of Draft Addendum XVI, Julie Nygard.

And I was advised last night I was supposed to embarrass her because it's her birthday. I'm not going to do that, but. (Laughter) Congratulations. (Applause) She just turned 21 so she can now have a drink in the bar legally with us if you want to buy her one afterwards.

MS. JULIE NYGARD: Thanks a lot.

CHAIRMAN GIBSON: Okay, Julie.

MS. NYGARD: Thank you, Mr. Chairman. As you all recall at the August 2005 meeting we formed a working group to revise the options presented in Addendum XVI that was brought to the board last year and did not move forward.

So, today we are presenting these options to be approved to go out to public comment. The purpose of Addendum XVI is intended to provide a species-specific mechanism for ensuring that a state meet its management obligations in a way that minimizes the probability that a state's delay in complying does not adversely affect another state's fisheries or conservation of the resource.

This addendum will not modify the existing compliance review and sanction process, nor modify the conservation equivalency procedures for summer flounder, scup and

black sea bass. Issues addressed in this addendum include: delayed implementation of commercial and recreational regulations; maximum implementation periods; and required notification period for states to notify the commission of regulatory changes.

You can see the schedule up on the screen and final approval, assuming things go as planned, would be for the addendum, final addendum to be reviewed and approved at the February 2006 meeting.

First I will review issues for commercial regulations. Problem 1 is the failure to adopt annual adjustments to minimum fish sizes for summer flounder, scup and black sea bass. The options are: Option 1, status quo;

Option 2, states would increase the minimum fish size in the next fishing season by the same amount as the difference between that state's current year size and the board approved size for the same days the regulations was delayed;

Option 3, states would reduce the duration of the next year's fishing season by the number of days the implementation of the appropriate minimum fish size regulation was delayed and the season would be closed for the same days that the delay in the previous year had occurred.

Problem 2 is the failure to adopt the initial Winter I trip limits for scup by January 1<sup>st</sup> and the Winter II trip limits by November 1<sup>st</sup> for the scup fishery. Option 1 is status quo.

Option 2, for each day beyond the designated date that states do not implement appropriate or smaller trip limits states would delay the start of the next year's fishing season by the number of days

implementation was delayed.

Option 3, for each day beyond the designated date that a state does not implement the board approved trip limit for either of the Winter I or Winter II periods the following year the state would reduce their trip limit at the beginning of the season by the difference, the same amount that they had implemented.

Problem 3, failure to adopt reduced scup trip limits for Winter I and Winter II periods when required due to established triggers. Option 1, status quo.

Option 2, for each day beyond the board designated date that states do not implement the adjusted trip limit states would delay the start of the next year's fishing season by the same number of days the implementation of the appropriate trip limit was delayed.

And, Option 3 would be if a state does not implement the board designated adjusted trip limit after the trigger has been reached in the next year's scup fishing season a state would close the fishery for the same days that the implementation was delayed. And this closure would be implemented regardless if the trigger had been reached in that following year.

Next problem is failure to close the black sea bass fishery after the state quota has been reached. Option 1, status quo. And Option 2 is states compensate for overages pound for pound within the first 5 percent of an overage.

Any overages between 5 and 10 percent above the state's quota would be compensated at 1.5 times the overage amount. And any overage above 10 percent would be compensated at 2 times the overage amount.

And the specific percentages and multipliers may be modified based on public comment. That covers the commercial regulations. And moving on to the recreational regulations.

Failure to adopt board approved size limits for summer flounder, scup and black sea bass, Option 1 is status quo. And similar to the commercial regulations, Option 2 would be states would be required in the following fishing season to increase the minimum size limit by the difference between the board approved size and the minimum size implemented by the state. And that increase would last for the same amount of time that the delay had occurred in the previous year.

Next, the failure to adopt board approved seasonal closures for summer flounder, scup and black sea bass, Option 1, status quo. And Option 2 states would reduce the duration of the next year's fishing season by the number of days the state fished beyond the board approved closure date.

Next, the failure to adopt board approved possession limits for summer flounder and scup by the date the current season opens. Option 1, status quo. Option 2, states would decrease the possession limit by the amount of the difference between the board approved limit and the possession limit implemented by the state. And again that would last for the same time period as the delay occurred in the previous season.

And, Option 3, states would delay the opening of the next year's fishing season by the number of days that the delay of implementation was in excess of the board approved date.

Next delayed implementation of possession limits for black sea bass by January 1<sup>st</sup> or the

date the current season opens, whichever is later, Option 1, status quo.

Option 2, states would decrease the possession limit by the amount of the difference between the board approved limit and the limit implemented by the state, again, at the same time period as the delay occurred in the previous season.

And to note that states that have recreational black sea bass fisheries that do not begin until the spring of each year, they would be required to implement the required possession limit prior to the start of the MRFSS wave during which 500 or more black sea bass are landed.

Option 3, states would delay the opening of the next year's fishing season by the number of days the state implemented a possession limit in excess of the board approved maximum. And again, the same caveat for states that have recreational fisheries that start in the spring. They would be required to implement this delay, delay the season until after the first MRFSS wave where they land 500 or more black sea bass.

