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ATLANTIC STATES MARINE FISHERIES  
COMMISSION

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

Radisson Hotel  
Alexandria, Virginia  
August 16, 2004  
- - -

**Call to Order**

The meeting of the Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Monday, August 16, 2004, and was called to order at 4:05 o'clock p.m. by Chairman Bruce Freeman.

CHAIRMAN BRUCE FREEMAN: All right, if board members would please take their seats, we're going to begin the Summer Flounder, Scup, Black Sea Bass Board. Okay, this is the Summer Flounder, Scup, Black Sea Bass Management Board.

I'd like to welcome all of you here today. You should all have an agenda for this meeting this afternoon. Does anyone have any additions to the agenda? I have a few things I want to make certain we speak on today.

Under 5, we'll actually have a 5A. Toni Kerns has some recent information on the Wave 3 results for the recreational fishery for both summer flounder and scup.

Under Item Number 7, where we have reaffirmation of Framework 2, that is an action item. That deals with conservation equivalency. Toni will explain that in more detail.

Then under other business, there have been a number of requests made by various board members. One is to talk about the commercial allocation of all three species among the states.

This is an issue that especially Connecticut and New York have been dealing with for the last several years.

There has been a request to relook at those. So far as the recreational management is concerned, there was a request made recently at the board meeting that was last week concerning how we deal with recreational management.

Again, we need to look at coastwide, season, size and bag limits, which we have agreed, particularly on the three species, has not worked and we've gotten into the system we do. We need to look at if, in fact, it makes sense to have regional season, size and bag limits.

Also, the issue of single versus multi-year averaging of recreational landings in order to overcome some of the problems we've seen in the last two years, particularly with Connecticut with scup last year, and now this past year New York with both scup and summer flounder, to moderate some of the dramatic changes that are required, understanding some of the limitations of the MRFSS sampling. So those are issues we'd like to at least initiate the discussion today.

So with that said, if I see no other comments relative to additions to the agenda, we'll move with the existing agenda.

All right, there's a portion of the meeting where we have public comments. Are there any public comments at this time? All right, seeing none, we'll move forward with the agenda.

**Approval of Proceedings**

We have the board minutes from our May meeting, May 24<sup>th</sup> meeting. Are there any comments, additions, corrections on those minutes?

Is there a motion for the approval of those minutes? A motion by Mr. Adler to approve; second by Mr. Augustine.

Again, any comments on those minutes? If not, are there any objections to have those finalized? Seeing no objection, then the minutes are

approved.

Okay, at this point, public comment. Seeing no public comment we'll move to Draft Addendum XII, Toni.

### **Discussion of Addendum XII**

MS. TONI KERNS: Thank you, Bruce. Addendum XII looks at the black sea bass commercial management. Within the addendum, basically there were two options.

One option was to stay at status quo with the state-by-state shares as they currently are for two years, ending December 31<sup>st</sup>, 2006. Option 2 is, again, to remain status quo with the same state shares, but ending three years down the road, December 31<sup>st</sup>, 2007.

We had several public hearings on this addendum. The first public hearing was in New York. There were about 30 attendees there. The group preferred Option 1, to extend for two years.

They strongly believe that the 7 percent share that New York currently has is too low. They would like to see further investigation of alternate-base years to determine the base share.

They feel that state-by-state quotas are a good way to manage, and that going back to a coast-wide quota would be devastating to their fishery. There were too many closures during that time period.

The fishery will be flooded with fish and it would drop the price of the fish, and it would be bad. Right now, they are able to get a much better price for their fisheries.

The next hearing was in Narragansett, Rhode Island, where there were no attendees.

Then we went to Dover, Delaware, where there was one attendee. He was quite pleased with the way the system is right now with state-by-state shares and would like to see that extended for three years.

Then we moved to Ocean City, Maryland, where

there were seven attendees, and the group preferred to see the shares extended out for three years. They would also like to see Maryland get its historic share of the black sea bass fishery back. They find that state-by-state shares are working well for Maryland but would like to see a higher share.

Then we moved to Newport News, Virginia, where there were seven attendees. The group favored to extend the state-by-state shares out for three years. There were a few that were in favor of two years.

They feel that the state-by-state allocation system gives the fishermen a better chance at surviving. They feel that the Commission should definitely stick with the state-by-state shares.

They would also like to have the Commission look into allowing one state's overage in a given year to be given back proportionately to the states that did not go over in their quota in the following year, only when the overall coast-wide quota was not reached.

Lastly, we moved to New Jersey where the group overall preferred Option 3, to continue on with state-by-state shares for three years. They feel that we need a minimum of three years to look at how the current system is working and to explore other options.

Some would actually like to see the state-by-state shares go on indefinitely, but they want to be assured that New Jersey would not give up any more of its state share to have states stick with state-by-state quotas.

They, too, would like to get their historic share back, that they've given up too much, and would like to see their historic share returned.

Of the written comments that I received for this addendum, two people were in favor of extending for two years. Some of those comments included that New Jersey receive their historic share back for the future; also, that they would like to have fishermen with individual state quotas to land in the state that's

most convenient for them, regardless of the state that their quota is for.

They feel that fuel costs are too high, and the life of a fisherman is too precious to have them traveling up to 120, maybe even more miles out of their way to land fish when they could easily land it much closer.

Lastly, the only association or group that wrote in was the Fisherman's Dock Co-op, and they were in favor of Option 1. They feel that the majority of the sea bass fishermen in New Jersey are still waiting to get their rightful percentage of the fish based on their large historic landings of this species back.

When the state-by-state plan was approved for 2003 and 2004, it was promised that we would revisit the allocation formula before the 2005 fishing year. They have great concern for the process in which the state shares were determined.

There are several other concerns that are within that letter as well that you have in front of you. That is a summary of the public hearings.

CHAIRMAN FREEMAN: All right, questions? Harry.

MR. HARRY MEARS: Thank you, just a clarification. I heard nothing in the summary of either public hearings or written comments from either states or constituents that did not favor state-by-state quotas; is that correct?

MS. KERNS: That is correct.

CHAIRMAN FREEMAN: Other comments, questions? All right, you heard the report. Howard and then Rick Cole.

MR. HOWARD KING: Are there any mechanisms that could be employed to allow fishermen from one state to land in another? Is there anything currently in the plan that would allow that?

CHAIRMAN FREEMAN: I don't recall any provision to prevent it, Howard, but I think the impediment comes from most states having a

limited entry system, and that limited entry system is predicated on past landings.

So, for example, if someone caught fish in the EEZ and wanted to land it in the state that had limited entry and they didn't have that permit, that would prohibit them from doing so. Go ahead, Toni.

MS. KERNS: The problem is that it ends up counting against the state that they landed in, where the fishermen are asking that they can land in another state but have it count against their home state's quota.

CHAIRMAN FREEMAN: I think, Howard, if, in fact, that's what the board wants to do, it would probably require an addendum for that to occur. Rick Cole.

MR. RICK COLE: Mr. Chairman, are you ready to accept a motion to move the discussion along?

CHAIRMAN FREEMAN: Just one point, Toni.

MS. KERNS: There is one other provision that I would like to add into the addendum concerning the regulations that were on the meeting CD for the Commonwealth of Pennsylvania. Recently, there have been some issues with possibilities of fishermen landing black sea bass in Pennsylvania, and currently they have zero, they have no quota.

It's not written in the books as saying Pennsylvania has zero quota, so they had put in a regulation specifying that it's unlawful to land finfish, shellfish, crustaceans and other marine organisms when harvest quota allocations to the Commonwealth have been met or otherwise capped by action of the executive director pursuant to the fishery management plans and harvest allocations of the Mid-Atlantic Fishery Council and the Atlantic States Marine Fisheries Commission .

We would like to add into this addendum under the state-by-state shares that Pennsylvania would receive 0 percent of that quota to close that gap, so that would be the only addition to the

addendum.

CHAIRMAN FREEMAN: Again, the reason for this is a loophole in the present law that allows -- in some instances, has allowed fish being taken in the EEZ being landed in Pennsylvania in excess of the coast-wide quota.

So, again, there was a request of Pennsylvania to take an action to correct that problem. As Toni indicates, it will require allocating Pennsylvania zero quota in order for the regulation to become effective. Okay, Rick, back to you.

**MR. COLE: Okay, Mr. Chairman, I'd like to move that the board adopt Option 2, status quo for the fishing period from January 1, 2005, through December 31, 2007, in Addendum XII as the preferred management strategy.**

MR. TRAVELSTEAD: Second.

CHAIRMAN FREEMAN: Okay, while Brad gets that up on the screen, there has been a motion made and seconded. Dick Snyder, I didn't see you back there. Would you like to comment on Pennsylvania's rule? Dick.

MR. RICHARD SNYDER: Bruce, as Toni mentioned, that's the regulation that our agency promulgated and had approved this past July.

If she would read on the next sentence, there is a component in there that does say those fishes and other seafood may be landed if the species has been properly reported as part of an unmet quota of another jurisdiction. I just read that in for a matter of information for the board, but, yes, indeed, and this zero quota if so granted, will allow us to tidy up a loophole.

CHAIRMAN FREEMAN: Thanks, Dick. Any questions of Pennsylvania on that? It's something, again, the board had requested and we appreciate, Dick, the fact that the Commonwealth has moved quickly. Sema, I'm sorry. I didn't see you. Would you come forward please and identify yourself for the record.

MS. SEMA FRYERMAN: Sema Fryerman, Montauk Inlet Seafood, New York. I'm sorry, Bruce, I just wanted grab something before it completely went by, whether or not there were any comments in opposition to a state-by-state quota.

I guess it was last May when the New York delegation worked very hard at getting other alternatives out for public comment on this addendum and was unable to do so.

Certainly, had we in that Setauket hearing, if one of the options was to go back to some sort of hybrid quota or coast-wide or seasonal quota or what have you, there would have been comments in favor of no state-by-state quota.

It wasn't an option, so we're certainly savvy enough to just not go and try to push something that's already gone down the tubes, as it were. The options were for how long we're going to keep these state-by-state quotas in place, before we reviewed them. Had the option been to not have state-by-state quotas, we would have had lots of people at the hearing to say so. Thank you.

CHAIRMAN FREEMAN: Thank you, Sema. All right, we're still having a little trouble getting that up on the screen. Other discussions, Rick?

MR. COLE: Thank you, Mr. Chairman. I just wanted to go over my justification for bringing forth this motion. Obviously, based on the public input from the public hearings, this was the preferred option. That was Reason Number 1.

My second reason for supporting this particular motion is that it gives the maximum amount of stability to the commercial fishery in order to provide them with a set strategy that they can depend on and look forward to out until 2007.

I think this is very important from the standpoint, especially, for example, in the pot fishery where people have to make decisions on how much gear they're going to replace on an annual basis and how much gear they're going

to need.

This gives consistency to the program. Anybody in the business would certainly advocate this consistency, because it's important for them in making their business decisions.

As we've heard throughout the public hearing process, this by far, the state-by-state system has been a dramatic improvement over our previous quarterly program that we had in place. This approach, from the industry standpoint, seems to be the way we should go. Those are the reasons I've supported this approach.

CHAIRMAN FREEMAN: Okay, other comments? Gordon.

**MR. GORDON C. COLVIN: Mr. Chairman, I would propose to amend the motion. The amendment would be to adopt the addendum with the further modification of Table 1 in the appendix, the addition of a line stating Pennsylvania and 0 percent under the percent coast-wide quota column.**

CHAIRMAN FREEMAN: All right, there has been a motion made to include the wording for Pennsylvania. Is there a second to that motion? Second by Mr. Fote. Is there discussion or questions relative to the amended motion? Tom.

MR. THOMAS FOTE: Would they accept it as a friendly amendment so it just --

CHAIRMAN FREEMAN: Will the maker and seconder of the motion accept that as a friendly amendment?

MR. TRAVELSTEAD: Yes.

CHAIRMAN FREEMAN: Yes, and Mr. Cole?

MR. COLE: Yes.

CHAIRMAN FREEMAN: All right, friendly amendment, so this would become part of the amendment. Is there any further discussion on the motion? Gordon.

MR. COLVIN: Yes, Mr. Chairman. I just want

to indicate why I'm going to vote against the motion briefly on the record. I understand the maker's preference for a longer, more stable period of time. That is certainly a desirable thing to do.

But just to remind everyone how we got here, the decision to adopt the current amendment was one that resulted from a day's worth of board meetings that I will not soon forget, in which at the end of the day the New York delegation reluctantly voted for the motion to adopt the state-by-state quota system.

We clearly indicated on the record why we opposed it, why we opposed state-by-state quotas on principle, anyway, and why we opposed it in the instance of black sea bass. I won't go back over all that now.

