

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

**March 11, 2004**

**Radisson Hotel  
Alexandria, VA**

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF	Bruce Freeman, <b>Chair</b> , New Jersey DFG&W
Vito Calomo, proxy for Rep. Verga (MA)	Edward Goldman, proxy Asm. R. Smith (NJ)
Jerry Carvalho, proxy for Rep. Naughton (RI)	Rick Cole (DE)
Gil Pope, Rhode Island Gov. Apte.	Russell Dize, proxy for Sen. Colburn
David Borden, <b>Vice-Chair</b> , Rhode Island DEM	A.C. Carpenter, PRFC
Eric Smith, Connecticut DMR	Jack Travelstead, Virginia MRC
Lance Stewart, Gov. Apte. (CT)	Kelly Place, proxy for Sen J. Chichester (VA)
Fred Frillici, proxy for Sen. Gunther (CT)	Preston Pate, North Carolina, DMF
Gordon Colvin NYSDEC	Damon Tatem, North Carolina, Gov. Apte.
Pat Augustine, New York Gov. Apte.	Anne Mooney, NMFS
Brian Culhane, proxy for Senator Johnson (NY)	Bill Cole, USFWS
Tom Fote, New Jersey Gov. Apte.	

### Ex-Officio Members

Rob Winkel, LEC Rep.  
David Simpson, Tech Chair

### ASMFC Staff

Vince O'Shea	Toni Kerns
Bob Beal	Lydia Munger

### Guest

Paul Forsberg, Viking Fishing Fleet (NY)  
Mark Hodges, F/V Captain Mark (VA)  
Joe Wagner, F/V Saturn (NJ)  
Michael Scott, F/V Wizard (NJ)  
Mike Bloxem, ASMFC LEC, (MD)  
Dick Brame, CCA (NC)  
Pete Devita, FBA (NY)  
Mike Barnett, F/V Codfather (NY)  
Steve Kearney, United Boatmen (NY)  
Dennis Kenjuk, United Boatmen (NY)  
Tony Bogan, United Boatmen (NJ)

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## INDEX OF MOTIONS

Page 3: Motion to amend the previous action of the Summer Flounder, Scup, Black Sea Bass Management Board regarding scup recreational specifications to require the following states reduce recreational landings based on 2003 landings by the following amounts during calendar year 2004: Massachusetts, 40 percent; Rhode Island, 25 percent; Connecticut, 57 percent; and New York, 58 percent. Motion carried on Page 4.

Page 6: Motion that each state report the 2004 summer flounder, scup and black sea bass recreational measures to the ASMFC by May 9, 2004. Motion carried on Page 6.

Page 9: Motion that the board appoint a plan development team to develop a public information document that incorporates the various options in the staff's March 2004 management options paper and schedule hearings to receive public input on the options. Page 15: Modification to the motion: "Commission staff would also notify the public of the board's intent to consider extension of the current allocation system for 2005 for action by this board at its May meeting." Motion failed on Page 20.

Page 11: Amendment to the motion: Move to amend to add the words before the word "appoint" in the first line, add the words, "extend the current black sea bass quota management system in 2005 and"; and then also after the words "the options", at the end of the motion, add "for the 2006 fishing year". Amendment withdrawn on Page 12.

Page 19: Move to direct the staff to prepare an addendum to extend the current sea bass allocation system for calendar year 2005 and 2006 for action at the May meeting. Motion carried on Page 21.

Page 20: Motion to amend to delete 2006 so it would just be for 2005. Motion failed on Page 21.

Page 26: Motion that the board approve the proposals as presented in the staff report. Motion carried on Page 26.

Page 29: Move that the board approve New York's proposal to reduce its projected recreational summer flounder landings for 2004 by 20 percent on condition that:

1. The Technical Committee verify that the final measures New York selects achieves a 20 percent reduction; and
2. New York maintains such measures in place for the 2004, 2005, and 2006 fishing years. Motion failed on Page 44.

Page 37: Move to amend to remove 2005 and 2006 from the previous motion. Amendment failed on Page 44.

**ATLANTIC STATES MARINE FISHERIES**

**COMMISSION**

*SUMMER FLOUNDER, SCUP, AND BLACK*

*SEA BASS MANAGEMENT BOARD*

Radisson Hotel

Alexandria, Virginia

March 11, 2004

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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 Thursday, March 11, 2004, and was called to order at 2:05 o'clock a.m. by Chairman Bruce Freeman.

**Welcome/Introductions**

CHAIRMAN BRUCE FREEMAN: If board members would take their seats, we'll start the meeting. We have a very full agenda of very important items. We'd like to make sure we have sufficient time to get through these and get out of here before midnight tonight.

Just a couple points I would like to make prior to asking for approval of the agenda. There was a press release on January 22<sup>nd</sup> of this year relative to the action we took on Addendum XI, and there is a typo.

I just wanted to make sure I brought that to your attention. I think most of you recognize it, but the press release indicated that Delaware, Maryland, Virginia, North Carolina were approved for a 10-inch minimum size, and that is an 8-inch minimum size, so I'm sure most of you recognized that. Pres said he was going to put the 10 inch in place, but decided he would probably stick with the 8 for the time being.

The other point was the Fisheries Service at our

January 20<sup>th</sup> meeting indicated they would provide a written report on the issue of MRFSS relative to primarily the very large catches in New York and New Jersey, and we have yet to receive that.

That report has a tremendous amount of bearing on, I think, some items that we'll be covering on the agenda, particularly as I mentioned for New York, and the fact that we don't have that at this time is making our job quite difficult.

I know, Anne, you're representing the agency today and you probably don't even know about that commitment, but I would ask that you take that back to Bill Hogarth, and in the future we'd appreciate meeting the original deadlines. It makes our tasks much easier.

One other item, I've been asked by several states to add an item to the agenda and that is an item to -- actually, an action to revisit Addendum XI, which we passed this past January. This is the recreational scup fishery for 2004.

The states that really are impacted by this action are the four states of New York, Connecticut, Rhode Island and Massachusetts. As a group they have come forward to ask that we revisit that item.