The final issue, the next issue addressed in the addendum is a maximum implementation period. Currently none of the commission's management programs include a minimum time period for staff to provide notification to the states before management changes can be required, nor is a maximum period for a state to implement the change required.

And a notification period will allow states time to make the required changes and should make implementation dates more consistent among states and hold states accountable for required management changes.

Options in the addendum are: Option 1, status quo which is no implementation, maximum implementation period; and Option 2, commission staff will notify states within three working days prior to requiring a management change.

And a state will have a maximum of seven calendar days to implement any required changes upon notification by the commission, which would allow states sufficient time to notify the fishermen and dealers of a change.

Finally, the addendum addresses required notification periods for states to notify the commission of regulatory changes. Option 1 is status quo. Currently annual reports are due on June 1<sup>st</sup> and the board requires notification of other measures on a case-by-case basis.

Option 2, minimum notification period. States would have to notify the commission staff within seven calendar days of any management changes. And states would continue to submit annual reports on June 1<sup>st</sup>. That's it.

CHAIRMAN GIBSON: Thank you. Are there questions for Julie? And, again, I guess the action we're looking for is simply to approve this to go out for public hearing, not selection of final options. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. I was out of the room when the subject was introduced so I'm not sure if I'm covering ground you already did but there was pursuant to a prior direction of this board a subcommittee of four board members that worked with staff to develop this current addendum. And in doing so -- and I guess I should also say that somebody decided I was the chairman of that group so that's why I'm

shooting my mouth off.

CHAIRMAN GIBSON: Somebody decided I was chair of this group. (Laughter)

MR. COLVIN: That was voted on right here. That's kind of why I'm speaking up and just saying that I felt that I wanted the board to understand that the members of that committee are all unanimously supportive of what is in front of you.

We felt that it was necessary to get very specific about what kinds of measures might be delayed and what were the appropriate means to compensate the fishery — and that's what we're talking about here is prevent the consequences of delaying implementation, to essentially neutralize those consequences over time and to communicate that effectively.

And I think staff has done a good job of translating the subcommittee's intentions into the text of a proposed addendum. **I believe the next step here is to approve the addendum for public review and comment and on behalf of that subcommittee I do so move.**

CHAIRMAN GIBSON: Thank you. We have a motion to send this to public hearing.

MR. ADLER: I'll second.

CHAIRMAN GIBSON: Bill Adler seconded it. Okay, board discussion on this motion. Gil Pope then Harry Mears.

MR. GIL POPE: Thank you, Mr. Chairman. I'm just curious as to why Issues 3, minimum implementation period, and Issue 4 required notification, really have to go out to public hearing. I'm just curious.

It seems like that's more like in-house type

matters and whether it really needs to go. And I'd also like to get, if possible, some staff feedback on how they feel about Issues 3 and 4. Thank you.

CHAIRMAN GIBSON: Bob.

MR. BEAL: Well, you know the staff worked with the subcommittee that Gordon just mentioned to develop the document. You know members of the subcommittee were comfortable with the timing of that. You know, staff feels that the, once information becomes available we can turn that around in the time that's listed there.

And as far as these going out to public comment, you're right, we probably won't get a whole lot of public comment on how many days a letter needs to go to a state in advance of any action but it's part of the addendum and if the public wants to comment on it, then it's fair game.

CHAIRMAN GIBSON: Harry Mears.

MR. MEARS: Thank you, Mr. Chairman. National Marine Fisheries Service has commented on previous iterations of this addendum, both in writing and verbally and I just want to repeat it.

Looking ahead to potential compliance actions that may or may not occur as a result of approving this addendum at some point in time, the Secretary in reviewing findings of non-compliance must rule on two primary factors: 1, whether or not the action that the non-compliant state has not taken is necessary for the effective implementation of an interstate fishery management plan; and,

Number 2, that the action that the state has not taken is necessary for conservation of the resource. Now in the case in question

we're addressing what could arguably be construed as the result in action of the price a state would have to pay for a non-compliant action.

The only reason I'm bringing this up is that at such time as the Secretary would get involved in cooperation with the commission on findings of non-compliance, that I would urge that this board pay very particular attention that the addendum during the public information document period and certainly prior to the time it's reviewed, anticipate findings of non-compliance and enhance to the extent that it can, that both tests are met -- that an action that's not taken would be necessary for an interstate management plan and, more importantly perhaps, that the action the state has not taken is necessary for conservation of the resource. Thank you.

CHAIRMAN GIBSON: Eric Smith.

MR. SMITH: Yes, forgive my, if I'm going to cover something that just got said. I was unfortunately trying to do two things at once and missed something that came up. I also agree that in average circumstances we're not going to have much public comment on this.

I mean it really is something to regulate ourselves to do the right thing. But the thought occurred to me that I think we want to plan our public hearing process in a way that doesn't give the issue the wrong kind of attention, attention that it doesn't deserve.

I guess I'd like to develop that a little further with staff as we start to develop how we go out and get comment on this. So, enough said on that.

CHAIRMAN GIBSON: Okay, any other board comments or discussion? Okay, I'll

go to the public. Herb.

MR. MOORE: Herb Moore, counsel for the Recreational Fishing Alliance. Thank you, Mr. Chairman. I haven't had a chance to review the latest version of Addendum XVI but I'll just be frank with the board.