We agreed to support this at the board level and later at the Commission level for two reasons: first, that it was at the time a unanimous decision, and only on that basis could we agree to it; and, secondly, because it was sunset, because it was for a limited period of time during which there was an agreement and a commitment to completely revisit the commercial management options and ascertain whether there was something better.

The difficulty is that we have not followed through on that second commitment. In fact, this motion just further puts it off.

Without going into a whole bunch of details on the record, I just want to point out that I will not be supporting this motion because it is so inconsistent with the basis for which we reluctantly went along with the current state-by-state quota system in the current FMP amendment. Thank you.

CHAIRMAN FREEMAN: Dave Pierce.

DR. DAVID PIERCE: Gordon did a very good job summarizing some of the apprehensions that at least a few states have with regard to extending the percent shares as they exist right now into the future three years.

There was a commitment to revisit these percentages as soon as possible. Of course that's pretty wishy-washy. Nevertheless, there was a desire to do that. I think most board members recall that the Commonwealth of Massachusetts actually went through the formal appeal process regarding the 13 percent share that we were given.

I'm not going to go back over all of that because that would be very unproductive discussion. But, nevertheless, we did agree to remain at the 13 percent, and we assumed the 13 percent would remain in place for at least one year, maybe two years, but now, of course, the motion is for three years.

So, indeed, it does appear to postpone the need to take another look at the percent shares by state, and that's clearly not our desired way of moving this forward. I'll have to discuss with my colleagues the nature of our vote on this particular motion.

However, I just wanted to make sure for the record that everyone was reminded that the Commonwealth did appeal. We lost our appeal and that we have gone along with that 13 percent for at least a few years.

CHAIRMAN FREEMAN: Other comments by board members? Audience, Jim Lovgren, I had your hand.

MR. JAMES LOVGREN: Thanks, Bruce. I've got to support Gordon's position there of the two-year time frame on this here. As you're all aware, New Jersey hasn't been very thrilled about the breakdown, the percentage breakdown that we were granted in this original state-by-state quota allocation.

The 20 percent was nowhere near what we historically should have been allocated. The minimum allocation that was based on in Amendment 13 was 24.6, that was based on five best years, all the way up to 38.8 percent of the quota, according to whichever time frame you used.

So to get 20 percent was a real screw-job on

New Jersey's fishermen. I've supplied written comment here -- I hope you've seen it -- from the Fisherman's Dock Co-op. I can't spell it out any clearer than that. I'll try and condense it a little bit, though.

When we did Amendment 13, our fishermen were told that we had to get the state-by-state quota system in place because you're losing severely. Every year we went down with the coast-wide quota in place, we were losing.

The fishery was more friendly to the smaller potters inshore in Massachusetts as it was to our guys that had thousands of pots previously off of Jersey. Our fishery was only a handful of people there with up to 2,000 pots and so forth.

And we were landing 1.2 million pounds a year for a number of years. Well, with the end of limitations of Amendment 9, we went down to 600,000 pounds within two years, of our landings. And it dropped even farther, I think down to 540,000 pounds.

So, when a state-by-state quota system came around that promised the guys 20 percent of the landings, which would have been 600,000 or 700,000 pounds, the pot guys jumped at it. They wanted that.

But we were promised that after two years, this would sunset and we would revisit these allocations. And the amount or revising you did was to put it in front of the council, say, oh, well, we should have done something. We should have been working on that in the last 12 months and we didn't.

And to send it on to here in which we say the same thing, well, we should have been working on that but we didn't, so the best we can do at this time is extend it for another two or three years.

Well, I noticed that in the public hearing document in the options, already we're including the time frame including the latest two years so that we can lock in the numbers that were granted through Amendment 13.

Now this is wrong. This isn't the way to manage state-by-state fisheries. It's a problem. In my letter -- and this letter is going to be sent to Commerce Secretary Evans -- I'm requesting an economic analysis of the effects of Amendment 9.

As I stated earlier, New Jersey lost half of their landings. We went from 1.2 million down to 600,000 pounds directly because of Amendment 9. Now, let's see, there are certain National Standards here in effect.

Amendment 9, okay, National Standard Number 4, conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen such allocation shall be fair and equitable to all such fishermen, be reasonably calculated to promote conservation and carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privileges.

The council and Commission has refused to acknowledge the obvious effects of Amendment 9 and their negative effects on one sector/state, that's New Jersey, while another sector reaps enormous benefits.

Also, in the MS Act, under Section 303, content of fishery management plans, required provisions; Number 14, to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recover benefits fairly and equitably among the commercial, recreational and charter fishing sectors in the fishery.

Further, each plan should undergo a secretarial review every two years to assure that overfishing is being addressed by the plan's management and measures. Now, obviously Amendment 9 did not abide by the National Standards that are presented in the Magnuson-Stevens Act.

And as such, I'm going to request the Secretary of Commerce to do an economic review of Amendment 9. I think that this Commission

should be supporting that because if you look at state-by-state landings in those years, you can see exactly what the effects of Amendment 9 were, and now we've based state-by-state quotas on that.

And this is an economic allocation battle, and my state is the loser. My fishermen are the loser, and they want their quota back, plain and simple. I don't know what else to say, but two years is two long already.

CHAIRMAN FREEMAN: All right, thanks, Jim. Other comments from the audience? Seeing none, back to the board. Pat.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I'd like to make a friendly motion to amend.

Move to adopt Addendum XII with Option 1 as the preferred option and changing the fishing period from January 1, 2005, to December 31, 2006.

CHAIRMAN FREEMAN: I'm not sure that's a friendly amendment, but you can make an amendment.

MR. AUGUSTINE: Well, I have to use that expression. No, it's not very friendly at all, sorry, Rick. Should I call it a "substitute," Mr. Chairman?

CHAIRMAN FREEMAN: Well, yes, I think you want to call it a substitute.

MR. AUGUSTINE: We'll call it a substitute, then, Mr. Chairman.

CHAIRMAN FREEMAN: A substitute motion. Is that the wording, Pat?

MR. AUGUSTINE: Well, yes, it would be exactly the same. Actually, it would be exactly the same motion as the one up there with the exception it becomes Option 1, the date goes to December 31<sup>st</sup>, 2006, and with the addition of a quota of 0 percent for Pennsylvania.

CHAIRMAN FREEMAN: Okay, I think the



motion would be just the reverse. Okay, 2006 for 2007.

MR. AUGUSTINE: Yes, just that section there.

CHAIRMAN FREEMAN: All right.

MR. AUGUSTINE: And make it Option 1 as opposed to Option 2.

CHAIRMAN FREEMAN: Okay, so this would be essentially to substitute Option 1 for the original motion. Jack.

MR. TRAVELSTEAD: Just a point of order on the substitute motion. I thought we learned that substitute motions that in effect place before the group the exact opposite of the original motion were out of order.

In effect we have two options before us. The original motion was for one and now we have a substitute for the other. Can I get a ruling on that?

CHAIRMAN FREEMAN: Okay, we'll confer with our parliamentarian here. Well, at this point I think we need a ruling whether it's even in order to make the motion. After discussing this briefly with our parliamentarian, I will rule the substitute motion out of order. If people do not like the original motion, that needs to be voted down and then another motion offered. All right, Eric.

MR. ERIC SMITH: From a procedural point of view, Mr. Chairman, that's fine, but I wanted to comment on the main motion then. Having heard the nature of the comment, I'm going to oppose this motion very clearly, because I think the other one is a better approach.

I thought the other way, the substitute was an expeditious way of not having to bounce back and forth between motions, but either way we'll probably get there, so I have to oppose this motion.

CHAIRMAN FREEMAN: Okay, is there a need for -- I guess there is a need for a caucus so we'll take a three-minute caucus. All right,

when we come back, before we vote I'll read that, Joe. Three-minute caucus.

(Whereupon, a caucus was held.)

**CHAIRMAN FREEMAN: All right, could members return to their seats in preparation for the vote. The motion that we'll be voting on is move to adopt Addendum XII with Option 2, status quo for the fishing period from January 1, 2005, through December 31, 2007, and with the addition of a quota of 0 percent for Pennsylvania.**

**All right, we'll do essentially a hand vote. All those in favor of the motion, signify by raising your right hand; those opposed, same sign; abstentions; null votes. All right, we have 6 yes, 3 no, 2 abstentions and no null votes. That would be the motion carries.**

Relative to the comments on this, several of us, in fact the three states that voted against it, this is an issue -- in my opinion, it wasn't the time frame; it was really the allocation system that I heard most of the concerns about. This I think needs to be addressed.

There needs to be some system where -- as we've heard in the past those states that had very low quotas, we need to develop some mechanism to bring those states into some increased catch, and there are various ways that could be done, if that's the desire of the board.

We'll continue that discussion at the end of the meeting, but that's an issue that I think we need to deal with and find some resolution to. All right, we'll move forward with the agenda. Okay, Toni.

#### **2004 FMP Reviews**

MS. KERNS: Currently being passed out to you are the 2004 FMP reviews for summer flounder, scup and black sea bass, as well as the preliminary landing estimate for Wave 3 for summer flounder and scup.

I'm going to go ahead and start with summer flounder for the FMP review. The FMP review has not changed too much for summer flounder.

The status of the stock was updated at the joint Mid-Atlantic Council and Commission meeting last week.

The stock is not overfished but overfishing is occurring. The state of New York has come back into compliance by the Commission and the National Marine Fisheries Service by putting in place an 18-inch size limit, 3-fish bag limit, and a season ending on September 6<sup>th</sup>. So, we are square again there.

For black sea bass, we are not overfished and overfishing is not occurring. We determined that overfishing is not occurring due to some new tagging results that Gary Shepherd has been working on for the past two years.

The status of the compliance issues for black sea bass, New York has returned into compliance by putting in the proper dates for a seasonal closure. And the Commonwealth of Massachusetts has put in all the season closures except for the December closure, and they have ensured the board in writing that closure will be in place before October 22<sup>nd</sup>.

For scup we are not overfished, and we are still unable to determine whether or not overfishing is occurring. And in front of you, the graph that you see, which I don't have, but shows that -- on the back side, the one that says the difference in the Wave 3 summer flounder landings from 2003 to 2004, if a state is in the negative, that means they are fishing less than they did in 2003.

If they're in the positive it means they're fishing a little harder this year. And you can see that both New York and New Jersey are fishing a little less, which is good to see.

The states of Rhode Island, Connecticut, Delaware, Virginia and North Carolina are fishing a little bit harder. Another significant data point is on the comparison of the Wave 3 scup recreational landing estimates for 2003 and 2004.

As you can see, New York has significantly lowered their landing estimates in 2004. The

two states that are fishing a little more this year are Massachusetts and Rhode Island. We'll need approval of these FMP reviews.

CHAIRMAN FREEMAN: Okay, questions? Harry.

MR. MEARS: I have two questions, Toni, on the Wave 3 information. You may have said it and I may have missed it. The first question is are these preliminary or final data? And the second is has the technical committee been afforded a chance to look or comment on this as of this point?

MS. KERNS: These are preliminary landing estimates that I have gotten off of the MRFSS Website, and, no, the technical committee has not reviewed these. These are graphs that I made.

CHAIRMAN FREEMAN: Other questions? Gordon.

MR. COLVIN: Just following up on that, yes, we've sort of been looking at this with more than just a teeny little bit of interest. The board should know that in addition to these being preliminary, and as yet unreviewed by the MRFSS staff or subjected to -- I don't believe they've actually been reviewed by the rec/tech committee at a Wave meeting either -- there is something interesting in the New York one that you ought to know about, and that is that the Wave 3 trip estimate for New York is way up from last year across the board, way up from 2003 across the board, every mode.

Do I believe it? No. Does anybody in New York believe it? No. So here we go again. Remember that tautog thing that I saw lying on the table when I got here?

CHAIRMAN FREEMAN: Dave Pierce.

DR. PIERCE: Regarding the Wave 3 for Massachusetts and the increased 2003 versus 2004, it's not really unexpected. I did expect something like that would occur. The measures that we've implemented for our recreational fishery for this season are much more restrictive

than they were last season, Wave 4 and onwards.

Obviously, we have to get a 40 percent reduction in our recreational landings, with MRFSS, of course, being used as the benchmark for determining if indeed we're doing that unfortunately, but that's the way it goes.

So, I just wanted to make the board aware of the fact that our more restrictive measures did kick in for the beginning of Wave 4. Now we'll just wait to see how the dice rolled and see if the 40 percent actually does result as predicted.

CHAIRMAN FREEMAN: Okay, other comments, questions, board members. Tony, do you have your hand up? Would you come forward, please.

MR. TONY BOGAN: Thank you, Mr. Chairman. Tony Bogan from United Boatmen. Gordon already mentioned a couple of the points that we were going to bring up. I just wanted to add a little information for the board's sake.

We have been in significant conversations with staff from MRFSS, both Mr. Van Voorhees and Mr. Sminkey since these preliminary numbers were released.