If there is no objection, I would put that on the agenda after public comment. Again, if there is no objection by the board, I would also restrict discussion on that item for no more than one-half hour.

If there is a need to go beyond that, we'll have to put it at the end of the agenda, but we're very much concerned. This is the end of a long meeting week. People have commitments to leave. We want to make sure we have a quorum in order to take necessary action.

I would ask at this time if there is any objection from any board member to put this re-visitation of the Addendum XI on the agenda. Seeing no objection, I will do so.

I will also, when this item comes up after public comment, ask Bob Beal to indicate what vote

this will take to get this back up before the board. Okay, any additions to the agenda by anyone? Eric.

MR. ERIC SMITH: Thank you, Mr. Chairman. At the appropriate time, which may be other business, I would like to discuss, briefly, some ideas for consideration in the restarted Addendum XIV that we talked about at Kill Devil Hills and then in December. So if we could just mark out time to have that discussion, thank you.

CHAIRMAN FREEMAN: Okay, we may get to that before that point, but if not, we'll definitely make sure we do. Any other items? David.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. Item 5, is that specific to black sea bass or can that be expanded? In other words, is it limited to black sea bass alone?

CHAIRMAN FREEMAN: Expanded in what manner, David?

MR. BORDEN: Excuse me, Bruce, I can't hear you.

CHAIRMAN FREEMAN: You indicated you want that agenda item expanded?

MR. BORDEN: Well, is that the only subject in terms of developing an addendum?

CHAIRMAN FREEMAN: Okay, let me just indicate that you recall last meeting we asked staff to put together an issue paper dealing with black sea bass commercial allocation, and that was on our list as the next item to discuss.

I think either there or, as Eric indicated, under other business the issue may come up should there be an addendum and should that be expanded into other issues, so we can either place talk about that. Gil.

MR. POPE: Yes, thank you. Black sea bass commercial allo-cation, should that read "reallocation"? I'm not sure because there is already allocation. Thank you.

## **APPROVAL OF MINUTES**

CHAIRMAN FREEMAN: Okay, any other comments? All right, we have the proceedings from the December 15<sup>th</sup>, 2003 meeting. Board members have copies of that. Is there a motion to accept that? Mr. Augustine.

MR. PATRICK AUGUSTINE: So moved.

## **PUBLIC COMMENT**

CHAIRMAN FREEMAN: Second by Mr. Pate. Any objections or any comments, deletions, additions to those minutes? Seeing none, without objection, we'll accept the minutes. Thank you. All right, we have a period for public comment at this point.

As we get into these issues, I would like to reserve time for public to speak prior to any necessary vote by the board; however, if anyone wants to make a general comment at this time, please raise your hand.

## **REVISIT ADDENDUM XI**

All right, seeing none we'll move on. Then we'll move to the action for revisiting Addendum XI, and, Bob, I would ask the procedure that we must follow relative to getting that back before the board.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. This item falls under the new provisions of the ISFMP Charter that were approved in December. This would be a consideration to amend or rescind a previous action by a board, so this would take two-thirds majority vote of the entire voting membership of the board, not just the members present today, but the entire membership of the board. So it would need to be phrased as a motion to amend or rescind.

CHAIRMAN FREEMAN: All right, are there any questions? This will take two-thirds. We have a 12-member board. There will have to be eight votes or more in the affirmative. Tom.

MR. THOMAS FOTE: You answered the question.

CHAIRMAN FREEMAN: Okay, any other

questions? David.

MR. BORDEN: Do you want me to proceed, Mr. Chairman?

CHAIRMAN FREEMAN: Yes.

MR. BORDEN: All right, thank you very much. Just as a very quick background here, the board finalized action on the addendum, as Bruce indicated; and following that, there has been a very significant negative reaction on the part of some of the recreational constituents up and down the coast.

The basis for the reaction is the differential impacts that the addendum has. For instance, in the case of the state of Rhode Island, Rhode Island was about 8 percent over our target TAL, yet the required reduction for 2004 was 53 percent, so there is a bit of a disconnect there.

As a result of that, both the state of Massachusetts and the state of Rhode Island submitted comments requesting reconsideration of the issue for a whole variety of reasons, and I'm not going to summarize those in the interests of time.

We only have a half hour to move through this. That's already part of the record. It has already been distributed to anyone that wants it. So as a result of that, I had requested that the affected states, which are really New York, Connecticut, Massachusetts, and Rhode Island, get together with our esteemed board chair and try to negotiate a different percentage sharing arrangement.

We did that in really two parts. One was a conference call. The second activity was we continued meetings during this meeting week, and, in fact, I am pleased to be able to report we have the agreement of the states involved to change the sharing arrangement. So on behalf of those affected states, I've got a motion that I would like the board to consider on this.

If you could put the motion up, please, Lydia, **I would move a motion to amend the previous action of the Summer Flounder, Scup, Black Sea Bass Management Board regarding scup**

**recreational specifications to require the following states reduce recreational landings based on 2003 landings by the following amounts during calendar year 2004: Massachusetts, 40 percent; Rhode Island, 25 percent; Connecticut, 57 percent; and New York, 58 percent.** I move that.

MR. VITO CALOMO: Second.

CHAIRMAN FREEMAN: Okay, the motion was made by Mr. Borden, seconded by Captain Vito.

MR. BORDEN: As far as justification, I think it might be helpful, rather than have me speak to the point here or reiterate what I've already said about the differential impacts, I've asked Eric Smith to just outline the rationale for the action.

CHAIRMAN FREEMAN: All right, Eric.

MR. SMITH: Thank you. This, as David points out, is a negotiated agreement. In the context of the 4.3 million fish harvest target for 2004, it gets us within 200,000 fish of that target. This is less than 5 percent.

What we're asking the board to agree to, that less than 5 percent amount is deemed insignificant in the context of a number of factors, and I'll run those very quickly. The inter-annual variation in the results of the marine recreational fishery survey far exceeds that amount of a percentage.

In the context of the commercial underage from last fall and the one that seems to be shaping up now, there is an underage of a million pounds of fish or more. The way we understand the plan to operate, as you assess the impacts of the fisheries during the course of the year, the discard rate is about 50 percent higher than the landings.