When the last version of Addendum XVI came out, we were unhappy with it. We submitted comments very critical of it. And it looked like the board was basically going to leave Addendum XVI on the shelf for a while and frankly that's where we had hoped Addendum XVI would stay.

Forgive me if the latest version of Addendum XVI, some of the concerns that I'm going to raise, have been addressed but I just want to touch on a couple comments that we made during the last round of public hearings.

The statement of the problem in the last Addendum XVI said traditional non-compliance findings and sanctions under the Atlantic Coastal Act are not sufficient to address implementation delays of days, weeks or even a couple months.

From the RFA's standpoint, being labeled out of compliance with the FMP and facing a federal moratorium on all fishing for summer flounder, scup or black sea bass is a very sufficient sanction for states to face.

Time and again we've seen states scramble and exert a tremendous amount of effort to avoid a non-compliance finding that would lead to disastrous social and economic consequences. If a state delays complying with an FMP in the recreational fishing sector, MRFSS doesn't stop estimating recreational catch.

Therefore, the ASMFC still accounts for fish

caught during that period of time and already has the ability to impose tighter recreational measures the following year, including shorter seasons, smaller bag limits and larger minimum size limits.

I think it's also important that the board looks at why the states are delaying compliance. We've seen examples in the past of states delaying compliance because of questions concerning the accuracy, reliability, precision of MRFSS. That's something that shouldn't be ignored.

Finally, I'll just mention in the statement of the problem from previous Addendum XVI, the document said the management of summer flounder, scup and black sea bass has repeatedly been impacted by delays in implementation of required regulations.

As this statement pertains to the recreational sector, we feel that measuring an implementation delay of days or weeks is an extremely gray area, measuring how that impacts a stock.

And we feel like with all the items that the ASMFC is charged with complying with as it is, it's an area that shouldn't be taken up by ASMFC resources at this point. So, I will conclude with that and thank you for the opportunity to comment. Thank you.

CHAIRMAN GIBSON: Thank you. I just want to ask Julie if she could just let the board know how those comments were responded to in the updated version because there seems to be some perception or at least unawareness of the changes that were made.

MS. NYGARD: That was the main reason we formed this working group was to address some of the concerns that were voiced from the last round and to refine the options presented and to point out that these

are intended to hopefully address the delays and prevent them as opposed to having to be implemented frequently.

CHAIRMAN GIBSON: Thank you. Other comments relative to this. Yes.

MR. JOE MEYER: Thank you, Mr. Chairman. Joe Meyer from the ASMFC Law Enforcement Committee. The ASMFC Law Enforcement Committee will be commenting on this addendum in writing at a later date but some general comments is that the law enforcement community finds it difficult to have seasons, size limits or bag limits which would change in short timeframes.

There needs to be some consistency to the greatest extent possible to facilitate compliance with any regulations that we pass. Some of these options presented would cause a number of difficulties for law enforcement. Thank you.

CHAIRMAN GIBSON: Thank you. And you will be, the committee will be providing staff written comments?

MR. MEYER: That's correct.

CHAIRMAN GIBSON: Okay, thank you. Other comments on this motion. Back to the board. Are we ready to call this question or to caucus? Okay, 30 seconds I guess to caucus then we'll call this question.

Okay, are we ready? Are we ready for the question? All those in favor of the motion to send Addendum XVI out to public comment, please signify by raising your right hand; any opposed; you can't vote twice, Gordon; any abstentions; null votes. The motion passes. Julie needs to know which states would like to have hearings.

MS. NYGARD: Can I see a show of hands if you would like hearings, please.

### **Scup Quota Allocation**

CHAIRMAN GIBSON: All right, thank you. Next agenda item, scup quota allocation discussion. And I believe this item flows from the difficulties a number of states are having delivering a reasonable recreational fishery for scup in the summer and a white paper that was put together by Gordon Colvin on behalf of the states New York, Connecticut, Rhode Island and Massachusetts. And Bob has circulated a memo with staff comments on the white paper. So, Julie. Bob, are you going to take care of that?

MR. BEAL: Sure. I'd be glad to. Thank you. I'll just, as you said, Mark, Gordon presented the paper on behalf of the four states or introduced the paper at the last meeting. A copy of the paper was just passed around.

I think it was passed around at the last meeting as well so I think folks have had a chance to look at it. I will just quickly go through the comment, the staff comment memo that I put together.

The white paper boils down to more or less three different issues that those four states would like to have addressed as far as the scup fishery goes. Those issues are: reallocation of the unharvested Winter I quota.

In the white paper it, there is a discussion of the poundage of unharvested Winter I quota and there is substantial, I think 6 or 8 million pounds over the last three or four years that have not been harvested in the Winter I quota so there is a discussion of reallocating this quota to the Summer commercial

fishery as well as the recreational fishery. And so that's Issue 1 that's addressed in the white paper.

The second issue is to address the commercial/recreational allocation as the quota increases. The concept here is that as the scup resource continues to rebuild, we hope, the commercial and recreational allocation that's currently in the plan, which is 78 percent commercial/22 percent recreational, that allocation would be adjusted to provide more fish to the recreational sector relative to the commercial sector.