About two weeks prior to the preliminary Wave 3 data being available, there had already been a volume of information collected from the for-hire sector as far as a comparison of this year as opposed to last year, business related.

And, as I said, this was weeks before we had even seen the Wave 3 data. It was in concert with some meetings that were going on with some political entities in the state of New York.

Then, of course, when this information came out the immediate reaction was, didn't we just tell the Center two weeks ago that business is down island-wide in the for-hire sector, between 30 and 35 percent?

And MRFSS Wave 3 numbers came out with, lo and behold, the exact opposite statement that angler effort on the for-hire sector was up 30 to 35 percent from last year. So there is a lot of

talk going on.

We've learned a few new things about MRFSS concerns with effort information and participation information, particularly from the state of New York but overall. We're still waiting to find out the impact of the changes in the way that MRFSS prioritizes what they call "low volume" or "low priority" intercepts sites, which the first year they did that change was last year.

We've also found out that they now are beginning to consider that there was more than just Waves 2 and 3 effort problems in 2002. It might have even been the whole year of 2003. So, in our minds any time we see something whacky like initially the tautog information that I showed you.

But even more so, which obviously could now be a result of that 2002 problem, which might have gone far beyond Waves 2 and 3 as they originally told us, we've also got an issue where we might be looking at a problem that started actually back in 2002, giving all of you people, the states, the incorrect information of what to do with your regulations for 2003.

On top of that, you've also got issues with changes in MRFSS for 2003 and now 2004. And you've got conflicting information again that is coming from MRFSS as far as effort and participation as opposed to what industry has actually seen.

And we haven't even touched the rest of industry. We had only gotten to the for-hire sector. So just keep that in mind when you're looking at these numbers, if it's going to influence any future decisions, that there is a lot happening at MRFSS right now, and there is a lot of discussion going on. And I just wanted to add those pieces of information. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: All right, thank you, Tony. There are other comments. The gentleman in the corner, please come forward. Please identify yourself for the record, please.

MR. JIM BUTLER: Thank you, Mr. Chairman. My name is Jim Butler. I represent the Buzzard's Bay Party-Charter Boat Association in Massachusetts. We are not or have been actually fundamentally in disagreement with the collection efforts of the MRFSS and their findings.

But what I would like to address on behalf of the small party-charter boat operators in the region is that the impact of this has been absolutely devastating. There are about a dozen small party-charter boat operators operating out of the Buzzard's Bay area actually teetering on the brink of ruin as a result of these preliminary findings as illustrated in Wave 3.

I don't know what Wave 4 will show, but these numbers are so inconsistent with what's actually happening with the fishermen. There have been cancellations. There have been reductions up to 50 and 60 percent in terms of the for-hire vessels going out, in terms of people chartering those vessels.

There have been cancellations in that same range of 50 to 60 percent. Overall in the region, the numbers are so down that some of the businesses are only sailing on two or three days per week because the clientele is just not coming to the area.

So, if they're not fishing, how is it conceivable that the numbers can be up? This boggles the imagination. And it's almost a slap in the face to these people teetering on the brink of ruin that the numbers show something that actually is not in place.

We would like to address the whole MRFSS data situation as it affects the small party-charter boat associations in the area and in the region, actually up and down the East Coast. How these numbers are gathered and how they're translated has absolutely no bearing on the realities of the fishermen on the angler side of the equation.

So, we would just like to go on record as saying that if the data and the way that data is translated and submitted to you guys could be introduced as regulation, if that does not change

dramatically, then the party-charter boat industry as we know it will no longer exist.

CHAIRMAN FREEMAN: All right, thank you. As indicated, this is preliminary data. It's through May and June only. We may see changes. Oftentimes that does occur as the information becomes available later in the season. And the final numbers, we really won't know until December, but this is what we have at the present time. Other comments? Tom.

MR. FOTE: My concern over the years has been if we ever started getting better recreational data, how would we basically handle that data? Basically I always couldn't -- you know, I'm a former New Yorker and always believed that there was no way possible that New York had half the number of trips or half the number of anglers as New Jersey, not with 120 miles of coastline on two sides and the city island.

And what I think is, you know, we basically are starting to pick up numbers that we've never picked up before that were really there all the time. I remember when they did a major change to the MRFSS way of looking at data a couple of years ago.

They did a retrospective of all the numbers previously to see how that would have basically impacted the numbers previously. I'd be curious to find out if they made any changes or are they doing the same thing.

Are they looking how those numbers would be in previous year? I mean, and that's my concern here. What could really happen, if we're not doing that, is that the numbers for 2001 could actually have been higher than 2004 and 2003, but because of the way we're taking in the data, the way we're prioritizing the data, we actually wind up with a situation that shows that they're up years instead of down years.

I think that's what's occurring. That's the only thing I can make to make any sense out of this. I'll be asking those questions of Mr. Hogarth when he comes in here. I think if they're looking -- you know, we always knew that if we started doing a better job, we're going to

basically find out some missing gaps.

I mean, as soon as we start doing bluefish night trips, we're going to find out, really actually finding out how many bluefish are being caught on party and charter boats at night. We'll basically start sampling people at night because MRFSS doesn't do that right now.

We estimate what they do, but we really don't have a true figure of what goes on there. So my concern is has been all along, when we start getting better data, how do we handle it? And I really think it's going to be a serious situation.

We need to have better data. We need to basically count every fish that's out there if we possibly can. But we shouldn't be voting states out of compliance because we changed the rules and we've gotten data that might show something that it really doesn't show. Thank you for your indulgence.

CHAIRMAN FREEMAN: Okay, other comments? All right, we have heard the report on the FMP review for 2004. As Toni indicated, there have been a number of actions. We had New York almost out of compliance.

New York has indicated they have changed their regulations back in compliance. A number of states needed to change their season. Connecticut had taken action to change their season for sea bass.

New York has done that. Massachusetts has indicated it will close its season during December. That's pending action, but we've received a letter from Paul Diodati indicating that they would move that.

And the Massachusetts scup size and bag limit I believe has been changed to be in compliance with the plan. So, I'm looking for a motion to accept the FMP review. All right, Mr. Pate made the motion; second by Mr. Cole.

**Any further discussion on that motion essentially to accept the FMP review? All states will be in compliance. Is there a need to caucus? No need to caucus.**

**Please raise your hands, those who agree with the motion; those who oppose; abstentions; null votes. The motion carries.**

Okay, the next item is the technical discussion of the technical review of the bycatch workshop. Toni.

#### **TC review of Bycatch Workshop**

MS. KERNS: Before I started working at the Commission, a bycatch report was developed from a workshop that was in place. The management board asked the technical committee to review the recommendations of the bycatch report.

So, at the last TC meeting, the technical committee did so; and since David Simpson, our TC chair, is not here, I will read the recommendations that the TC went through. Under the recreational fisheries, it said studies show some benefit to using circle hooks in terms of reduced mortality rates, and the TC agreed with this.

The Commission could help with outreach on the benefits of circle hooks. Outreach rather than regulations should be encouraged since slight modifications to hook shank angles can reduce effectiveness and complicate law enforcement.

They agreed to encourage volunteer angler surveys as a way to get more data on discards. A workshop suggestion for a cumulative total length regulations was reviewed by the TC as unenforceable.

A suggestion to do away with the minimum size was viewed as problematic, given the low bag limit and shortened seasons that would be needed to compensate for the loss of the size limit. Under the commercial fisheries they agreed, low trip limits induce discards.

Closures are also leading to discards, and trip limits set below the bycatch threshold allow vessels to fish with unregulated mesh for extended periods, resulting in greater discarding of multiple species.

Some possible actions that they concluded would be to allocate more or future increases in the TAL to the bycatch reduction or to set trip limits no lower than the large mesh threshold or lower the bycatch threshold.

And another bycatch workshop was scheduled for June 29<sup>th</sup> through July 1<sup>st</sup> in Massachusetts this year. Those are the recommendations that the TC gave back to the board.

CHAIRMAN FREEMAN: Okay, questions, comments? All right, seeing none, there is no action needed on that item. We'll move on to reaffirmation of Framework 2.

### **Reaffirmation of Framework 2**

MS. KERNS: For those of you that forgot what Framework 2 does, it provides the information and analysis necessary to implement a system of conservation equivalency for the recreational summer flounder fishery.

It allows states to customize their summer flounder recreational management measures in order to address issues associated with the availability of summer flounder on spatial and temporal scales.

In February of 2002, the Commission indicated their preferred option for Framework 2. Later that month the Mid-Atlantic Council went ahead with the preferred option that the Commission chose and adopted Framework 2.

Since that time, we've been under the provision that we had approved Framework 2, but we never actually did approve it, so I'm looking for a motion to officially approve Framework 2.

CHAIRMAN FREEMAN: Okay, any questions? As Toni indicated, we do need to take formal action. We apparently did not. Framework 2 allows for conservation equivalency that we've been using. And it applies only to summer flounder only, does it not? We've only used that for summer flounder.

There has been some request to use it for other species. States have been given the responsibility of proving conservation

equivalency or determining that for the other two species, sea bass and scup. So far no one has come forward with that, but we have used it continually for summer flounder. Jack.

**MR. TRAVELSTEAD: Is this just a formality now? Why wasn't Framework 2 previously approved? What happened? Was it just a simple oversight? With that being the case, I would move approval of Framework 2.**

CHAIRMAN FREEMAN: All right, motion to approve Framework 2. Howard, is that a second? Second by Howard King.

MR. COLVIN: Point of order, Mr. Chairman.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Mr. Chairman, as a point of order, can I ask exactly what this motion does and how it relates to the ISFMP Charter of the Commission?

CHAIRMAN FREEMAN: Mr. Beal.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. Framework 2, as Toni and Gordon mentioned, established the process that we've been using to implement conservation equivalency for summer flounder for the last three years, 2002, '03 and '04.

What this will do is a framework -- it's called a "framework" because it was developed jointly with the Mid-Atlantic Council. It works as an addendum under the Commission process.

We've jointly approved frameworks as addendum in the past for summer flounder, scup and black sea bass since they're joint plans. There is a couple of provisions in Framework 2.

The first is the responsibility of the Commission to establish or to notify the Northeast Regional Administrator when the states have all implemented their conservational equivalency programs, if that's the course of action the board chooses.

The regional administrator will take action to waive the provisions in federal waters and allow the vessels with federal permits to operate under the home state's recreational management measures.

There is also the provisional default measure or the precautionary default measure is included in there, which is the default -- if the state chooses not to implement conservation equivalency, it's the combination of size limits, bag limits, season that the state is required to implement if conservation equivalency is not selected or implemented by that state.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Thank you, Mr. Chairman. Again, with respect to my point of order, I don't believe this board can adopt Framework 2 as Framework 2 and have it have any meaning in the context of the Interstate Fishery Management Program and the Charter under which it operates.

I believe that the board could adopt the provisions of Framework 2 as an addendum under the Charter subject to the process that the Charter provides. I would have a great deal more to say about that.

Let me also suggest, having spent more time than I care to in the last four or five months reading all this stuff, thinking about it and discussing it with people, that there are provisions of that framework that are not well understood and appreciated by the board, including the one that Mr. Beal just referred to.

And, for instance, let me just lay it out for you, the framework includes a provision whereby if the decision is made to go to conservation equivalency in a given year and the National Marine Fisheries Service adopts that provision as part of its annual specifications through the rulemaking process, that if a state is ruled non-compliant, it should be compelled to implement the default.

Most of us that I've talked to didn't understand the default to work that way, and I can point you

to a dialogue on the record of a board meeting between the chairman of this board and the vice chairman of the Commission that suggests a different interpretation.

I'm not quite sure that a simple motion here today, without thought about the details, without the framework in front of us, without assuring ourselves that we know what we're doing and that we've adequately complied with our procedures for public input and deliberation under the Charter is in order.

I would suggest that what might be in order is a motion to initiate the adoption of Framework 2 as an addendum under the charter and the appropriate scheduling of public hearings at the discretion of the states that choose to have them for adoption in the future.

But other than that, I would suggest that this motion is not in order or, if approved, has no significance or meaning with respect to the Charter and accomplishes nothing in terms of making the provisions of Framework 2 applicable to compliance under the Atlantic Coastal Act.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. One way to look at this is this board identified to the Mid-Atlantic Council that Framework 2 was the preferred alternative.

My understanding is at that time there was advice from the executive director not to formally approve Framework 2 before it went to the council because of the possibility that the council might change the details of what was in there.

The board took that advice and sent the recommendation over to the Mid-Atlantic Council, saying that would be the Commission's preferred alternative. The council approved Framework 2.

There was a document produced that said Framework 2 was produced by Mid-Atlantic

Council and the Atlantic States Marine Fisheries Commission. It was published three years ago. And, this board has continued to operate under the provisions of Framework 2 since then, setting, for example, annual specifications each year under the framework process and not through the addendum process.