So if those fish were not taken in the fishery, because they weren't landed according to the quota, then the estimated discards of several hundred thousand fish also aren't factored in there, because they weren't taken and they weren't affected by the fishery.

So, we believe that all things considered, there is a large effective amount of fish left in the ocean in 2004, and we would ask that the board consider that in the context of the 4.5 percent that would be a mathematical overage above the 4.3 million fish. With that, I just won't say any more. That's the impact analysis, if you will, of the motion.

CHAIRMAN FREEMAN: All right, let me just pause here for a moment to make sure procedurally we move forward. So far as the board is concerned, you see the motion, you see the rationale.

In order for us to continue discussion on this issue, we're going to need a two-thirds vote so we don't essentially waste anymore time on the agenda. Is there any objection at this point to taking that vote in order to continue or not continue this discussion? Eric.

MR. SMITH: A point of order, Mr. Chairman, and we may need to ask the Executive Director, he consulted with the parliamentarian about this issue, and, in fact, this is the only motion we need to vote on, and it needs the two-thirds vote.

This maybe didn't get cleared up to your satisfaction, but we don't need to open the issue by a two-thirds vote and then also debate it. This is the one motion. This concludes the business, whichever way we vote. Thank you.

CHAIRMAN FREEMAN: That's agreed by staff? Fine, all right, great. I like to keep it simple. Okay, those who would like to speak on this motion, could I see who would be -- anyone who would like to speak? Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman, and I will be quite brief and address issues that will come up again later. A good deal of the reason for the difficulty we're in relates, of course, to the extraordinarily high catch estimate and harvest estimate from New York in 2003.

That estimate is in large part a result of extraordinarily high effort estimates that we will

discuss again later this afternoon in the context of fluke; and the issues associated with all that, I will not burden you with twice. We'll hold off until later.

Let me just say that I want to express appreciation to the other states for their willingness to assist in the resolution of this issue, and the way it has, in particular, the state of Connecticut for the efforts that they have put in, in trying to craft a solution and to share the pain that results from this issue.

Let me also say and emphasize that we all have a stake, not just in the outcome of this exercise, but also dealing with this input problem that we've had as a result of the MRFSS estimate. We need to give a great deal of attention to how we deal with that in the future.

CHAIRMAN FREEMAN: Anyone else? All right, seeing no further discussion, I will ask for a vote on this. Tom, caucus, is that your point?

MR. FOTE: Well, caucus and I didn't know if you wanted to go to the public.

CHAIRMAN FREEMAN: Good point. All right, let me ask is there any public comment on this and then we'll go to caucus. Any public comment? Seeing none, we'll take a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: All right, I would ask for a show of hands for those in favor of the motion; those who oppose the motion, please raise your hand; any abstentions; any null votes. The motion passes 12 to 0 to 0 to 0. All right, David.

MR. BORDEN: Can I have 30-seconds more? I would just like to thank our esteemed chairman of the board for brokering this deal. It wouldn't have happened without your leadership, Bruce.

CHAIRMAN FREEMAN: Okay, let's move on. Plan review team for 2003, I would ask Toni to take that item.

**FMP REVIEW**

MS. TONI KERNS: Thank you, Mr. Chairman. In front of you, you have the PRT reports for summer flounder, scup and black sea bass. I have updated all of these documents accordingly. There is nothing new to the group inside these documents that you haven't heard since August of 2003.

I'd like to note that the states of North Carolina and New York have not turned in their compliance reports, but I have discussed with them, and they are not out of compliance, and that they will turn those in to me within the month.

**MASSACHUSETTS' BLACK SEA BASS COMPLIANCE ISSUE**

The other issue that we need to discuss is the inconsistent measures that Massachusetts had for their black sea bass recreational fishery that we discussed at the January meeting. In front of you, as well in the large stack of papers that you have, is a letter from the Commonwealth of Massachusetts.

It's a one-page letter. You have two letters from them. It starts off, "In 2003 the state of Massachusetts did not require the September 2<sup>nd</sup> through September 15<sup>th</sup> closed season".

The Technical Committee discussed the management measures that the Commonwealth of Massachusetts had in place that did not include that September two-week closed season as well as the one-month December season.

Biologically speaking, this did not have an effect on their catch. As you can see from this document, they caught less fish than they necessarily would have, so it's not a biological issue. It's just a management and policy issue that the board needs to decide if they want to take action on that.

CHAIRMAN FREEMAN: All right, any comment from the board? David.

DR. DAVID PIERCE: Regarding our not having that two-week closed season in place for 2003, I wanted to make sure that the board

understands that it was not an act of defiance. It was an act of omission by my part.

In 2003 my agency was immersed in groundfish management issues, and this is an action we did not implement, because it was just forgotten about.

Fortunately, as it turns out, when we look at the data that has come in from MRFSS, we see that we landed less than what was available for us as a target, so it worked out fine in that regard. But, once again, it was not an intentional action on our part to not have that closure.

CHAIRMAN FREEMAN: All right, thank you, David. Any other comment? Rick.

MR. RICK COLE: I would only ask Dave if Massachusetts plans to implement the coast-wide season for the 2004 fishery, in other words, September 8 to September 21 closure and December 1 to December 31 closure, 2004.

DR. PIERCE: What was the other? What was the beginning part of that question? The season length was what, now?

MR. COLE: September 8 through September 21 closed.

DR. PIERCE: Yes, we have every intention of implementing that. Since Amendment 13 has come and gone, so to speak, there is time to devote to black sea bass so, yes, that will happen, Rick.

MR. COLE: Okay, thank you.

CHAIRMAN FREEMAN: Other comment? All right, we'll move on.

MR. PRESTON PATE, JR.: Bruce, before we leave that --

CHAIRMAN FREEMAN: Oh, I'm sorry, Pres.

MR. PATE: No, that's okay, I didn't have my hand up, but maybe one possible solution to those problems occurring in the future or at least recognizing them before they occur is to modify

the reporting requirements to have an earlier compliance date for that.