The Item Number 3 is to adjust the allocation of the commercial quota to the three harvest periods. Currently there is the Winter I period which is a coast-wide quota, the Summer period which is divided on a state-by-state basis, and then the Winter II quota period which is the November and December period which again is a coast-wide quota.

There is a discussion in the paper about adjusting the percent shares that go to each of those harvest periods, increasing it so that, again, there is less fish left on the table or unused in the Winter I quota period.

Going on to the staff comments, I just kind of reiterate that these states brought this forward. And the states that in the paper as well as discussions that I've had with them between the last meeting and this, they've indicated that Item Number 1 in the list of three there that I have is the one that they would like to see addressed first, which is the reallocation of the unused Winter I quota.

As I mentioned, there is a lot of, there is a substantial poundage of fish being left unharvested in the last few years and they

want to see if there is an opportunity to use that available fish in some other sector of this fishery.

As I mentioned earlier, that this transfer would shift fish from the offshore Winter trawl fleet to the Summer inshore commercial fishermen and the recreational anglers. Staff recommends that this action is substantial. It's shifting quota between different user groups and an amendment is likely in order to achieve this adjustment to the fishery management plan.

In Amendment 12 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan there is a list of -- I don't have it in front of me -- 23 or 24 items that can be adjusted through the council framework process or the commission's adaptive management process which is through an addendum.

That list does contemplate adjustments to commercial quota. It doesn't, on the list it doesn't explicitly say that we can shift fish from commercial sectors to recreational sectors or among different user groups; however, there is the last item or the second to last item on that list is a catch-all item which is "any other management measure included in this document."

So you know there is obviously some room for interpretation of that last item and there probably will be a discussion around the table of that. But I just wanted to highlight it. But, the staff recommendation is based on the fact that you know it's a fairly substantial action which is shifting fish from one user group to another.

The memo that I put together goes on to describe a couple or an approach that could be taken to put together this amendment. This could be done independently by this

management board. But if the board takes on this issue solely without the consultation with the Mid-Atlantic Council or done jointly with the council, there is likely we'll end up with a discrepancy between the state and federal commercial and recreational quotas.

The Mid-Atlantic Council, as I think all of you know, is initiating Amendment 14 to address some Sustainable Fishery Act deficiencies that are currently included in the amendment or that need to be addressed in the current management document.

Those are a rebuilding schedule and I think some essential fish habitat issues. One suggestion would be for this board to go back to the Mid-Atlantic Council and ask them to include the reallocation of the unused Winter I quota in Amendment 14.

It's different than the work plan that they had laid out at their last meeting and you know it's something that we'd have to go back and request the council consider that and you know have a joint planning meeting to see what the impacts of that request would be.

The memo goes on to wrap up with the council is also initiating Amendment 15 which is designed to address summer flounder, scup and black sea bass management issues or potentially address those.

And the longer-term goals which are Items 2 and 3 from the first page of my memo would probably most appropriately be addressed in Amendment 15 as the council moves on with that amendment. So that's just a quick background on staff interpretation of how we can go from this white paper to an actual management document.

CHAIRMAN GIBSON: Gordon, I knew you were going to want to discuss that with Bob.

MR. COLVIN: I do and before I do I want to offer some other points to make the board aware of the context of this request and where it all fits. The white paper was originally transmitted as a final document to each board member individually by mail I think back in August or September so you've had it for some time.

And it was a document that was signed by Chairman Gibson, Dr. Pierce, Mr. Smith and myself, representing a proposal made by the four states and also an assessment of how our joint project to try to manage this fishery cooperatively as a four-state cooperative endeavor has been going.

There is a few things that have happened since then that I think it's worthwhile just laying on the table to make sure the context for the discussion is complete.

One of them is that we've gotten a recreational landing estimate this year through Wave 4. and we still have three states, three of the four states still have Wave 5 open so it's far from complete but I think the Wave 4 catch estimate was about 1.39 million fish with 4.2 million as the quota. So we're doing good and I don't know where we'll end up, of course.

And I'll be the very last person at this table to try to prognosticate what MRFSS might do. But we may have some opportunity there at the end of the year to evaluate whether our admittedly and deliberately conservative four-state program resulted in an under harvest of the quota and what the implications of that might be, all by itself, for next year. Let me just put that out there and make folks aware of it.

The second thing is as relates to the current process of the roll over of the Winter I unharvested quota to Winter II, we've been doing that now jointly with the Mid-Atlantic Council for three years and it's been pointed out in the paper.

And we have been rolling over impressive amounts of unharvested Winter I quota despite the fact that we have increasingly relaxed trip limits in Winter I to the point where we're up to 30,000 pounds over two weeks now. It isn't making a difference.

And up until now we really haven't harvested any of that rolled over quota in Winter II. Now this last year some commercial fishermen -- and since this paper was written -- some commercial fishermen came to the quota setting meeting and suggested that we ought to increase the trip limits in Winter II to see if the Winter II quota itself could be more effectively utilized and including more effective utilization of any of the rolled over quota.

And I just think everybody needs to be aware of that. I personally don't think it's going to change anything. But, I wouldn't want us to proceed without reminding ourselves that we did that.