So, while there has been one interpretation of where we are right now, the other interpretation is there was a clear signal by this board to adopt Framework 2. There has been a document published saying that the Atlantic States Commission has ownership of Framework 2.

And, I think most significantly, the board had been acting as if Framework 2 was the rules and the law of the land. So, the idea of now going back and starting all over again to say do we really want to adopt Framework 2, I'm not really sure that's where you're at.

I think really what is before you today is to formally affirm that Framework 2 is the process that you all have been following all along and that you intend to follow. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Mr. Chairman, I would assert that if the executive director's argument is the case, then the framework should be adopted as an addendum and that the motion as constructed should be so modified.

Otherwise, I'm not sure what the effect of the motion would be, again, coming back to the charter. And I can appreciate what Vince is saying in terms of there was at the time a pretty clear record of deliberation and discussion with respect to it.

Let me just ask this, though -- and this is an open question coming back to the one example that both Bob and I have spoken to in the course of this discussion. I suspect that there is other procedural stuff in the framework, most of which we've all read some time ago and are not 100 percent up on right at the moment.

But with respect to the default issue, just to retrace recent history, and it's not pretty, the Commission determined that a state was not compliant because it had not adopted one of the approved management measures for the current year.

To get back into compliance, the state needed to adopt one of those measures by the time indicated in the Commission's determination.

However, had the framework been in place, is it not conceivable that at the time of the Commission's decision and at the time of the National Marine Fisheries Service's adoption of the specs, that those options would no longer be in play, and the only way to come back into compliance would have been to go to the default?

That's a very real concern I have about the substance of this, and it's one of many reasons that I will vote no on the motion if a vote comes to it. I'll speak to others later, but that's a concern that I have. I'm not sure what it means.

Let me just say that kind of in hindsight, if you haven't gathered by now, the way the default stuff played out was a big surprise to us, and I suspect it would have been to every one of you.

CHAIRMAN FREEMAN: Okay, I have several people on the list. I have Jack Travelstead and Howard King. Vince or Bob, when the Commission jointly moved forward with Framework 2, was that identified in the Commission as Framework 2 or did we allocate an addendum number to that? Bob.

MR. BEAL: All the previous discussions that the board has had on this issue with the Mid-Atlantic Council and separately, just as a management board, the document has been referred to as Framework Number 2. And through the public comment period and all the steps along the way, it was Framework 2.

CHAIRMAN FREEMAN: Okay, Jack Travelstead and then Howard.

MR. TRAVELSTEAD: I need some more



information, Bob. Under our normal procedures, the Mid-Atlantic Council and this board are sitting at the same table, and we need like motions from both groups to proceed forward with any kind of plan amendment/addendum, et cetera. Did that procedure happen with respect to this framework?

MR. BEAL: The initiation of the framework, yes.

MR. TRAVELSTEAD: It takes two meetings, right, to do a framework?

MR. BEAL: Yes, and the board was -- I believe the board only attended the first framework meeting. Actually the board attended the meeting at which the board and council decided to initiate the framework, and then the board also attended I believe the first framework meeting, which is the first public comment meeting, essentially, that the councils have to develop a framework and approve a framework.

The second framework meeting that the Mid-Atlantic Council had, the Commission board did not attend that meeting, but we did send the recommendation of the preferred alternative to that meeting, to the Mid-Atlantic Council when they had their second framework meeting. This board was not present at that meeting.

MR. TRAVELSTEAD: So the public aspects of the process have in fact been held?

MR. BEAL: Yes.

MR. TRAVELSTEAD: And it was just the lack of a formal vote on the part of this board to accept the framework?

MR. BEAL: Yes.

MR. TRAVELSTEAD: Which did occur at the Mid-Atlantic Council?

MR. BEAL: That's correct. The concern was, as Vince mentioned, if the board had approved the framework prior to the Mid-Atlantic Council approving the framework, the council may have

modified something in the framework, and then we would have ended up with two different documents that we were managing summer flounder with.

CHAIRMAN FREEMAN: Howard.

MR. KING: Two questions, Bob. Does the National Marine Fisheries Service recognize Framework 2 as an operating framework of the Commission, and what are the consequences of not reaffirming it?

MR. BEAL: To the first question, the National Marine Fisheries Service has approved the Framework 2 for the Mid-Atlantic Council.

If the Commission does not approve Framework 2, the Commission's authority to implement conservation equivalency for summer flounder may be in question.

In other words, if the board wanted to implement conservation equivalency in 2005, there probably is a question of whether or not they do have the authority to do that.

CHAIRMAN FREEMAN: Rick Cole.

MR. COLE: And more directly to Howard's question, if we don't have that authority, when we have our December meeting to set recreational specifications, the only option we're going to have to select would be the coast-wide option.

Keep in mind the first item on our agenda, when we have that December meeting, is to determine whether we want to go with coastwide or with conservation equivalency, then we move forward so, coastwide would be the only option we'd have to work with.

CHAIRMAN FREEMAN: Harry and then Gordon.

MR. MEARS: Mr. Beal's comments were essentially correct. The National Marine Fisheries Service looks at Framework 2 certainly as a critical part of the joint summer flounder management in response to Mr. King's question.

And the concerns just made by Mr. Cole are also correct, that it's the very tenant upon which the joint plan can move forward with consideration of a joint management initiative under which conservation equivalency can be considered by all parties and a process that is equitable to both state and federal permit holders. Thank you.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: I believe the framework enables but does not compel an annual decision for state-by-state management, and so the adoption of it keeps it in play. And, certainly, New York would not argue against not adopting it.

That probably goes without saying at this point. But I will say this, a little friendly advice for the board, clean this up. Clean it up. Adopt something. Do it as an addendum.

CHAIRMAN FREEMAN: Dave.

DR. PIERCE: Well, I respect Gordon's opinion on this in light of all the research that he's done and in the recent experience he's had with regard to non-compliance on fluke.

What is the problem with our converting Framework Adjustment Number 2 into an addendum format so we can see it in that format and then act on it, adopt it in a formal way at an upcoming meeting, so that we would have it in hand and in time to deal with our decisions about 2005?

He has offered up enough words of caution to make me hesitant to just adopt the framework the way it is. And, again, I'll get back to his original point. Have we violated some ASMFC process by not doing this in an addendum form? To me it sounds as if we have.

And if we have, then what would be the objectives to just converting it into a simple addendum format so that all of these specific issues can be very clearly identified in a much briefer document than Framework Adjustment 2, which is a rather large and weighty document?

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: Another question, Bob. Does the ASMFC Flounder Plan allow for the adoption of frameworks?

MR. BEAL: I don't have it in front of me, but I believe Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Plan, the joint plan established a list of management measures that can be adjusted via framework, quotas and those sorts of things. There's a list of I think 25 different measures that can be adjusted through a framework, and that is the joint plan that we're operating under.

MR. TRAVELSTEAD: Have we ever adopted a framework in this plan or any other plan and called it a framework; or, do we usually go through an addendum process?

MR. BEAL: Usually we go through an addendum process. I can't think of any frameworks for summer flounder, scup, or black sea bass or any other plans that we've adopted a framework for. But, yes, I think we have adopted an addendum for all the other actions that we've done through the framework process.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, maybe another way to ask the question or to look at this is to say, if we roll back in time, what we're really trying to do is put ourselves back to where the first Commission meeting after the Mid-Atlantic Council passed Framework 2.

It seems to me the relevant question is what process then would the Commission have gone through or should have gone through to approve Framework 2, if we could now roll back to some time in 2001?

MR. BEAL: Yes, the board discussions, prior to leading up to the Mid-Atlantic Council finally approving Framework 2, had contemplated this board approving a framework.

But since that time, the way this board has

operated is whenever the Mid-Atlantic Council approves a framework that adjusts how we do business at this board or how you guys do business at this board, the Commission has always approved an addendum.

The most recent example was the council approved Framework 5, which is the multi-year spec framework, and this board took action last week to approve Addendum XIII which was the multi-year spec addendum. So, there is a history of this board approving addenda to be consistent with frameworks that the Mid-Atlantic Council had taken.

CHAIRMAN FREEMAN: Okay, Tom Fote then David Pierce.

MR. FOTE: Actually, I think I was missing in 2001. That was my year gap if I wasn't proxy or something when you basically did this, and so I'm a little confused also. But what I've seen is that we've matched the -- we basically took care of the public hearing process.

We just never voted on the addendum for the plan. I mean, so do we need to just vote on an addendum to the plan or do we need to go back through the public hearing process? I think that's my concern here is that I don't want to postpone and go back to a public hearing process.

I don't care if we call it a framework or an addendum, I need basically a ruling whether we can just vote this as an addendum at the November meeting, after basically putting it on the floor here, or can we vote it in as an addendum today.

Since we already have gone through the public hearing process on this one, we just postponed voting for three years, it looks like? I mean, that's what I'm trying to figure out here. I guess everybody else is, too.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, the other thing that makes this unique, and I think it's something you need to

think about, is you have operated for the last three years as if this was the rule.

So the sort of question is what are you going to gain through an addendum? And if the addendum is going to give a chance to maybe give public visibility to a set of rules that you've been operating under for the last three years that may have some surprises in it, okay.

But, I think what makes this unique is you have operated as if this was the governing rule for the past three years and have used this as a rationale not to do an addendum every time you set annual specs. Thank you, Mr. Chairman.

And if I could follow up, in discussions with John Nelson over this issue, after Mr. Colvin raised it in the New York situation, Mr. Nelson suggested that the action by the board would rather than approve Framework 2 with a conceptual thing that said through your actions you've approved -- your behavior has indicated an approval of Framework 2, and that the actions today might be more accurately described as an affirmation of the board's commitment to operate under the rules and specifications of Framework 2 as opposed to saying as of this day, we now are going to start operating under Framework 2.

Again, the tradeoff here, I think the tradeoff between the two approaches is there are arguments you could put on both sides of this, Mr. Chairman.

CHAIRMAN FREEMAN: All right, I have David Pierce, Eric Smith and then Tom Fote.

**DR. PIERCE: Mr. Chairman, I appreciate the awkwardness of this. Vince has done a good job describing just how awkward it may be. I'm trying to come up with some way to address the concerns so clearly expressed by Gordon; and to do that, I would move to substitute and see if I get a second.**

And the CHAIRMAN FREEMAN: That is a substitute motion, David?

DR. PIERCE: Yes.

CHAIRMAN FREEMAN: All right, Gerry, you second that? All right, while Brad is getting that on the screen, get the words correct, Eric.

MR. ERIC SMITH: Thank you, Mr. Chairman. That seems to handle the procedural issue so that we comport with our Charter. But it seems to me, if I'm following the weaving in and out of the advice Vince is trying to give us, the fact is that if this was the first board meeting after the council had passed Framework 2 back in 2001, as far as I am concerned, we would have voted for it in a minute and we would have consistency.

I guess what I'm hearing from Gordon is with the hindsight of the last couple of years of experience, there may be some things we need to fix. The question is are we better off voting for this right now, as Rick points out, so that we don't run into a real problem on January 1<sup>st</sup> and fix it at a later date?

Or, do we benefit by going back and looking at the six choices there were in Framework 2 and deciding if there is a couple of them that are very close to the preferred one, they have some nuances, differences that I can't really discern right now, but are we better off looking back at those six and seeing if those solve some of the problems that Gordon is trying to allude to?

But, I don't understand the problems he's had because he's got the scars for it and I don't. But are we going to benefit by a couple months of seeing an addendum document that fleshes it out, we fix the problem, we vote for it in November and we're still on time for January?

If we can do that -- that's a burden on staff, but if we can do that between now and November and logically fix these concerns, we could be better off doing that.

But if we don't think we can do it between now and November, then I would suggest we vote for David Pierce's substitute, which is to deal with the process part of it, and then we're going to have to promise ourselves to deal with an identification of the problem that Gordon has

pointed out and see if there is an addendum fix that needs to be done in the course of 2005.

So somebody who can better predict the staff needs and the time line between now and November/December has to answer the question of the scheduling, because I can't answer that one.

CHAIRMAN FREEMAN: I have Tom Fote, Gordon and then Pres.

MR. FOTE: My concern is if we change a few of those six things, then don't we have to go back to the Mid-Atlantic Council and go through their process again? I mean, that's my concern here.

I would love to tweak that, but I think that needs to be a separate addendum to go back and do the framework because we're talking -- if you start dealing with the council system, you're not going to get anything done in two months or three months, and we can wind up in December and not be able to put the specs in place for next year, and that's my real concern. I'm trying to figure out a way to of doing that.

I don't think we can tweak these things at this point in time and get a measure in place by January 1<sup>st</sup>. I mean, that's my concern.

MR. SMITH: Mr. Chairman, since that was directed to me, could I answer Tom's concern? And that's why I said of the six options that were in the original document, there were a couple of them that were very similar.