I've been talking with the staff about problems created with states reporting their compliance measures so late in the year that we don't have time to respond to it, so **I'd like to make a motion that each state report the 2004 summer flounder, scup and black sea bass recreational measures to the ASMFC by May 9, 2004.**

CHAIRMAN FREEMAN: Okay, while the motion is getting up on the board, I'd ask staff, Toni, do you have any comment?

MS. KERNS: This would be very helpful and a good move.

CHAIRMAN FREEMAN: Okay, further comment. Pat Augustine.

MR. AUGUSTINE: I can only say second.

CHAIRMAN FREEMAN: We've got a second by Pat Augustine. Other comment on the motion? Seeing none, the motion reads move that each state must report the 2004 summer flounder, scup and black sea bass recreational measures to ASMFC by May 9, 2004.

All right, we'll take a vote on the motion. All those in favor of the motion, signify by raising your right hand; those opposed, same sign; any abstentions or null votes. All right, the motion passes.

Okay, the next item will be discussion on development of an addendum or amendment. Again, this may be appropriate, Eric, for the issue you raised, but if you recall at our January meeting, staff had indicated they would put a draft together for discussion.

That has been done. That dealt specifically with black sea bass for the commercial allocation. I think we need to talk about that. Then if we need further discussion for either adding something to that or an addendum, that would be appropriate to raise that issue at that time so, Toni, why don't you go through the document at

this point.

#### **DISCUSSION OF DEVELOPMENT OF AMENDMENT/ADDENDUM**

MS. KERNS: First, I'd like to ask if anyone does not have the document "Management Options for Black Sea Bass Commercial Fishery". If you do not have this document, please raise your hand, and someone will pass it out to you. I'm going to be asking you to follow along. It was in the CD.

CHAIRMAN FREEMAN: Everyone should have a copy. For those in the audience, there should be copies on the desk that you may want to follow along. Okay, Toni.

MS. KERNS: The current addendum for the black sea bass commercial fishery will expire on January 1, 2004. What we need to do today is decide if we'd like to stay status quo, or if we want to make a change such as a change in the allocation of the shares, then we'll need to proceed with an addendum.

If we want to make more significant changes, such as changing the quota system to quarterly quotas or sub-regional quotas, then we're going to have to proceed with an amendment. Either way I'm going to need direction so that I can put together a document for public comment that you will have to approve at the May meeting.

Currently the black sea bass commercial allocation is managed under an annual coast-wide quota. The state allocations are 0.5 percent for Maine and New Hampshire. Massachusetts has 13 percent of the quota; Rhode Island, 11 percent; Connecticut, 1 percent; North Carolina, 11 percent; New York, 7 percent; New Jersey, 20 percent; Delaware, 5 percent; Maryland, 11 percent; and Virginia is 20.

I would ask you to go to Table 3, which is on Page 8 of the document. The first option, Option 1A is a quarterly quota system. The annual coast-wide quota would be divided among four quarters.

The first quarter would run January 1 through March 31. The second quarter would run from

April 1 through June 30. The third quarter could run from July 1 through September 30. The fourth quarter would run from October 1 through December 31.

In this coast-wide system, the quotas could be allocated on a variety of base years, and quarterly quota trip quotas, trip limits and landings from 1998 to 2002 are presented on the table that you are currently looking at.

Option 1B would be, again, a quarterly quota system, but the change in allocation formula and a provision to allow for rollovers between quarters would make it slightly different. This is a relatively simple modification that would require little analysis by staff.

The quota system would operate as explained in the previous slide before, but with the exception of allowing the quota to be transferred to the next quarter ending at that year. You can see here the different allocations that each quarter would have based on different year allocations.

Option 2 would be quota allocations by separate permit categories. This alternative would use the control date to classify participants in to two or three categories. This is Table 5. These categories could then be used in conjunction with the overall quota to allocate quota to each group.

Allocations to each category would then have to be managed to prevent quota overages and allow for distribution of landings throughout the year. Allocations could be managed with a combination of period allocations and trip limits, and the fishery would close when quotas were reached for each group.

It could be difficult to track landings for a large number of individual vessels; however, if given fewer vessels in the larger categories, then it may be possible to track those vessels that account for a majority of the landings through individual vessel reports. Ratio estimators could then be used to determine the allocations for the other categories.

Option 3A is a sub-regional quota system.

There would be two regions, the north and the south, north consisting of Maine through New York and the south consisting of New Jersey to Cape Hatteras.

Sub-regional management would be further refined to allow for landings to occur over the years, such as allocation to each sub-region group that could be further allocated by periods if you so would choose. This table would show allocations based on this current year's TAL. We also could divide it up into different year bases if this is something that you would like to look into.

Option 3B would be, again, a sub-regional quota system. It would be separated into three regions instead of two. The regions would be Maine through New York; middle region, New Jersey and Delaware; and the south, Maryland to North Carolina. Again, we could look at different year bases, if so interested.

An allocation to the two sub-regions could recognize the differences in the fisheries between the north and the south, but if we do a third region, it could get a little bit more complicated.

For state-by-state allocations based on historical landings, I would direct you to Table 8 on Page 11 of the document. The quota would be allocated based on historical landings. Based on landings for the years, you could do 1998 through '97. You could do a best five years. We could also do from the years 1999 to 2003.

State-by-state allocation would allow the flexibility to design your own fishery management system. It has been said that the National Marine Fisheries Service is opposed to state quotas.

Because the National Marine Fisheries Service is responsible for monitoring landings in most states except for Massachusetts and North Carolina, they indicate that they would not be able to monitor the fishery in a timely fashion, given the small quotas that would be allocated to some of the states.

State shares could also be altered to reflect different regulations during the base years. If this is a desired management option, additional analysis would have to be established to get those state shares.

Option 5A would be a hybrid quota system. Based on this system, the quota would be subdivided into two periods, January through April and May through December.

Based on the 1998 to '97 data, the period allocations would be 46 percent for the first period and 54 percent for the second. In the first period, the quota would be coastwide, and the landings would be controlled with trip limits.