Now, I understand Bob's advice on the process. And I would, I'll speak for myself now because I think we're now starting from here and moving forward. I don't know how receptive the Mid-Atlantic Council will be to adding the issues addressed in our white paper to Amendment 14.

I would hope that they would be but I was there at the council meeting and the sense I had is that the council really wanted to confine Amendment 14 pretty tightly to the SFA compliance requirements and utilize

Amendment 15 which was expanded in scope from fluke to include scup and sea bass to address all other management issues.

So I don't know what the outcome will be but that was the mindset of the council at the time they made that decision. We can see. And we ought to pursue that. At the same time I think it would be useful to continue to have a dialogue about the prospect of some action unilaterally on the part of ASMFC to address unharvested Winter I quota.

I will suggest that we could in fact consider allocating that quota to the recreational fishery without getting in trouble with having different federal quotas as we have had in the past.

On the other hand, if we were to do exactly as we have proposed in the white paper and reallocate some of it to the recreational fishery and some of it to the Summer commercial fishery, then we would in fact create the problem that we had in the past where we had a disconnect between and a higher state Summer quota than the federal Summer quota.

And you know, notwithstanding that, I would suggest that we continue to have a dialogue about taking such an action as an interim measure to address the goals that are outlined in the paper.

And I think you know the goals are quite clear. And I think that there is a very strong desire, an extremely strong desire, on the part of the four states to attempt to attain the near-term measures that are outlined under the three bullets following Item Number 1 on Page 2 of the white paper.

That is what we want to do just as soon as we can. And we think that we might have a very substantial, we might be able to make

very substantial headway towards those three items with a little bit of additional quota.

And I would also just point out that we're not really talking right now about transferring quota from one harvest sector to the other. We're talking about making use of quota that isn't going harvested. And I want to emphasize that, that isn't going harvested and hasn't been for years.

So, let me just commend that to your attention and suggest that we would, I, at least, would like to see a continued discussion of this proposal for implementation next year at least insofar as the commission and this board can do unilaterally involving the recreational fishery. Thank you.

CHAIRMAN GIBSON: Thank you, Gordon. David Pierce.

DR. PIERCE: Well, I have a motion to make, Mr. Chairman, and some prefacing remarks but I'll cut those remarks very short because of the time and also Gordon covered all the bases. Clearly, it's very important to the four states and New Jersey included since New Jersey has become a greater player recently with the scup recreational fishery.

It has become more and more important for us to resolve this issue of how to deal with the scup recreational fishery's issues, specifically, and how for us to do it in a timely way. We've discussed this, the four states in particular.

And the white paper has been assembled. We assume you've had a chance to look it over. Gordon has already highlighted the points within that white paper and now we've gotten some excellent staff work

regarding some suggestions as to how we should proceed.

And, clearly it does seem as if we need to move forward with an amendment. And it does seem very important for us to move forward with the Mid-Atlantic Fishery Management Council, recognizing that they have a hesitancy to deal with our specific issues at this time.

They want to include it in a future amendment not the one they're working on now, Amendment 14. Amendment 15 definitely would be unacceptable to us, I think this whole board as well, because we know that's going to be a very large, all-encompassing amendment.

And, frankly, I would suspect we'd be looking at four years down the road, a minimum of three years down the road. And as a group of states we don't want to wait that long. There are too many important issues to deal with.

And I'll also note that we're not suggesting at this time certainly that we reallocate scup in particular between recreational and commercial fisheries, that is change the percent share. We don't want to do that. We choose a different route, a route that we think is much simpler.

And again Gordon has tapped into that, already described it, unused commercial quota, Winter I, would go into the Summer to be split between the recreational fishery and also the commercial fishery.

**So with all that said, you know, citing the urgency as we see it to deal with this issue in a timely manner I would move that ASMFC in conjunction with the Mid-Atlantic Fishery Management Council, initiate an amendment to the Scup, Sea**

**Bass and Summer Flounder FMP to define a rebuilding program for scup and reallocate unharvested scup from a commercial Winter I period to the Summer period -- so that would be unharvested scup from the commercial Winter I period to the Summer period -- to be divided equally between recreational and commercial fisheries.** And if I get a second I'll elaborate a bit more, Mr. Chairman.

CHAIRMAN GIBSON: Seconded by Gordon Colvin. Just a question from the chair, this motion, Gordon has suggested perhaps a more streamlined approach of working only with transference to the recreational fishery.

Do we continue to pursue that at the commission level while this is going on given the timeline likely for this amendment? Just so I understand what you're suggesting. Or is this a replacement for that process?

DR. PIERCE: Well, go ahead, Gordon.

MR. COLVIN: I think the motion is consistent with joining the question of the transfer of the unharvested with Amendment 14 which is due to be completed by next August, and it has to be under its SFA deadlines.

That means that it would not be available to us as a management tool for the 2006 fishery. I would suggest that if in the event this motion passes that the board also engage a dialogue with its partners and people in the fishing community about the possibility of a limited transfer.

Of course this all assumes there is still unharvested surplus in Winter I '06 and I think we all think there will be but assuming

that there is, to address the question of a limited transfer of that, of some of that surplus into the recreational fishery for next year. I think we could do that at the same time in a dialogue driven process.