What I took from Gordon's comment is in the approval process, some things happened that were unanticipated by the board at the time and they've become very onerous, at least to that state. One of the options was the conservation equivalent measures by all states or specify the coast-wide measure, which is the precautionary default, which it has come to be called.

Number 6 is a system like the one currently under place under the interim rule, so that's three years ago, where states choose either a coast-wide measure or equivalent measures to

achieve the coast-wide recreational limit.

Now, I haven't wrestled that to the ground to know how much the difference is, but a quick read says they're very similar, but if that second one I read solves the problem that Gordon has had and potentially we could all have, that's what I'm talking about a benefit.

You're absolutely right, if we pick something diametrically opposed to what the council picked, then we're back into this leapfrogging and we don't want to be there.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: I guess one of the things that we've learned in the last few months is just how fragile an aging memory is. I need to ask a couple of questions just to make darned sure that what I think is right is, I guess for Vince or Bob or Toni.

I wanted just to get a very clear affirmation on the record as to what I said before. The framework enables state-by-state quotas as an annual decision. It does not require, it does not prevent the federal government and the states from going to alternatives such as a coast-wide recreational management program or a regional recreational management program; is that correct?

CHAIRMAN FREEMAN: Bob or Vince.

MR. BEAL: That's exactly true, Gordon.

MR. COLVIN: Okay, the other question I wanted to get at is to what extent does the framework get to specifying the particulars of setting the rules -- and, Bob, this is a discussion we've had -- of setting the rules by which the conservation equivalency proposals must be developed, be reviewed and be adopted, such as the issue of the three-year averaging that we talked about or other issues? Is any of that covered in the federal rule?

MR. BEAL: No, the framework provides very limited guidance on exactly how conservation equivalency proposals are to be developed and

reviewed.

The framework does provide guidance that the technical review must occur prior to board approval and implementation within the states and prior to notification to the regional administrator that those plans do meet the guidelines that were established by the board.

MR. COLVIN: So the good news then is that by adopting the framework as an addendum, we don't necessarily tie our hands in terms of any desire we might have to further elaborate those procedures down the road, which is where I'm coming from here. And that would be a grave concern to me if it did.

So long as we have that flexibility, kind of where I come out at the end of this whole debate is that while I'm always uneasy voting for something that's not in front of me where I can read it and refer to it and discuss the details of it, it would seem to me that based on what has been discussed on this record about the record that existed, both the public review and comment record, the record of deliberation by the Mid-Atlantic Council at two successive meetings as the record of deliberation and the action and recommendation by the board in 2001, that in effect the Commission's process for the adoption of this as an addendum was substantively followed.

And, therefore, if the board chose to take action today to adopt it, understanding Vince's comments, I think that would not necessarily be out of order. I do think -- and I've said this before -- that it needs to be done as an addendum because that's the term that our Charter uses.

You won't find the word "framework", I don't think, anywhere in the ISFMP Charter because, believe me, I looked. I spent a lot of time looking. I didn't see it there so -- and neither did our lawyers -- so it seems to me that it would not be out of order for the board today to pass a motion that adopts Framework 2 as addendum, whatever, based on the record that existed in 2001. For what it's worth, that's my advice to the board.

CHAIRMAN FREEMAN: Pres.

MR. PRESTON PATE JR.: Thank you, Mr. Chairman. Gordon has stated the observations that I've made in listening to the explanation of the process that led up to the Framework 2.

I agree with his suggestion that the motion be amended to adopt Framework 2 as Amendment 14, or whatever the number is now, based on the conclusion that all the procedural requirements have been met for that adoption.

I can't do that as a form of a motion because there's a substitute on the board that hasn't been acted on yet, but should that fail I would be willing to make such a motion.

**DR. PIERCE: Mr. Chairman, if there is no objection, I would withdraw the motion to substitute.** There has been enough discussion around the table to convince me that there our authoritarian or our legal man, Gordon Colvin, has characterized the situation quite correctly and that we do indeed need to be guided by his wisdom on this, so I will withdraw the motion.

CHAIRMAN FREEMAN: Does the seconder agree? The seconder agreed. Pres.

**MR. PATE: Thank you, Mr. Chairman. Then I would move to approve Framework 2 as Amendment 14 to the Summer Flounder, Scup, Black Sea Bass Plan, based on the conclusion of the board that the procedural matters that led to the adoption of Framework 2 by the Mid-Atlantic Council satisfied those necessary for the Commission to adopt the framework as Amendment 14 -- I'm sorry, Addendum 14.**

CHAIRMAN FREEMAN: It should be Addendum 14.

MR. PATE: Addendum 14, correct.

CHAIRMAN FREEMAN: All right, while Brad is getting that, is there someone who would second that motion?

MR. AUGUSTINE: I'll second.

CHAIRMAN FREEMAN: Mr. Augustine would second that motion. All right, discussion? Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, if you would just give us a second here and maybe if Mr. Pate could come up here next to Brad, we'll get the wording right for you, please. Thank you.

CHAIRMAN FREEMAN: All right, we'll just take a slight delay. No one leave their seats; we'll never get you back here. Let me say, while they're getting this wording down, there are a number of issues yet today that we would certainly want to deal with, perhaps not conclude, but there are some discussion issues, and we have 40 minutes left in our agenda today so hopefully we can get through this motion and get on to other items. Comments on this substitute motion. Pres, that satisfies you?

MR. PATE: Yes, it does, Mr. Chairman.

CHAIRMAN FREEMAN: Okay, the substitute motion will read move to amend to approve Framework 2, as adopted by the Mid-Atlantic Council, as Addendum XIV based on the conclusion by the board that all of the procedural requirements of an addendum have been satisfied. Okay, discussion on the substitute motion? Gordon.

MR. COLVIN: Just briefly for the record, Mr. Chairman, I will oppose the motion because I have come to a point in time where I no longer believe that even the option of state-by-state quotas, based on the data that's available to us with which to manage them, is appropriate for consideration or implementation by the Commission.

I won't repeat what I've said on the record and what New York state has put on the record. I think you all know what it is. We oppose this and will continue to as strongly as we can.

CHAIRMAN FREEMAN: Other comments,

other board members? Mark.

DR. MARK GIBSON: The discussion about the packaging of how this should be packaged, an addendum/amendment/Framework 2, is interesting to the newer members of the Rhode Island delegation.

I mean, we're most interested, like Eric Smith, whatever package this is offered in and endorsed by the board, does it give us the instrument to address some of these problems that have popped up with state-by-state accountability and specifying of recreational measures.

That's not clear to me yet as a new member of Rhode Island's delegation. And if this package doesn't allow us to address some of these problems that took place, New York, Virginia, Rhode Island, then what will be the instrument after that by which we will address those?

CHAIRMAN FREEMAN: Well, Mark, just to add some to that, we hope to discuss that later in the meeting as to how we can remedy this. Obviously, the situation is very critical as experienced by New York last year. I think certainly as someone with your technical experience, realizing that a sample does have variation, if this variation jumps around and we deal it on a year-to-year basis, we can run into some very severe problems.

And if indeed, as the sampling is reduced, the probability of these variations increases considerably so there needs to be certainly something done, and we need to discuss that.

All right, any other questions, discussion on this motion? Is there a need for a caucus on this? Does anyone need a caucus? All right, we'll take the motion. All those in favor of the motion, signify by raising your right hand; those opposed, same sign; abstentions; null votes, one null vote.

**The motion carries 10 in favor, no nos, no abstentions, one null vote. All right. Okay, this becomes the main motion. This is the main motion. Those who favor signify by raising your right hand; those opposed, same**

**sign; abstentions; null votes, one null vote. The motion carries.**

All right, let's move on to discussion of the petition to change allocation formula for summer flounder. Just as a quick background, this was a petition that was presented to a number of groups, including the Fisheries Service, the Commission and the Council.

The Service indicated it's an issue that they would desire the Council and the Commission to deal with. It has been referred to us and the Council. We had a meeting last week, a joint meeting, both of the board and the council.

The council had not had the opportunity to present the information. There is some preliminary data that staff and the technical committee have provided. We want to hand that out and review that quickly.

Quite frankly, we don't want to take a lot of time on this at the present time. We will have a joint discussion in October with the Mid-Atlantic Council on this issue. But for the board's information, we want to provide this to you so you'll have some background relative to that discussion. So, Toni, I'll just have you review what we have handed out.

### **Petition to Change the Allocation for Summer**

#### **Flounder**

MS. KERNS: Thank you, Mr. Chairman. For your information, the dates of that joint meeting will be the fourth, fifth and sixth. I'll let you know as soon as I hear from the Mid-Atlantic Council which day that meeting will be, but it will be in October, and it's in Ronkonkoma, New York, so that's the Islip Airport Area.

Okay, there are two documents that are of interest. One is the technical committee's report to the Summer Flounder, Scup and Black Sea Bass Management Board reviewing the historical landings for allocation of summer flounder, as well as a document that was on the meeting CD that was an interpretation of the historical recreational landings estimates for

summer flounder by Mark Terceiro.

I will go over in further detail the technical committee's report since you just received that. This document is still under review by the technical committee so it is still a draft document.

The early recreational data from 1960, the TC found would not be useable because all summer flounder species were included in this data, so all fluke, southern and Gulf flounders were all lumped together.

Using the recreational data from 1965 and 1970, adjusted for stock area, gives about a 56 percent recreational to a 44 percent commercial landings ratio. However, it's noted that the commercial landings data are not complete for this time period.

It may be that commercial data in North Carolina are totally absent from this period. There also have been no published studies that would give estimations of the commercial landings for this time period as there were for the recreational landings estimates, which those studies are the ones that Mark Terceiro reviewed in his document.

The general canvass system was put in place in the 1980s and the weigh-out system was coming on line state-by-state after 1980, and commercial landings were clearly incomplete for those years. Some states did not come on line until 1986.

It was noted by the TC that 1989 is the only obvious year of low recreational landings during the 1980 to 1989 time period that we use now in the current scheme to develop the 60/40 split for summer flounder.

It was also noted by the TC that recreational landings estimates have been recalculated since the original allocation was made. If redone, the allocation could possibly be different for this reason. Years since 1993 would not be useful for a basis of allocation since that's the time period that quota management had been put in place.

The TC agreed that there is not a perfect set of years for allocation, and it was suggested that the management board could possibly consider a different set of out years for allocation where available harvest above some based TAC level would be allocated on a different share basis.

That's the review that the TC put forward. If the board would like the TC to review any other additional information, they can do this before the October meeting, but they have reviewed all landings data that they have available to them, so it would have to be something new that the board would put forth.

CHAIRMAN FREEMAN: Okay, comments, questions? Gordon and then Pat.

MR. COLVIN: Thanks, Toni. I have a couple of questions. I'm not quite sure I understand what this recommendation about out years is really saying. Could you just try to explain that a little more fully. I'm being dense here today. What are they getting at here?

MS. KERNS: I will do my best. I believe that they're talking, if there was a policy decision to change the years that you decided, the historical landings years, they could look at that and see what the difference is.

MR. COLVIN: When they say "out years", what do they mean, leaving certain years out?

MS. KERNS: Future years.

MR. COLVIN: Future years, okay. The other question is I recall that in the original petition to NOAA for rulemaking, one of the points that was made related to the assertion that in the case of recreational harvest, it's arguably appropriate to give greater weight or more credence to landings that occur at times when stock abundance is high than when it's low; and that when stock abundance is low, commercial landings are likely to proportionately decrease less than recreational landings.

Therefore, the petition claimed that perhaps one way to look at this is to simply look at years during which stock abundance was above some



threshold of abundance and just try to proportion that. Did the technical committee discuss that issue?

MS. KERNS: Not specifically. I think one of the things that I think they may say -- I can't speak for them but depending on what that stock abundance would need to be, if it's something that we've achieved since we've put quota management into place, they would say that it would not be good to use those years as allocation because there was quota management.

MR. COLVIN: Understood, it would have to be during the baseline period or earlier. Personally, Mr. Chairman, that argument I think may have some merit.

There is certainly a logic to it, and I think probably some of us would benefit from some further technical committee evaluation of the merit of that argument and perhaps see whether they could put some sideboards on it.

Personally I'd like to recommend that we ask the technical committee to look into the merit of that question, look into the science that might be behind it, and see whether or not they can come back with a recommendation on if you wanted to go that way, what would be an appropriate threshold of abundance above which to look.

CHAIRMAN FREEMAN: Is there any objection from the board to looking at that issue? We would like to identify issues that we can try to get answers to. Okay, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. A follow on to that, also in Mark Terceiro's first paragraph, he does clearly identify what the catch rate difference was in recreational as stated by one of the writers in New Jersey.

But the interesting thing about it is he then goes on into talking about North Carolina; is there any thought or has there been any thought of going back to the North Carolina people to try to come up with some clear breakout of the type of summer flounder we're talking about?