In the second period the quota would be by state based on historic landings. This system would take into consideration the relevance of gear type employed in the fishery throughout the year. Those different fishery types are seen on Table 11.

Option 5B is the hybrid quota system as well. This system, as stated above, with the exception the quota would be allocated from the north, Maine to New York; and south, New Jersey to Cape Hatteras sub-regions during the months of May to December.

The Service is concerned relative to the quota monitoring are relevant here with respect that state-by-state quotas during the second period; however, sub-regional allocations during May to December may allow for the consideration of regional differences in the fishery.

Option 6 is gear allocation system based on historic landings. The quota could be allocated based on gear type. As with other systems, the percentage allocations would differ depending on the base years for calculation.

Allocating by gear type would also require further allocation by period or even individual. For example, the trawl gear allocation could be allocated by quota and then trip limits calculated to allow landings over the period.

The allocation to the other gear types could be

based on individual allocations. Gear allocations could prove to be difficult to administer if a significant number of fishermen use multiple gears.

Option 7 is to implement a fishing mortality-based management system. This system would be similar to the management system implemented by the commission for weakfish and striped bass. States would be required to develop management measures designed to achieve a target fishing mortality rate.

This alternative would require the development of a document to detail the guidelines that the states would use to determine their management program.

This alternative could only work if we had a good estimate of the current fishing mortality and the time to develop the methodology that would be required to establish individual fishing management programs. Currently both the estimate of fishing mortality and the time to develop this methodology are lacking.

Option 8A would be to implement individual allocation of effort or quota, looking at a days-at-sea option based on separate permit categories and defined trip limits. Permit categories would be established based on past performance.

Allocations would be established for each category based on historic landings and the overall quota. Each permit holder would receive a days-at-sea allocation based on the quota for category and the daily trip limit.

The numbers of days would be determined by dividing the quota by the trip limit. A day would be defined as any trip within a 24-hour period, and each permit holder could then determine when they wanted to fish.

Option 8B would be to implement individual quotas based on historic performance. Individual allocations could be used in conjunction with the information on permits to allocate individual quotas to those vessels that landed the majority of the black sea bass. The other permit categories would have allocations that could be managed by trips. And that is all.

CHAIRMAN FREEMAN: Okay, are there questions? Gordon.

MR. COLVIN: Mr. Chairman, since I learned this morning that our purpose for being here is to make decisions, I have a motion, and I have it written down.

CHAIRMAN FREEMAN: Okay.

MR. COLVIN: If I can get a second to this motion, Mr. Chairman, I'd like to be recognized to explain its basis. **I move that the board appoint a plan development team to develop a public information document that incorporates the various options in the staff's March 2004 management options paper and schedule hearings to receive public input on the options.**

MR. FOTE: Second.

CHAIRMAN FREEMAN: Second by Mr. Fote. Gordon.

MR. COLVIN: Thank you, Mr. Chairman. I won't belabor this, but I have some not yet entirely dim recollection of the day in which the decision was made by the board on the current management system and recall the position of the state of New York as being quite opposed to the system that ultimately emerged at the end of a very long and difficult day of discussion.

I also recall that one of the key reasons that convinced us at the end to reluctantly vote to adopt this management program, based on state-specific quotas, was that it would sunset in a defined period of time, and that we would commit as a board and a commission to a thorough re-evaluation of the quota management and other commercial management options at that time.

For this reason, I think it's essential to undertake a de novo thorough and not a pro forma review of these options and consider them. The first step in that process is to get public input, and the basis of this motion is to set that process of public information gathering and stakeholder input in motion.

The last point I'd like to make is I understand that process may put us on a time line that may make it difficult to come to conclusion in 2004. I fully recognize that possibility exists and would be open to the prospect, if it existed, and we were marching along to a one-year extension via addendum or some other mechanism of the current mechanism to enable us to clean that up. Frankly, I think we'll cross that bridge when we get to it. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: All right, just a comment, Gordon, relative to your last point relative to where we are at the present time. I was conferring with staff at lunch, and the need to make a decision for 2005 relative to the plan we have here could be made considerably later in the year.

If this does pass, there certainly may be time before we have to make a decision one way or the other -- just a point of information. Any comments on this motion? David Borden.

MR. BORDEN: Thank you, Mr. Chairman. Does the staff have an estimate of the amount of time and resources that will need to be committed to this in order to accomplish this? I realize a PID doesn't have a great deal of specificity to it, but what types of resources do we have to dedicate to this? What has been budgeted?

CHAIRMAN FREEMAN: Bob Beal wants to address this issue.

MR. BEAL: Thank you, Mr. Chairman. The time line is difficult. What this does is initiate a full amendment, and we would draft a public information document, bring that back for review at the May meeting, have a first round of public hearings during the summer, put together a draft amendment potentially for review by the annual meeting and public hearings following that in early winter '05, probably completion spring of '05.

The action plan for this year does include an amendment for black sea bass to deal with the commercial allocation. We knew the current

plan sunsetted at the end of 2004, so we do have the staff and financial resources to go the course of a full amendment and fund the public hearings and the plan development team work that is necessary to put this document together.

It's not likely to get done this year. There is a provision in the ISFMP Charter to allow one-year extensions of fishery management programs or regulations that sunset in commission documents.

What this takes is a 30-day notice of the public that the board intends to extend a measure that is currently included in an amendment or an FMP; and following that 30-day notice, the board must have a two-thirds vote in order to extend the current management program for six months.

Then following that six months, the board has to get back together and reaffirm its decision to extend the current program for six months, so those two six-month blocks obviously can add up to a year. In order to justify the second six-month block, the board must be working on an amendment or an addendum to deal with the issue that is being extended for a certain period of time.

CHAIRMAN FREEMAN: David, go ahead.

MR. BORDEN: Well, I guess my inclination here is to not support the motion, and it's not because I don't want to discuss it, because I have stated on the record before that I have an open mind on this subject. The essence of this proposal is a reallocation.

That's what we're talking about. We're talking about reallocating the sea bass resource, which opens up, at least in my own mind, an endless number of questions that are going to have to be answered.