CHAIRMAN GIBSON: Thank you. Board comments on the motion. Rick Cole.

MR. COLE: I guess I would ask commission staff if in fact they've had any deliberations with the council staff on the possibility of including these changes in Amendment 14.

MS. NYGARD: No, we have not.

MR. COLE: Okay, well, that concerns me from the standpoint that like Gordon has indicated, Amendment 14 as it stands right now has a very tight timeline. And when I say "tight timeline" there is the rebuilding issue that has been hanging for a number of years.

But there is now also this issue, and it was based on a letter that Pat Kurkul sent to council and we reviewed at the last meeting, that the stock is now considered overfished and the council has to address overfishing within a very tight timeline. And I assume that was Gordon's reference to August and that must be what the timeline was.

Now, by adding this additional work into the process I don't know if it's possible to in fact meet that deadline. And if we don't meet that deadline then I would assume that the service would address the overfishing issue themselves.

So, I'm just reluctant here. I mean I'd feel a lot more comfortable if I knew what the council staff was thinking because they're going to have to do the bulk of the work on this. And they could give us a more realistic

viewpoint on whether or not it's possible to do it. So, here lies my concern.

CHAIRMAN GIBSON: Jack Travelstead.

MR. TRAVELSTEAD: I have some of Rick's same concerns. I don't mind at all what you all are trying to do. But normally when we talk about amendments to plans we're in joint session and we have similar motions from both groups.

And you know if they both pass we proceed down the line and I'm just wondering. I guess at some point a similar motion will be made at the council, at the December meeting to see if this happens?

And I wonder if Dan Furlong could comment on what this means relative to all the other amendment processes that we've set out just at our last meeting of the Mid-Atlantic Council, rather.

CHAIRMAN GIBSON: Dan, would you be willing to comment on that?

MR. FURLONG: Thank you, Mr. Chairman. Yes, I have the same concerns that Rick expressed. This is news to me. I hadn't heard anything about this. But I do know that the council has set it's "docket" if you will, in terms of its schedule of amendments that are necessary to satisfy the agency, especially in two areas.

One is scup and the other is butterfish where there is statutory responsibilities laid out in the Act that say, hey, when the agency declares or when the Secretary declares them as overfished you've got a one-year period to get that fixed.

And scup and butterfish are the two that you know absolutely, you know, if you will, "laser shot" amendments. I don't see the

opportunity to fold this in to the rebuilding schedule for scup. That's a personal opinion.

Now the council, of course, may make a different decision. My personal opinion is that, no, that's not the sense I had coming out of our last meeting. And if we were to get a request from the commission I would certainly give it to the committee and the committee would be the first level of review before it came to the council.

CHAIRMAN GIBSON: Thank you. I had Bruce Freeman then Dave Pierce next.

MR. FREEMAN: Thank you, Mr. Chairman. Perhaps either Gordon or Dave could address this issue but I'm curious if, how this reallocation would work. Under the present circumstance there is a surplus. But if in fact in the next year or two there were not a surplus, would this revert back to Winter I or Winter II? Or is this a permanent reallocation?

MR. COLVIN: My understanding is that there is no, if there is no unharvested Winter I quota there is nothing to transfer for that year into the Summer period.

MR. FREEMAN: All right, so it would be predicated on, this would be a year-by-year situation? All right.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: Yes, I would suggest that -- I'm very sensitive to the Mid-Atlantic Council's concerns. I mean I was at the last council meeting, the one before that, and I know that they've got a heavy agenda with regarding scup and rebuilding schedule, et cetera.

But, clearly, we need to have the same sort

of rebuilding schedule and our staff could provide some assistance. It would be a joint effort on both staffs to get that work done. But, I would suggest that the Mid-Atlantic staff could take the lead on the rebuilding program and then the commission staff could take the lead on the rollover issue and that way we could get it moving and get it done in a timely way, I would hope.

Now this is again a real important issue for the states. There is a lot of history here with regard to how we've dealt with the recreational fishery for scup. There has been a lot of agony, a lot of pain, a lot of meetings and a lot of adverse consequences within each of our individual states because of the nature of the restrictions we've had to impose on the recreational fishery.

And I can cite many of them but I won't right now. The Mid-Atlantic Council has been fortunate with regard to the recreational fishery for scup because every year it sets a pro forma EEZ recreational fishery strategy which really doesn't involve any work and no pain.

It's an easy softball, frankly. The hard work, the real hard work, the work in the trenches, is done by the states on the scup recreational fishery's issues.

As a consequence of that the Mid-Atlantic Council, working with us as partners on scup management, specifically, I hope, would be sensitive to our concerns and would be willing to move forward with this because, frankly, it makes a great deal of sense and it would attend to the very serious and legitimate interests of the scup recreational fishery that certainly in this year, this current year, was impacted very, very heavily, very, very heavily in the state of Massachusetts and probably in the other states as well.

So, I urge the board to you know adopt this motion so we can move it forward and then initiate those discussions with the Mid-Atlantic Council and hopefully you know the council will be willing to move in this direction which is a critical direction for all of us to move forward in.

CHAIRMAN GIBSON: Thanks, Dave. Jack Travelstead.