CHAIRMAN FREEMAN: Toni.

MS. KERNS: Thank you. We did not discuss it as a group. It's something that possibly could be done, but I'm not sure how much information we may or may not get out of that since I don't even know if North Carolina has records.

They haven't been put into the books at all now. I wouldn't see where they may be. I don't know if Pres has any information on that.

MR. AUGUSTINE: And just a follow on to that, if you go down further and talk about the 1965 angling survey total for summer flounder at 24 plus million pounds and so on, it just seems to me there appears to be a relatively strong case at least looking at it, that the recreational sector did indeed land more than 40 percent or 50 percent.

I do know, in looking at all of the years that the study that was a part of the petition for rulemaking showed, there was one year or two years I think that were up quite high, 60 or 70 percent. Most of the rest of them stayed around 43 percent.

But the numbers that are presented here surely does lead one to believe that there was a definite, clearly stated period of time when the recreational folks were catching an awful lot more.

And as Gordon had noted, once we got into the point where we were being -- "we" or they, the recreational were being managed, that sector was being managed by management regulations, needless to say the catch rate would go down.

It would appear to go down, anyway. And, again, comparing that against a common baseline of commercial that had different constraints put on them, there would seem to be some unfairness there, so I hope we're not through with this issue yet.

I still hope that we go further than just throwing it back onto the board's shoulders and saying, well, we should look at later years out are my comments. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: All right, and, Pres, the issue was raised relative to North Carolina differentiating amongst the various flounder species. Did you have a comment?

MR. PATE: It would be almost impossible to do that with using historical data. We certainly can now and have been able to for the last ten years. But going back to the '65 to '70 period would be difficult or impossible to do.

CHAIRMAN FREEMAN: All right, thank you. Other comments from the board? David.

DR. PIERCE: I certainly don't mind revisiting this issue. It's something we said we would do many years ago. I remember sitting in some meeting, I think in Washington, D.C., with a large contingent of commercial and recreational fishermen, NGOs, to talk about fluke management, and this was one of the burning issues, what should the percent breakdown be between commercial and recreational.

It's been a long time since we've revisited that issue. Now we have a petition before us. I haven't seen the petition; my comrade on my left has got a copy. I haven't and I guess I didn't go through all of the disk.

Anyways, I'll take a look at that, see what it says, and I hope that when the technical committee does complete its review, it also provides, well, the history as to why indeed we did establish the initial split between commercial and recreational.

I know a lot of time was put into that. Chris Moore, certainly, of the Mid-Atlantic Council was very instructive in providing us with data that led to the split that we've been living with for so many years.

I think that decision was made back in 1993, maybe in 1991, then it went to public hearing, so it's an old decision. There's a lot of history to it. We need to see that history and then use that history and some of the arguments, if not all the arguments, made in the petition to judge whether or not we should revisit the issue of how this is split up.

CHAIRMAN FREEMAN: Okay, other comments on the board? To the audience. Sema and then Tony.

MS. FRYERMAN: Yes, I'm not quite clear here when they're talking about --

CHAIRMAN FREEMAN: Sema, identify yourself, please.

MS. FRYERMAN: Yes, I'm sorry. Sema Fryerman, Montauk Inlet Seafood. When they're talking about the weigh-out system coming on line state-by-state, some states didn't come on line until 1986 for the weigh-out system, the state of New York does not use a weigh-out system.

I've sat at this table many times and said we need a proxy for a weigh-out system. The state of New York state landings, boats fishing in state waters did not report a pound of fish. Legally they were not required to do so until April 2002. We have never had a weigh-out system.

None of the federal landings have been reported or measured or counted by a weigh-out system to this day, so if you're looking to -- what you're missing from this picture, take New York state's commercial landings.

CHAIRMAN FREEMAN: Thank you, Sema. Tony.

MR. BOGAN: Thank you, Mr. Chairman. Tony Bogan from United Boatmen, just two quick points. I don't want to argue or start debating the merits of the petition here.

One thing that Mr. Colvin said -- and I was glad to hear that there were no objections from the board to look into it -- a comment he made I just want to elaborate on a real quick is the fact that, as we've seen in several other fisheries, in a declining stock, while everyone's harvest in pounds may go down, the percentages in harvest have historically always been skewed.

The most recent example where we were dealing

with winter flounder this morning is another species. In the eleven years prior to the implementation of the FMP for winter flounder, the recreational harvest averaged over eleven years a little over 32 percent of the harvest.

In the ten years since as the stock has declined precipitously, other than the Gulf of Maine stock, we're down to less than 14 percent of the harvest.

The same thing was true in weakfish. The same thing was true -- excuse me, we believe with summer flounder was one of the issues. Two things actually we'd like to also see the technical committee look into, if we could, is the assertion that only 1989 was a year of low landings or low stock abundance.

Actually, the last three-year period of the ten-year period used to do allocation, while you would think three years is roughly 30 percent, it's not going to be exactly, of your landings, it actually accounts for like -- I believe, if I remember the numbers correctly, 19 percent came from that whole last third of the time frame.

The other issue was as far as looking at the numbers themselves that were from the '60s and the '70s, it is important to note about North Carolina. We know that their gigging numbers were never included in landings, which, of course, is an important issue.

If there is commercial landings data that's lacking, that needs to be looked at, too. But, at the same token, you've also got an issue where the '65 and '70 data was cut to try and count out just Mid-Atlantic summer flounder.

Then it was cut in half, and it's still more than 50 percent in the general share so those are important points to bring up. But I would like to see some more investigation into the last three years, the last third of the original allocation time period, because we would disagree with that assertion.

It's in the petition that only one of those years was a low abundance year. Also look into the

historical pattern in other fisheries as well as summer flounder of as the stock is on the decline, and we know that after the early '80s that's what was assumed to have happened with summer flounder, that the historical percentage of a fishery has been skewed significantly and we have several other fisheries, weakfish and winter flounder notwithstanding, to look at. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Thank you. Other comments? Jim.

MR. LOVGREN: Jim Lovgren, Fisherman's Dock Co-op. Gordon and Tony both mentioned there how in the case of a decline in stock, recreational fisheries decline more precipitously than commercial.

And I'll point out the decline here. The 1988 commercial landings of summer flounder were around thirty-something million pounds. They were in the 30 million pound range.

In 1989 the recreational landings dropped down to about 4 million pounds from 12 or something; they dropped precipitously.

Commercials dropped precipitously, too. They dropped down to about 18 million pounds.

But it was in 1990 when the real collapse happened, that we really saw, and that's when it dropped down to 8 or 9 million pounds.

So over a two-year span, we saw a drop of a couple hundred percent; I mean, from the 30 million something down to less than 10 million pounds. And that was in the case of a decline in stock.

I can tell you, because I myself in the year 1989, I saw that collapse coming, and I had an opportunity to go tuna purse seining that summer, because I knew I wasn't going to make a penny summer flounder fishing.

I left the boat tied up at the dock because I knew there wasn't going to be a penny made fluke fishing. I can tell you that in 1990, if the guys wanted to catch more than the 9 million pounds they did catch, they could have worked and

scraped by and ended up with landings of 14 or 15 million pounds, because they could have caught that.

But it wasn't economically feasible for them to do it so they didn't do it. So, the decline looked worse than it actually was in reality; the point being it's not just recreational landings that get affected by a decline in the stock.

Commercial guys got to worry about paying the bills; and if it's going to cost me more fuel to go out and look for fluke and ruin my doors on sandy bottom because they wear out faster, I've got to use nets, wear the nets out and so forth to catch something that's barely breaking even, when I could go loligo squid fishing or something and make a good payday, I'm going squid fishing, to hell with the fluke.

And that happens to the commercial industry, and that happened in the end of the '80s. We had a lot of other opportunities to do. By the way, the weigh-out system, 1986, well, mandatory reporting wasn't required until 1994.

Any data, commercial data before that is suspect. It's an absolute minimum landing of any commercial data you're looking at. The farther back you go, the more you can multiply it up. As I say, North Carolina might not even be in there.

North Carolina had the biggest share of the commercial quota, 27 percent. Add that on to the commercial landings figures back in 1970 that you're going to look at, okay? This is what you're looking at.

I've heard Rhode Island fishermen say the pound landings never got accounted for whatsoever. Summer flounder landings in the pound nets, not a pound of that was ever accounted for. So, we can go on and on on this thing.

What's good for the goose is good for the gander, and we'll see it in October. But if you're going to analyze anything about declining fish stocks and a recreational catch rate, do it for commercial, too, because it's the

same thing.

CHAIRMAN FREEMAN: Okay, Greg.

MR. GREGORY DiDOMENICO: Thank you, Mr. Chairman, Commissioners, my name is Greg DiDomenico. I serve as the executive director of the Garden State Seafood Association. Today I can truly admit that I speak for all 17 commercial groups that have signed on to our response to the reallocation petition.

Of course, that response adamantly opposes the reallocation. I would like to say a couple other things. It's unfortunate the Commission has got to make this very difficult decision, but we look forward to this issue being resolved by this body and the council in October.

I'd also like to say that I had the opportunity to attend the technical committee meeting. I believe that their conclusions regarding the allocation years, while they decided it was not perfect, I believe that they reached another conclusion, that those years that were used, '80 to '89, were in fact years where the landing estimates or records for both user groups were indeed the most accurate.

That little nuance is missing from the draft document. Again, while they believe they're not perfect, they did agree, in my opinion, that '80 to '89 was the most accurate data for both user groups.

I'd also like to say that you all have a copy of our petition -- I'm sorry, you all have a copy of our response to the petition. In that petition, we clearly demonstrate that the objectives and the claims made in the petition violate four National Standards.

It is also our belief that any reallocation of the fluke quota will only have a negative impact on the commercial sector. It will accomplish very little for the fluke resource itself. It really only serves as a distraction of the real issue of management's inability to constrain recreational effort and accurately record those landings.

I would also like to say that while I know it has been very difficult for the commercial industry to be somewhat proactive and agree to all types of management measures that have accurately monitored our harvest and controlled our effort, which include accurate landings data, limiting effort, preventing new entrants into the fishery through a permanent moratorium, permitting requirements, logbooks, all those type of things has gone a very long way to positive impacts rebuilding this fluke resource.

We're happy to do it. We consider it a privilege to reap the benefits of our management and your help, and again we consider that a privilege to do, so thank you very much, and we will make more thorough comments in October.

CHAIRMAN FREEMAN: All right, thanks, Greg. What we're looking for now are specific issues that need to be identified by the technical committee. I'm sure in October we're going to get into the merits of the issues but, again, make sure that we're as complete as possible. Mark.

DR. GIBSON: Mr. Chairman, you are looking for a fleshed-out task to the technical committee to come back with additional information.

It seems that what they have suggested here -- and I'm trying to read between the lines as well - - the management board should consider different out-year allocations, where they seem to be suggesting that some TAC level, just a hypothetical example, a 30.3 million recently endorsed for, I think '05 specifications, might be allocated on the '80 to '89 base year proportions, and then any new quota that comes forward in additional years might be allocated according to some different standards.

That's what I'm reading into this here. I'm wondering if there is a responsible action for the board to task them to better flesh that out.

CHAIRMAN FREEMAN: Mark, that is later. It's coming up right away; just hold that thought. But that's what we'd like to talk about, not only on summer flounder but sea bass and scup, as well.

All right, any other points that board members would like to make? You'll certainly get into the discussion in October. We want to make certain that you're provided with information that you want and the most accurate that the technical committee is able to provide.

All right, let's move on. We have a couple other items. Mark led into them. Are there any other comments on the petition at this time?

### **Commercial Allocation Discussion**

Okay, the last two items deal with commercial allocation and, again, a segue into the comments, Mark, that you had. As we all have seen over the last several years, in these various species, three species we're talking about, there has been various concerns expressed from New York that many of their commercial catches were not recorded; and then when we allocate it by state, they come up short.

The issue -- and, Gordon, if I don't characterize that accurately, please add to it -- the issue with Connecticut, that their fishermen, during the period when allocation was made, were fishing in other states' ports.

Now that Connecticut has its own port, fishermen have come back to Connecticut. They essentially don't have an allocation and unless some system comes into place, never will. And relative to concerns expressed by Massachusetts, they have different size limits in place. Their catch was lowered because of those restrictive size limits, so their historical catch had been on the low side; and when allocation came about, they're being penalized because of catches that were forgone. And, David, if I don't characterize that properly, please add to it.

I think the issue is, then, we do have a system that we find various deficiencies, and the question is can we overcome these? There have been various suggestions, one made by Jim Lovgren, where in the future, as allocation increases as the stock continues to build, there be some differentiation in allowing states with fairly low or very low allocations to come up much faster than states that have large

allocations in a way to offset some of these differences.