I guess one of the reasons I basically don't support this at this time is I actually have spent a fair amount of time talking to different state representatives about whether or not they want to continue the current system at least for another year or two, and I just don't sense a commitment around the table to jump to a new system.

I mean, if states, for instance, have ITQ systems, this is going to trigger a whole discussion about how will those ITQ systems be affected by some reallocation scheme. I don't have any answers to those types of things, so I'm not inclined to support the motion.

CHAIRMAN FREEMAN: Other comment? Rick Cole and then Jack Travelstead.

MR. COLE: I have to echo what Dave said. I have an open mind from the standpoint of looking at different management options if we have the time to do it properly and have the time to get the public input we need to do it, like we did when we did Amendment XIII, the current system we're operating under.

I just don't think, and staff has now confirmed this, that we have time to go through this process and have a system in place for the 2005 fishery.

It's not fair to the commercial fishermen not to know what we're going to do so that they can make their decisions about the amount of gear they're going to need and how they're going to fish for the next forthcoming season.

We can't wait until December to make a decision. That's just not fair to the process, so that's my concern. I don't think we have enough time to commit to this particular motion. If we have some kind of provision that states what we're going to do in 2005 and then follow up with a thorough look at the options here at a later date, that would be fine.

But, the other issue is I certainly don't want to see us not do anything and go to the coast-wide quota that will happen if we don't do something. I don't think anybody around this table wants that to happen, because then we'd have strictly a gold-rush approach to the commercial fishery.

So we have to do something, and I would prefer that we go ahead and lock in the 2005 fishery here today, what we're going to do, and this longer-term process, we can address, but let's take our time and do it right.

CHAIRMAN FREEMAN: Okay, Jack.

MR. JACK TRAVELSTEAD: Thank you, Mr. Chairman. Briefly, I, too, support Dave Borden and Rick Cole's positions that they've already given. I was under the impression, and I think many fishermen from Virginia were under the impression that while the current system would sunset at the end of this year, that they would know before the end of this year what would be put in place in '05 and beyond, and now I'm hearing that it might be a year, year and a half before we have that answer, and based on that, I cannot support this motion.

CHAIRMAN FREEMAN: All right, thanks, Jack. Dave Pierce.

DR. PIERCE: I appreciate the time problems. However, a while ago we did make the commitment to revisit this issue in time for changes for 2005, potentially. It is sunsetted. I think the board is well aware of the state of Massachusetts' position regarding the black sea bass management approach now for the commercial fishery, and we had every expectation that work would be done and there would be a possibility of our having a different approach for 2005, so I would support the motion. I'm sensitive to the concerns of some board members, as I already expressed, but still I think it is a reasonable motion.

CHAIRMAN FREEMAN: Tom Fote.

MR. FOTE: Well, I was under the understanding, listening to Bob, that we were basically going to be status quo and ask for an extension for 2005. This would never be done in time if we started doing the process, because this sunsets and we are only allowed a year extension.

If we wait any longer to start an addendum, we're going to be sitting here the end of 2005 trying to decide what we're going to do. Can we get an extension after 2005? Can I ask that question to Mr. Beal?

CHAIRMAN FREEMAN: Yes, Bob, can you give some light on that?

MR. BEAL: Sure, thank you. Well, I'll answer that in a minute, but we're kind of flip flopping between amendment and addendum. Just so everyone is clear, if we're going to just do an addendum to either retain the state-by-state quota system and alter the state shares, we can definitely get an addendum done by the end of this year, have a draft ready in May, public hearings in the summer and final decisions in August.

So if the board is only interested in modifying the state shares, we can get that done, signed off and extended to whatever period the board wants by the end of the year. But if the board wants to go down the road of exploring all the options that are included in the current options document that Toni just presented and go through a full amendment process, that's going to take, like I said, a year, 15 months to get that done.

If that's the course the board selects, then there is the provision that allows a one-year extension of the current management program. But to answer Tom's question, it is just a one-year extension. Beyond that, the board doesn't have the authority to extend a provision that sunsets more than one year under the current ISFMP Charter.

CHAIRMAN FREEMAN: Eric Smith.

MR. SMITH: Because of the last thing Bob said, I would like to hear again because I was forming an amendment. Did you say that we don't have a process right now to simply extend without an addendum?

MR. BEAL: No, we do have a process set up right now where just through board action we can extend for one year, but beyond one year it would take an addendum.

MR. SMITH: Okay, thank you. Then I sense there is a grudging way to compromise between Gordon's point of view and Rick Cole's point of view, and **I would move to amend to add the words before the word "appoint" in the first line, add the words, "extend the current black sea bass quota management system in 2005**

**and”;** and then also after the words **“the options”**, at the end of the motion, add **“for the 2006 fishing year”**.

So, it would read **move that the board extend the current black sea bass quota management system in 2005 and appoint a plan development team to develop a public information document that incorporates the various options in the staff’s March 2004 management options paper and schedule hearings to receive public input on the options for the 2006 fishing year.**

MR. BRIAN CULHANE: Second.

CHAIRMAN FREEMAN: Brian Culhane seconded that substitute. I had a list of people on the other motion, but let’s — Pres, you had a comment. We’ll take comments on this substitute.

MR. PATE: Thank you, Bruce. I thought I heard Bob Beal say we had to give 30 days’ notice for an extension of the current plan.

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Yes, Pres is right. In order to extend the current plan, we need to give the public a 30-day notice, which we did not do prior to this meeting. The other issue is that the charter says we can only extend initially for a six-month block of time, and the board would have to go back and revisit that six-month extension during the course of 2005.

The motion to initiate an amendment only takes a majority vote. The motion to extend a sunset provision takes a two-thirds majority rule, so we’ve got a few things mixed up in this motion that are somewhat incompatible.

MR. SMITH: I would withdraw it, Mr. Chairman.

CHAIRMAN FREEMAN: The motioner volunteers to withdraw, and, Brian, do you agree?

MR. CULHANE: I agree.