MR. TRAVELSTEAD: I have no prejudice to the motion but I just feel like we need some time to have the two staffs from the commission and council get together and determine how this amendment is going to affect all the other things that we've talked about over the last several months and report to us at the joint meeting we're going to have with the Mid-Atlantic in December and then at that point bring the motion forward before both groups. I would feel much more comfortable with that.

CHAIRMAN GIBSON: Eric.

MR. SMITH: Yes, life is replete with all its little disappointments when you hear a debate and you realize, damn, why didn't we think of doing that. My apologize to Dan because none of us clearly thought, you know, it might not be a bad idea to go talk to the Mid-Atlantic Council staff about, you know, this idea before we started to debate it in a public meeting with a -- I thought Dan took that news rather well.

I commend him for it. But that's water over the dam. I mean we'd like to pursue it but we're sensitive to the Mid-Atlantic Council's concerns. The other thing I'm concerned about with this, the terminology in this I think is going to be everything.

And I think at the outset we shouldn't talk

about "reallocation" which keeps cropping up and, as Gordon points out, it really isn't. That's a poison pill if we want this thing to die because people are apprehensive about what it means.

It's really using unused quota later in the year. And however we find a way to keep saying it that way or some similar way and not use the dirty words of fishery management we'll be a lot better off. Thank you.

CHAIRMAN GIBSON: Any other board comments on the motion? Gordon Colvin.

MR. COLVIN: I appreciate Jack's Travelstead's recommendation and I think it's probably a wise one. It isn't just the Mid-Atlantic Council staff that probably, you know, got one out of left field here today.

It's also the ASMFC staff because I think most of us would assume that this being a limited ASMFC driven issue that our commission staff would have a substantial responsibility for developing what needs to be developed to support it as part of Amendment 14.

So there is a need for the commission staff to also think about this in the context of the action plan discussion that's upcoming tomorrow and so forth. So I think you know Jack's point is probably wise.

I think perhaps some consultation between the staff of the commission and the council to ascertain the best way to address this would be helpful. And I think you know frankly the four states probably need to think about how we can help out if we need to as well.

CHAIRMAN GIBSON: Dave Pierce then

Jack.

DR. PIERCE: Eric had a suggestion and I'm sensitive to it. Perhaps to take out the poison pill if it can be reference in that way, instead of reallocate just transfer. So define a rebuilding program for scup and transfer unharvested scup from the commercial et cetera, et cetera. If that's fine with the seconder I'll just rephrase it.

CHAIRMAN GIBSON: Does the seconder agree with that?

DR. PIERCE: Because clearly any relocation would involve, likely, Amendment 15 where then we talk about, as we've said time and time again, the percentages between commercial and recreational fishermen and that's a huge issue. So, transfer is the word.

CHAIRMAN GIBSON: Okay, we have an improved motion. Jack Travelstead.

**MR. TRAVELSTEAD: Mr. Chairman, I want to move to postpone the motion until such time as the staff of the council and commission can meet and determine how this affects all of our other processes and report to both the commission and council at the joint December meeting.**

CHAIRMAN GIBSON: Okay, so the motion is to postpone until the December meeting or would it be moved to later if there hasn't been a consult? Is it dependent upon a consultation?

MR. TRAVELSTEAD: No, I'm satisfied that that will occur before the joint meeting.

CHAIRMAN GIBSON: Okay. Motion to postpone effectively until the December joint meeting. Is there a second to that? Pat Augustine. Now a discussion on the time

for postponement. Any comments or discussion on that?

Probably not. We need to call that question. Any need to caucus on that? Okay, all those in favor of the motion to postpone, please signify, raise your right hand; any opposition; abstentions; or null votes. The motion to postpone passes. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. One last point on this and building a little bit further on Bruce Freeman's comment about, you know, how would you do it if you -- to get to the question of my thought about considering some interim action next year limited to the recreational fishery.

The thought I had about how that might work is this, and I have discussed this a little bit with Dave Borden who as many of you know is looking into this issue as well. Let's assume that the Winter I commercial fishery once again under harvests its quota by about 2 million pounds.

One option we might have is as a group of states to make the decision -- now, normally that 2 million under previously approved actions goes to Winter II. We could take action such that we will manage our Winter II quota to close when the Winter II quota plus 1 million pounds has been harvested.

And when we submit, develop, submit and approve our recreational plan for next year it could be done on the assumption that it is the recreational quota plus an additional million pounds. That gets, you know that is one way it could be done.

Under that scenario the commercial quota, that which has been adopted by both the states and the National Marine Fisheries Service, is not exceeded; the Summer quotas are not exceeded; and the surplus 2 million

pounds is made available for use in both the recreational fishery and the Winter II commercial fishery.

CHAIRMAN GIBSON: You're not making that in the form of a motion.

MR. COLVIN: No, I'm saying that I would continue to appreciate some continuing discussion about the possibility of taking action of that nature on the part of the commission unilaterally for 2006, assuming, of course, that there is an under harvest of the Winter I quota again. And I think those are decisions we can make next winter in consultation with our partners and our stakeholders.

CHAIRMAN GIBSON: So does the board have any problem with this group continuing to discuss that possibility and develop a possible course of action, unilateral action as Gordon has described? Doesn't seem to be any opposition to us continuing those discussions and ideas. Bruce, did you want to make a comment?