We've talked about it; we've taken no action. I think, speaking with council staff, they went through this iteration once after a large discussion. There really was no movement so far as a change in the management program.

I think the issue at hand is can we take another look at this. Can we look at possible ways to bring into what people consider a more balanced proportion, some mechanism for adjusting what states feel are inequities in the system?

Eric, you had made a request on this. In fact, Gordon has at various times expressed that again today, as has David Pierce. I would like to continue that discussion to look at various possibilities, at least concepts that we could then take back to the technical committee and do some analysis to see what would happen using various hypothetical increases in order to make these adjustments.

And so I'd like to have that discussion or at least start that discussion and continue it, then hopefully be able to summarize some directive to the technical committee to look at concepts, again, that would be able to make these adjustments. David.

DR. PIERCE: Mr. Chairman, we have about five minutes left in the meeting, so you're request is a bit ambitious, I think. Clearly, it's an issue that's important to every state, how to deal with splits.

I'm a bit unclear as to where you want us to go with this issue today, especially since I thought that we already had one idea that we were going to as a group of states to pursue relative to what do we do when we have increases in the amount of quotas and specific set shares for each state.

Do we divide the increase in those quotas equally amongst all the states? Is there some other approach to take? I'm unclear as to where we are in the development of this strategy relative to what we decided to do in Baltimore a little earlier on last week.

CHAIRMAN FREEMAN: Well, my desire, David, is to try to identify various approaches that could be used, and then at least philosophically what could be done, and then charge the technical committee with putting out several hypothetical increases.

In other words, if we reach MSY and we use Approach A or Approach B or Approach C, where would we be when we finally reach our harvest level that we want to see when these stocks are fully recovered?

Or, how can we in the future bring some balance back in to address the concerns that various states have? Now, we've looked at this individually.

It seems to me that if we look at it using all three species, it really makes more sense because the state, on one hand, may lose some quota or forego some quota on one species, but if you use that same philosophy, they'll gain perhaps something back on a different species.

So there seems, in my judgment, to be some balance where there may be some give and take, but we'd be able to make some adjustments. Maybe this won't happen, but it seems we need to strive a little harder than what we've done in the past to see if we can accommodate some of these concerns.

I would ask, David, that you identify, if you can, briefly the problem and then possible approaches. I would ask that Connecticut do the same. I'm sure Eric has some ideas that could be possibly used, and Gordon, as well, because each one has a little different situation.

We need to start this process and we need to be sympathetic to each one's concerns. And, looking at all three species, I think we may perhaps lose on one species but gain on another, and I think that's the advantage of using a combination of species. I'm willing to listen to any suggestions to move this forward. Eric.

MR. SMITH: Thank you. Last year in October I tried to articulate the frustration we have with

summer flounder and the commercial allocation system.

I'm beginning to think, not that I'm giving up the fight, but it's probably the wrong way to approach this because for every good argument I can offer, somebody else can offer an equally good argument from their perspective on fluke or scup or commercial versus recreational, commercial versus commercial.

I think we're kind of on a fool's mission if we pursue that too much. I think it's healthy to do that so we all understand the different problems we have, and there will be a lot of different ones.

I'd rather kind of look forward to potential solutions. In my view, and what I heard or reading the petition on fluke versus the counterpoint that came from Garden State, et al, and hearing the arguments on fluke commercial and the black sea bass discussion today, I think the issue is that we lock ourselves into qualifying periods that become stale.

Right now the qualifying period for the commercial allocations system and the commercial/recreational for fluke is 24 years old and counting. It started in 1980. A lot of those guys have, you know, bless them, have died and gone out of the fishery.

And 20 years from now we may be having these same discussions saying that, you know, the qualifying period is 45 years old. Well, 45 years ago Connecticut had a hell of a trawl fishery in Southern New England. It was a premier port and they landed a whole bunch of fish, and then things changed and the fishery declined.

And no one, including myself, would suggest we go back 40 years, but 20 years from now, if we don't do something, we will be allocating fluke continually with the shares we have now based on data that was 45 years old.

I think what we need, as a Commission, is a working group to develop a white paper on potential ways to reallocate. And it ought to come out somehow where we have a mandatory re-opener, every five or ten years we're bound to

go through a process that says how have things changed, what are the demographics of the fishery?

Maybe Connecticut bans commercial fishermen from the face of the earth from any person who ever set foot in the state, and we don't need allocations any more because those guys can't even move to Massachusetts and be fishermen, just to be facetious for a moment. Things change.

I can't sit here and tell you that I have a solution. All I can think of is you can't come to a solution with 25 people around a table at 6:29 in an afternoon, but you can empower a working group of a half a dozen people that, you know, basically are invested in this because their ox was gored or because they have a lot to lose, either way.

They need to sit down and say the fair thing for a Commission of this kind, where at the end of the day we all have to shake hands and say, well, you're still my buddy and I still respect your point of view, even if I disagree with you -- we have to move this Commission into that mode of thinking so that we can deal with these thorny issues, periodically revisit them and hopefully adjust to meet the current nature of the fisheries and move on without the rancor, because last week and a couple of meetings ago Gordon really made a good point.

These kind of debates, if we don't find a collegial way to solve them, are going to tear this thing apart, and this Commission will become a bunch of acrimonious, you know, dagger slingers, and we won't have a Commission the way this was formed 60 years ago.

We'll have a bunch of fights and a bunch of lawsuits, and I think we all want to avoid that. I would suggest a working group and a white paper, maybe a draft first look at the annual meeting, maybe that's too soon, I don't know, but I think that's the way to deal with it, and see what we come out with after the working group has done their job. Thank you.

CHAIRMAN FREEMAN: Okay, thank you,

Eric. I have Pres, Tom, Jack, and Mark, and Gordon.

MR. PATE: Thank you, Bruce. I think of all the options for reallocation that I've heard in the past couple of years, there's a fundamental need of each of the states that are proposing those, and that is to reduce discards and account for the discards.

One charge to the technical committee should be to look at how that can be accomplished with the various options that will be considered and how that might help or speed recovery of the stock, so that in the long run all states would benefit from increased TACs.

CHAIRMAN FREEMAN: Good point. Tom.

MR. FOTE: When you start horse trading with different species, you're affecting different fishermen. Sea bass fishermen might not be the person to fish for summer flounder. So when you're making deals, you're going to affect different commercial fishermen differently, and we have to be fully aware of that because I don't want to gore somebody one way.

You know, you're putting deals on the table and we've seen the consequences three or four years later of some of those deals that basically disenfranchised the person that wasn't at the meeting, the commercial fishermen in this particular fishery that was different from the person that was at the meeting.

So we've got to make sure that if we're going to do anything like this, it has to be a truly public process where everybody has input into it, especially with dealing with horse trading between species.

CHAIRMAN FREEMAN: Thanks, Tom. Jack.

MR. TRAVELSTEAD: We've heard the complaints of New York and Connecticut and Massachusetts on these allocation issues for many, many years now. What we haven't heard are a lot of very specific solutions to the problems.

I don't doubt the complaints of these states are not real. I understand them completely. But what we seem to lack are very specific solutions that the members of this board can sink their teeth into and debate and talk about.

I think Jim Lovgren submitted a proposal, a proposed solution, and that was probably two years ago or longer, it seems. I recall, Gordon, I think you put together some proposals that were sent around to the state directors, but I don't recall that they were ever really debated at a board meeting.

What I would like to do is encourage the three states that I mentioned and others, if they're interested, is getting together and putting together a very specific proposals with all of the various numbers and the effects that states like Virginia can look at and see what we can live with.

I think that's the only way we're really going to solve this problem. If we put together a white paper that discusses this thing in general and talks about broad solutions, I don't think it gets us anywhere.

I think we have to see the actual numbers out into the future as to how it's going to affect all of us. It's going to be very difficult for any state in the position of Virginia or North Carolina to go to its fishermen and say, you know, we're going to have to give up quota, a particular boat is going to have to give up 20,000 pounds of flounder.

You know the answers that we're going to get to that. It's very difficult to go back home and talk about these things generally without having the very specific numbers that we can show to our fishermen.

I just want to encourage those states who are concerned about this to get together and put some proposals on the table, send them out to the states, talk to them over the phone, see if we can't maneuver this thing to where we can all come to some form of agreement and then bring it to the board as a whole.

CHAIRMAN FREEMAN: Okay, thanks, Jack.



Mark.

DR. GIBSON: It's clear to me that none of the management boards will ever be able to grapple with this issue because the vested interests of the states, and the voting blocks with the larger shares, are going to be hard pressed to change their positions on what their allocations are.

I think you need an independent group. I don't know what group that would be, whether it's the technical committee or some outside group that would provide the Commission's boards recommendations on how allocations ought to be done, both commercially within the states and between the major commercial and recreational sectors.

I think the boards would need to give some guidance to those groups as how to do that, put some sideboards, I think they were called earlier.

I would suggest that it include the notion that states would retain the base year allocations up to some certain specification year, whether it be 2005, you retain your base year shares, and then future quota that is accrued because of improving stock status beyond that, would begin to be allocated under a different set of formulas.

Those formulas might include things such as the number of commercial fishermen or the recreational fishermen in the state, the number of fishing ports, miles of shoreline, whatever the appropriate formula is.

I think the board would need to give guidance to this independent group as to how to structure so that you have a more focused review and set of recommendation would come forward. That's my idea I would throw on the table.

CHAIRMAN FREEMAN: All right, thank you, Mark. Gordon.

MR. COLVIN: You know, I've spent time wondering when I stopped being a professional resource manager and started being a negotiator. We should all just stay home and send lawyers back here because we're not doing our jobs.

We're sitting here negotiating, not even. We've started a practice, for better or for worse, where we cut the pie. And as I said last week, we never made a decision, not once when we did that, that was so good and so bought into and so accepted that it ever deserved to get etched in stone for all time, never. And we probably never will, and we should accept that.

If we can't find a way to revisit these decisions constructively, Eric is right, we're going to tear ourselves apart. Times change, needs change, fisheries change, social and economic conditions change. Grievances fester and we need to find a way to let go.

I think Eric had some good points when he suggested a process that might get at it in a bigger way. I have to disagree with Jack a little bit. I think there have been specific proposals out there, and there has been a general unwillingness on the part of a majority of the members of this board or the bluefish board, or you name it board, to go forward and initiate a process of amending a fishery management plan to address it.

It seems to me that a lot of what we've done got done in the context of restoring overfished fisheries. We're moving toward a time now when that's less and less the sideboards that we're dealing with.

Maybe that happy circumstance gives us the opportunity to break out of the mode we've been in, the hunker down, keep what you got at all costs and don't ever go home having given something up, and get back to being professional resource managers that are looking at what do we have, what do we expect to have, and how can we best manage the use of those resources by people to meet their needs. That's what I think we're all here to do together, collectively, and that's what we need to try to do.

I think that a group along the lines of what Eric has suggested needs to begin from that perspective. We need to go back to the drawing board on fluke and scup and sea bass and probably bluefish and some others and find out from the users of those resources that they need,

what they expect, not just state-by-state but regionally, collectively, across the board because I don't think we're meeting those needs.

If we don't make some changes, we're not going to meet them, but we probably can, and the increasing TACs and TALs as the biomass grows gives us the opportunity to readdress those needs. I'm not just talking about 7 percent of the fluke quota versus some other number.

I'm also talking about the allocation between the commercial and the recreational sectors, or in some cases maybe doing away with allocations altogether, or in some cases recognizing that there are different classes of commercial fishermen that maybe have different needs at different times and locations, and maybe we should be managing one way for the offshore fishermen and another way for the small-scale inshore fishermen in state waters, as we do to some degree with scup.

But we need to get back to finding out what the fishermen need. As I've said before, I can assure you we're not meeting the needs of the vast majority of recreational fishermen on fluke right now. We're just not.

They have more pounds to catch, no more fluke to catch, maybe fewer, and the businesses that support the fishery are getting weaker and weaker economically as the resource gets stronger. We need to break out of that and address it.

I would suggest that we follow Eric's suggestion, create a process and a group. It could be a PDT leading towards a comprehensive amendment to these plans -- that certainly wouldn't be the first time I've suggested that -- that starts by going to the fishermen and finding out what they need and what they expect from us as these fisheries recover. Then once we know that, it will be a lot easier to reconsider allocation.

CHAIRMAN FREEMAN: I have Dave Pierce and Vince.

DR. PIERCE: Well, Gordon has made a number of good points; fishermen's needs, the

fishermen's expectations, what are they, we should be guided by those needs and expectations, but let's face it, those needs and expectations differ dramatically from state to state, from region to region.

I don't expect that the industry is ever going to come to terms with itself and decide amongst themselves regionwide to cooperate and to share. That's unlikely to happen. People are people. Fishermen are fishermen. Managers are managers.