CHAIRMAN FREEMAN: All right, we will withdraw that. Gordon. Well, Gordon, just before you do that, since this has been withdrawn, let me go through my original list. I had Pat then you if that would be satisfactory. Go ahead, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was going to suggest if we had gone with Eric’s addition to that amendment, to split it and accomplish exactly what Bob Beal said we could do, but we’d have to do it separately, two separate items.

The other way to go is to suggest we approve this and then create a second motion, then carry out the second part of that so we could go forward and notify the public accordingly. As Bob said, one is going to take two-thirds and the other is a simple majority. This is a simple majority, so unless there is a lot of debate on this, I’d call the question and go for a second motion.

MR. FREEMAN: Well, right now there’s this original motion. Eric’s substitute has been withdrawn. Gordon.

MR. COLVIN: The purpose of this motion was to start the commission’s process towards ultimately making a decision on where we go with black sea bass, trying to keep all of our process options on the table.

As I understood it when I made the motion and as has been reinforced by the discussion, those options include doing nothing, taking action to extend the current program for up to a year, developing an addendum should we choose to embark on a course of action that qualifies for an addendum or doing a full amendment.

The first step in that process, it seemed to me, was to give the fishermen an opportunity to weigh in on what options they would like to see us consider. That’s all this motion contemplates is that we put a public information document out that has all of those options identified in it, get some input, and come back together at some point later this year, possibly as early as our

scheduled meeting in June — hopefully, frankly, as early as our scheduled meeting in June — and make some decisions that reflect input from the fishermen.

I don't see why anyone has difficulty with the idea of doing exactly that. That's pretty standard operating procedure around here. I am not presupposing, and the motion doesn't say that we would necessarily commit to an amendment. I think we have four different potential outcomes. All we need to do is get input from the public first. Thank you.

CHAIRMAN FREEMAN: I had Eric and then Jack.

MR. SMITH: Well, very briefly, my only point in withdrawing it was to not clutter the decks of the motion that could just as easily been ruled out of order because of the 30-day notification issue, but I don't disagree with Gordon's point.

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: Thank you, Mr. Chairman. Gordon, I don't object to what you have just stated as a process. I guess my concern is that at whenever we have this other meeting to decide what route we're going to go, if that direction is to proceed with a full amendment, then what happens?

We know a full amendment will carry us well into '05. What happens for the beginning of '05? I assume the answer is you would at the same time have to make a conscious decision to prepare an addendum to continue status quo into '05?

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Well, exactly. I think the point is that we'd be making that decision with some input. We'd be making that decision in a time frame that was more amenable to the six-month time window that Bob pointed out. It would also enable us to provide the 30-day notice prior to taking final action that our process requires, which we cannot do today, as has been pointed out.

CHAIRMAN FREEMAN: I hope that wasn't a question to me. I was just conferring with staff. I'm just trying to get clarification relative to the procedure.

I think there is some certainly confusion in my mind, or there was, as to how we could proceed if we determine to continue what we have in place for 2005. My understanding, and I'll defer to Bob, this could be done by an action. It doesn't have to be an addendum; is that correct?

MR. BEAL: I'm sorry, Bruce, I didn't hear your question.

CHAIRMAN FREEMAN: If the board so desires for some reason to extend for 2005 what we have in place, that could be done. It doesn't have to be done through an addendum, it could be done through a vote?

Normally, we'd do this under emergency action, that's what comes to mind. And then that goes for six months. Then it can go for another six months, but that doesn't have to be an addendum. That could be done by voting by the board, correct?

MR. BEAL: Right, the board -- provided 30-day notice which we could give prior to May, the board could take action in May to extend for six months. That would not be an emergency action. It's a different provision of the ISFMP Charter that allows extension of sunseting regulations.

CHAIRMAN FREEMAN: Okay, I just wanted clarification, because it was confusing in my mind. All right, further comments? Rick.

MR. COLE: On the other hand, Bob, if we decided here today to ask staff to prepare an addendum that maintains status quo for the 2005 fishery, we can do that here today?

MR. BEAL: Yes.

MR. COLE: So we do have other options besides the motion that is before us?

MR. BEAL: Yes, definitely.

CHAIRMAN FREEMAN: I was conferring with Chris Moore of the Mid-Atlantic Council staff. I asked Chris to sit up at the table, and my question to him was does this have any implications relative to the council? His reply was, no, it's really an action the council is waiting for the commission to take, so the ball is in our court. Further comments, Jack.

MR. TRAVELSTEAD: Just a question. Could the staff tell us -- and this may have been asked before -- could the staff tell us when the PID would be completed and when it would -- I assume that has to go out for public comment, the information come back for the board. At what meeting would that occur?

MR. BEAL: We can get the public information document together for the May meeting of this board. The public information document is going to be basically a polishing up of the document that's before you right now, just a suite of options and an explanation of the commission process attached before it.

Getting the public information document together before May is not that difficult. The assumption is the board would take action on that document in May. Public hearings can be held 30 days after the board takes action, so summertime.

MR. TRAVELSTEAD: Another question, a follow-up, Mr. Chairman. Then that would come back to the board at the summer meeting?

MR. BEAL: In August, yes.

MR. TRAVELSTEAD: And at that point a decision would be made whether to proceed with an addendum or an amendment.

MR. BEAL: I'm a little bit unclear as to what the maker of the motion had intended the next step to be. In other words, would the public information document serve as the first round of public hearings for an amendment and also serve as the only round of public hearings for an addendum which -- and it seemed a little bit

awkward in that we'd be going out for a round of public hearings, then we're telling the public we may or may not come for a subsequent round of public hearings, depending if we're doing an amendment or an addendum.

I think either way we go on this one, we'd have to have two rounds of public hearings, this one just to kind of explore what the public sentiment is and then a second one to wrap up either an amendment or an addendum. I'm not sure if the maker of the motion had anything different in mind.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Two things. Number 1, I agree with Bob. I think that's probably how the process would work. The second thing is just pointing out in terms of schedule, it occurs to me that at a May meeting, the board could entertain and possibly pass a motion that began the process that provided the required minimum 30-day notice for extension subject to final action at its next meeting, which would then be within the six-month time window.