MR. FREEMAN: Yes, I just had a question of Gordon. I can understand your rationale, Gordon, and see it working but if for example the recreational were to gain additional quota and it came in the Summer, I could see this working very well for New Jersey because our fishery usually starts after August.

But for those states who have a May-June fishery, they would not be able to utilize that. And since it's the commercial quota it couldn't be carried over to the next year. It would have to be used within that year. So I don't know what the answer is and I suspect you've given some thought to that but that seems to be.

MR. COLVIN: You're right, Bruce. It has

the limitation of not becoming known until the end of the Winter I harvest period which makes it difficult to translate any of that savings into the early part of the recreational fishing season.

That's reality. But nonetheless it could be used later in the season. And I think this is a year when some of us would have very much liked to have seen that possibility. Massachusetts, for instance, had no fishery after August 31<sup>st</sup>. I know they would have liked to have fished at least in September.

#### **Update on Black Sea Bass Measurement**

CHAIRMAN GIBSON: So we'll continue to discuss and flesh out those ideas of how to do that. Anything else on scup quota allocation? We've dispensed with that and I'm almost back on time. Update on black sea bass measurement. Julie.

MS. NYGARD: At the August 2005 meeting we discussed the issue of discrepancies between states on measuring, including or excluding the tendril or also known as the tail filament on black sea bass. And we passed a motion to exclude the tendril from measurements of black sea bass.

Subsequently, we found out that most states, only a couple states specifically exclude the tail filament or tendril in their state regulations and that the others in most cases do not specify and that brings up an enforcement issue where law enforcement cannot enforce an exclusion unless it is specifically written into the state regulations. And at this time staff needs directions on how we want to move forward.

CHAIRMAN GIBSON: Gordon.

MR. COLVIN: I think the direction was

already given in the specification that indicated that the tendril should be excluded. What I'm not sure of is, and there was some dialogue on it and then my memory eludes me as to how it got closed, is where the federal regulation is.

My belief is that the federal regulation presently excludes the tendril, but that I was assured that the package that would be published for the specs for next year would specify that -- I'm sorry, that the tendril would be excluded.

The other thing I want to bring you up to date is that yesterday a package of amendments to New York state's regulations was filed as a notice of proposed rulemaking. It will be published in the state register in a week and a half and that makes the change for New York, among other things, to exclude the tendril in the measurement of black sea bass. We took that action based on the prior action of the board.

CHAIRMAN GIBSON: Okay, A.C. Carpenter.

MR. CARPENTER: Yes, Mr. Chairman, thank you. After the last meeting PRFC moved to adjust its commercial regulations so that we now exclude the tendril. And we intend to adjust the recreational regulations when they are adopted for 2006 and would exclude them as well.

CHAIRMAN GIBSON: Thank you, A.C. Preston.

MR. PATE: Thank you, Mark. I'll have to check when I get home just to be perfectly sure but I thought our rules excluded the tendril also. They don't?

MS. NYGARD: They do not specify.

MR. PATE: What?

MS. NYGARD: They don't specify so in other words it can't be enforced. It doesn't specifically say it includes or excludes the tendril.

MR. PATE: Okay, thank you.

CHAIRMAN GIBSON: Okay, other comments on this issue. Gil Pope.

MR. POPE: Thank you, Mr. Chairman. I'm just curious as to how the public is reacting to something like this in making it a little bit more complicated for them to figure out how to measure these fish. That would be my only worry about this. Thank you.

CHAIRMAN GIBSON: I don't know that we have any public input at this point on this.

MR. CARPENTER: Gil, we drew them a picture.

CHAIRMAN GIBSON: There is no action needed here. I guess that is the update on black sea bass measuring. Eric Smith.

MR. SMITH: Julie, when you polled states, you know Pres is perplexed and I just read our regulation and now I am too based on this. I guess the question is, you know, from -- all right, there must be a fish biologist in this room somewhere. I'm not sure who it is, though. Is the tendril part of the tail or not?

Because our regulation reads from the tip of the snout to the end of the tail which is what I thought it said and that would mean the tendril or whatever part happens to be there. If it's broken off, it's not there. So, I wonder why we're not in the? Well, we are

in. It's too late in the day. (Laughter)

### **Update on Scup Winter II Trip Limit**

CHAIRMAN GIBSON: Black sea bass tendrils, that concludes that update. Thank you. Another update on the Winter II trip limit.

MS. NYGARD: This is just a reminder that a revised rule was sent out for the Winter II scup trip limits and that is now set at 3,000 pounds.

CHAIRMAN GIBSON: Any question or board discussion on the Winter II trip limit? None. Is there any other business to come before the board? What are they passing out? That's just a memo. Okay. (Laughter) I was going to get out of here. Okay, that's the trip limit notification. Bob Beal.

MR. BEAL: Just a comment after the business of this board is wrapped up. Are you done?

CHAIRMAN GIBSON: Is there any other business to come before this board? Seeing none, Pat a **motion to adjourn**. We stand adjourned.

(Whereupon, the Summer Flounder, Scup, and Black Sea Bass Management Board meeting adjourned on Wednesday, November 2, 2005, at 5:30 o'clock, p.m.)

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