We are likely going to find ourselves in a position where we are not going to be able to let go. I don't see how any state is going to be able to let go; that is, to modify existing state percent share that they have right now because the political pressure would be too intense for a particular state or states to let go.

The commercial fishing industry or the recreational fishing industries would not let that process occur, the letting go. However, I think that there would likely be enough support for a change in direction with these recovering stocks.

That change in direction simply would be more fairness and more equity, more equal sharing, get away from a continuation -- get away from a specific application of a percent share forever more.

We all have our base percent shares for these species. I suggest that perhaps once we achieve some certain level of biomass, maybe the biomass threshold or some other appropriate amount, then we trigger a different wave of region-wide sharing, and that might be the equal shares across the board or something similar to it.

I haven't given enough thought to it to give many more options here tonight, but I don't think we can go back and retrench. I don't think we can go back and reset percent shares without animosity and the fights and the knives and what have you.

We have been there before, and I don't think there is enough evidence to suggest that we're

going to change now with regard to changing base shares.

I think there is evidence that there is a willingness of most states to start looking at this equity, this fairness of equal sharing of percent increases in quotas that will occur as we continue to rebuild these stocks, scup, sea bass and fluke being some excellent examples of that.

In addition, I think good arguments for doing so; that is, the equal sharing as the stocks increase above the baseline percentages is the fact that as the stocks grow in abundance, their distribution changes, they're more widely distributed and we end up with situations where fishing grounds that were devoid of fish in the past, for whatever reason, now are replaced with fish of all sizes, many different year classes.

We see that certainly in Massachusetts waters where fisheries that did very poorly in previous years are now doing very, very well because the resource has rebuilt because of the sacrifices that have been made by states' fishermen up and down the coast for a number of years now.

So, that bodes very well for the future and for a new approach for making sure that every state is able to get more than they otherwise would get.

In addition, if we cross this specified threshold or biomass, as I suggest, that in combination with the fact that the stock is spreading in its abundance, increasing its availability, would enable us to revisit in some cases, I'm sure, the percent shares between commercial and recreational.

I think it's tied to increased abundance and increased spreading of the resource. We've heard this time and time again from the recreational fishermen, certainly, and from commercial fishermen as well.

So, those are my preliminary views on where we need to turn our attention. I'm certainly more than willing to go along with Eric and Gordon's suggestion, that we establish some working group, what have you, to pursue this a bit further.

I think we've had other working groups like this before, and they've also made recommendations before, and we haven't pursued those recommendations, maybe the time wasn't right. Well, now certainly the time seems to be quite right. And, as I said, I'd support that suggestion for the working group.

CHAIRMAN FREEMAN: Okay, I have Vince and then Pat and then we'll go to the audience.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I can appreciate the difficulty of folks feeling that they'd rather send lawyers to this process, but the fact of the matter is there are other groups that wrestle with these questions in other regions as part of the job of fisheries management.

And one technique that those groups have used is you're getting -- this group is getting pressure from the industry itself. The folks that have quota are getting pressure from their industry not to give up quota, and the folks that don't have fish are getting pressure from their industry to get quota.

One strategy, if you were to pursue a working group, is to put that working group to put thought into how would you construct a working group of industry representatives and put the industry guys together in a room and ask them to come up with the advice to you all.

If in fact it's going to be trying to reflect the concerns that they all have, put the problem to them and see what their advice to you is. We have quite a bit of flexibility I think within the Commission process to put such a group together, maybe a lot more flexible than, say, the federal process in terms of how we get those folks together.

I've seen that process be used in other management boards with some surprising results. And the other is just to remind you on the time thing, Mr. Chairman. You're almost an hour over. Thank you.

CHAIRMAN FREEMAN: Thank you, Vince. I had Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Well, what I want to put on the table is as important as going to dinner. One of the things that has come up, last year as you know New York tried to use a creative approach to using MRFSS to solve our problem, and I either wanted to bring it up now or wait until the board meeting, the other board meeting, the full board meeting to ask what are we going to do about the possibility of the board looking at using multiple years' MRFSS averaging?

We haven't got another system in place yet to offset where we are. And looking at the catch rate that was given to us a little while ago, it looks like the three states, if they continue at the rate they're going, are going to be in the same boat New York was this year.

And we're going to sit here and say, "Ha, I told you so. I told you so." We don't want to do that so what can we do collectively as a board to address that concern?

The other point I wanted to put on the table is we've talked in New York about regional quotas, quota-sharing each of the three or four states, in their areas getting together and going that way, and seeing if we can't manage the fisheries within those areas a little better, particularly scup and summer flounder.

I know it's a very ticklish issue. We don't have a solution for MRFSS. We don't have a better data source. I'm not questioning whether MRFSS is good, bad or indifferent. We've got it; it's there.

So, how much more managing can we do on a state-by-state basis to see each of you states around the table in the same economic situation that we are in New York. It was Virginia a couple years ago, Delaware had it, New Jersey got a tip of the iceberg this past year.

And with what we've got going, for our catch rates so far this year, I think one of our folks noted that within two weeks of the scup season, we caught 27 percent of our quota -- two weeks -- and the big boats weren't fishing -- so it looks

like we may not have a scup season next year.

So I guess what I'm asking is that the board members, other board members around the table who are going to be faced with a similar crunch I think before the year is up, we really should look at and talk about is there something else we can do differently?

I'd like to, whoever would like to go to dinner tonight from the -- I'm not going to pay for it but any of you folks from the governor's representatives, I'd like to try to get together with you for dinner tonight and let's kick around some ideas to see if we can come up with some thoughts what folks in our states are thinking as possible solutions.

The problem isn't going to away. We can sit here and hope and hope and hope that it doesn't catch us next year. It's not going to go away. So, let's at least get it on the table and discuss it. I'm not sure we have any more time tonight but let's think about it and see what we can do about it. Thank you, Mr. Chairman, I appreciate your indulgence.

CHAIRMAN FREEMAN: All right, thank you, Pat. Sema, would you come forward.

MS. FRYERMAN: I think this discussion really has to be taken out of the allocative arena. And when you approach it from the allocative arena, you're missing a point here. It's not horse trading, as Tom said. And, you know, Eric almost hit upon it.

The fact is if you were at the council meeting and you looked at the numbers that Chris Moore put up and you heard Chris Moore say that the F rate is driving this plan now so that, guess what, you've already gotten allocated less this year at a 75 percent rate of possibility of making the plan work than you would have gotten at a 50 percent possibility of making the plan work.

And the reason that you had to go to 75 percent is because in the recreational arena you're forcing anglers to throw over -- I mean, you know, I'm trying to remember the year class charts that Chris put up, but let's say -- and I

don't know the numbers -- that fish over 15 inches are 25 percent of the population, so you forced the recreational angler in a lot of states to throw over three fish for every one they can keep.

And your F rate is going up, and you're getting less fish this year. And you force those states who haven't got -- with this recovered resource who haven't got a trip limit to bring in a decent amount of fish.

You can't get your net out of the water fast enough, and this is what your technical committee has to look at. What is the minimum amount of fluke you can catch in a half hour tow? Is it 1,000 pounds?

And how many states are operating on a 200 or a 500 or a 50 pound trip limit so that the F rate is going up? And you need now a 75 percent probability that the plan is going to work.

And that's the wild card is how many fish are being discarded because the allocations, as Eric very well said, the allocations don't fit the current circumstances. You went to a state-by-state quota system in sea bass three years ago or four years ago, because it was a really warm winter.

And suddenly New York and Massachusetts had a shot at that 9,000 pound trip limit. For years and years before that, when the fish -- when you had a 9,000 pound fish limit, the fish knew to stay down there in Virginia and North Carolina where they belonged and nobody had a problem with a seasonal trip limit.

Well, now what's going to happen at the next warm winter when, once again, the fish are thick in New York and Massachusetts. And I don't know, what's our sea bass limit in January now? Two thousand pounds?

How fast can we get our net out of the water if they're as thick up there as they were in 2001? And then we're going to be sitting here hearing how the discard rate and the F rate requires us to have a much higher probability of success in the sea bass fishery.

You know, change is the word, change is the word. You've already been allocated less fish with that 75 percent probability.

When you talk about a working group, I hope that you look for ways to prevent discards and come up with guidelines of how trip limits should be set, and maybe work as a body to talk about weekly trip limits and maybe work as a body to talk about how many anglers are there in a state and how should those states have qualified their fluke permits and how many fluke permits should they have in a state with this much shoreline.

But all of these things have to be done, and it has to come out of the allocative arena, because those states who are sitting there saying we don't want to change because we're allocated the most fish, are losing quota this year because the states that are not allocated enough fish to bring a decent haul on board are killing too many of them.

CHAIRMAN FREEMAN: Thank you, Sema. The gentleman from Massachusetts in the blue shirt.

MR. BUTLER: Thank you, Mr. Chairman and the rest of the committee. Jim Butler, Buzzard's Bay Party-Charter Boat Association. Actually, I just want to leave the committee here with a parting word, what the fishermen in my area want to say to you guys.

I know that I'm representative of a small group of party-charter boat captains but our real business is people. You know, we're here discussing fish and the limits of fish and the dimensions and a lot of technical stuff, as somebody indicated.

You know, a lot of legalese is being bandied about here. But the truth of the matter is that we deal in a people business, and somehow the people are being left out of the equation.

The people that are represented by proxy from the small party-charter boat operators are the people who avail themselves of recreational

fishing at the most basic levels, the people avail themselves of it because they're economically challenged or disadvantaged, and these fish and this recreational has become a part of their lifestyle, has become a part of their economic wellbeing, not to the point of them converting the fish into capital of any kind, but in the form of lifestyle that needs to be maintained.

Somehow the small fisherman person, the person who struggles to go to work all during the year and then has a one-week holiday to come up to Massachusetts to go fishing and catches enough fish to freeze and supplement their dietary needs over the course of the rest of the year, these people are being left out of the equation.

All they want to do is fish. You know, it's not a question of a right to privileges or anything else. These are the under-privileged, for the most part, who need for you guys to put something in effect that creates some kind of incentive to maintain a certain kind of a balance in their lives and to not so much look at the economics of it all.

I come from a community, New Bedford, Massachusetts, where it's probably the commercial fishing capital of the world or United States, and so all of the emphasis is on commercial fishing, you know.

But a significant portion of people come from all up and down the East Coast just to fish recreationally, just to fish to maintain a wholesome kind of a balanced lifestyle, and that is not being taken into consideration.

You know, it's a people issue with us and not just a fishing issue. So we are so much against the MRFSS data and things like that that don't take the people into consideration.

I just wanted to leave the committee with this word that as you evaluate the technical data, that you factor in the human component of all of this.

And if you up to this point are trying to keep the small party-charter boat captains and the people that frequent those organizations out of the

business, out of the fishing, then we're doing a wonderful job of doing that.

But if we want to increase their ability to go fishing, to have a lifestyle that fishing is a component of it, then we need to drastically change how we've been doing business up to this point and how our data is collected and the rules and regulations associated with that. Thank you.

CHAIRMAN FREEMAN: Thank you Captain Butler. We're very appreciative of the fact that you came this long distance to address the board. All right, we do have time limitations.

Pat touched upon one of the issues I wanted to dwell on more, but that was the recreational problems that are occurring, particularly in several of the states. I think we understand those. Gordon, did you want to make a comment on that?

MR. COLVIN: Sorry, two things. One is I want to specifically and enthusiastically endorse Vince's suggestion and suggest that perhaps the staff come back to us with a proposal about how to do that. I think that would be very helpful and it dovetails very nicely with what I'm talking about in terms of addressing the needs and expectations of the users of the resources.

The other thing is moving on into this other thing, Bruce, I'm not sure where we're going to go tonight with it because of the time, but what I was getting at hours ago, when we talked about the framework, now addendum, was that there is a lot unspecified as yet in addressing the question of if we do conservation equivalency, whether it's state-by-state, whether it's regional, whether it's based on a quota share, whether it's based on something else, if we do conservation equivalency, how do we do it?

What are the rules? That itself could easily be the subject of another addendum, certainly at least clearly articulated, consistent technical guidelines, which we have not really done as thoroughly as we might have.

And, at this hour maybe there is little we can do

other than to agree that we need to do that and to talk a little bit about the process for moving in that direction. Perhaps the staff has a suggestion.

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CHAIRMAN FREEMAN: All right, thank you, Gordon. Because of the time, I don't want to cut this short, but we're over already. Let me just indicate that I'll further confer with staff, as well as commission chair and vice chair, how best to proceed and move in a positive way, at least trying to get this moving.

So at this point, I think that's as far as the discussion can go or should go, but we'll certainly move on these issues. All right, is there any other business? We've exhausted the agenda. Any other business from any of the members? Seeing none, then I conclude this meeting. Thank you very much.

**Adjournment**

(Whereupon, the meeting was adjourned at 7:05