I just don't think we can do it today, because procedurally it doesn't work. As I understood what Bob said, not only are we constrained by kind of a 30-day advance notice and a six-month window, we also, at the end of that process, can only extend it if we have an amendment or addendum going.

That can't be extended forever without some follow-up action that formalizes it via either addendum or amendment as appropriate. To me, the whole thing seems to flow if you hypothesize that we could take that action in May.

The other point is that it seems that some of the members of this board want to make a decision today to extend this program to 2005. I want to submit that would be wrong, simply wrong, because there has been no notice and opportunity for the industry to have input on such a significant decision.

CHAIRMAN FREEMAN: All right, other

comments? Gordon, at the risk of confusing this issue, as I understand your motion, it would restrict this public information document only to the issues that were outlined by staff, or would it include others, or could it include others?

MR. COLVIN: The motion is inclusive of those options. It is not exclusive to them as it is stated. It incorporates those options. It could certainly incorporate others, and that's not uncommon.

When we appoint a plan development team, we empower that team to come back to us with their ideas and recommendations. This wouldn't be any different. We're going to have to meet and approve it in May.

CHAIRMAN FREEMAN: The reason I ask -- and I hope I'm not getting too far in front of this process -- is this issue that you, for example, have raised and Massachusetts has raised and Connecticut has raised relative to the way this whole process works, and for those states that have a relatively low or small historical catch, you're really almost excluded from getting into the game and all the implications that has.

We have spoken at the Mid-Atlantic Council, I suspect, amongst most of you personally, the possibility of coming up with a different system where there would be some greater allocation for those states that have a relatively modest amount of historical landings.

It would seem to me that may be something that could be put into this, and I'm just curious, from your standpoint, that wouldn't exclude that if that's what the plan development team brought forward, would it?

MR. COLVIN: No.

CHAIRMAN FREEMAN: All right. Pres.

MR. PATE: Bruce, I'm going to make a suggestion that I hope will get us off the dime on this, and that will be a motion by me; and before I get a second, I'll explain why I'm doing this, to table this motion for ten minutes, long enough to get another motion on the table for consideration, which would direct the staff to

issue a notice of our intent to extend the current management measures for six months and make that decision at the June meeting.

That, at least, will give the supporters and opponents of Mr. Colvin's motion some indication of commitment to lock in some type of predictable management measures for 2005 while going forward with consideration of this. So with that idea in mind, I'd like to make a motion to table for ten minutes.

CHAIRMAN FREEMAN: Pres, let me just at this point, before we get too complicated, just call a ten-minute recess, and we may be able to accomplish what you're trying to do without going through a series of votes.

MR. PATE: Whatever.

CHAIRMAN FREEMAN: Let's just take a ten-minute recess at this point.

(Whereupon, a recess was taken.)

CHAIRMAN FREEMAN: Okay, if board members would take their seats. All right, Mr. Colvin.

MR. COLVIN: Thank you, Mr. Chairman. During the recess I was able to come up with a modification to the motion I originally offered, which I believe will address the concerns of some of the board members about the uncertainty on the course of action we might be on for 2005.

**I added a sentence to the motion, which is up on the board: "Commission staff would also notify the public of the board's intent to consider extension of the current allocation system for 2005 for action by this board at its May meeting."** I offer the modified motion for the board's consideration, Mr. Chairman.

CHAIRMAN FREEMAN: All right, is there a second to that motion?

MR. PATE: Second.

CHAIRMAN FREEMAN: Comments, discussion by board members? Tom Fote.

MR. FOTE: I was the second to the motion. I'm trying to understand the process. I missed something in the meeting this morning. I'm the seconder to Gordon's motion. All he did was modify his motion, so you've got to ask the seconder whether he agrees, and I think that's parliamentary procedure.

CHAIRMAN FREEMAN: Right, I understood this to be a substitute, but if it's a friendly amendment, Tom, do you have any problems?

MR. FOTE: Yes, I agree with it.

CHAIRMAN FREEMAN: He agrees. All right, friendly amendment. Okay, further discussion? Rick.

MR. COLE: I guess just from a bottom-line standpoint, really all this does is delay us making a decision on the 2005 fishery to May, and presumably it will give some of the commercial fishing public an opportunity to be at the May meeting or provide comments before the May meeting of how they'd like to go with it. I don't have any problem delaying this to May. I'd just as soon do it here today, but I'm willing to accept that.

CHAIRMAN FREEMAN: All right, further comment by the board? I will go to the public for comment, but let me get the board first. Any further comments by the board? David Borden.

MR. BORDEN: Just for my own edification, I agree with this issue of providing notice, but if we want to provide notice and once we come back after 30 days, if we want to consider for a whole variety of reasons I won't even outline, extending this for two years, does that have to be part of this motion?

CHAIRMAN FREEMAN: I'll defer to Bob, but I understand that will have to be an addendum.

MR. BEAL: Yes, in order to extend this for any more than one year, the board has to do an addendum.

CHAIRMAN FREEMAN: Other comments by

the board?

MR. COLE: Bruce, just a point of clarification. Bob, if we decide in May to offer an addendum for this board to extend the current system for 2005 and 2006, that is a process we can follow?

CHAIRMAN FREEMAN: Go ahead.

MR. BEAL: Okay, yes, that motion could be made at the May meeting.

CHAIRMAN FREEMAN: Any other comments by the board? All right, Sema, please identify yourself and the group you represent for the record, please.

MS. SEMA FRYERMAN: Sema Fryerman, Montauk Inlet Seafood, New York. Just a quick question here. Does this mean that at these public hearings where this document would be discussed, would the public also have input as to whether or not to extend, with our representative's input, as to whether or not to extend and to create an addendum to extend the current regime?

CHAIRMAN FREEMAN: I would say yes. Is that --

MR. BEAL: Actually, no.

CHAIRMAN FREEMAN: There you go.

MR. BEAL: But other than that, we agree, Bruce. What this would do is notify the public -- the second part of this motion, what it would do is notify the public that the board is going to, at its May meeting, consider the extension of the current state-by-state allocation system.

One of the options in the amendment that would be going out -- I'm sorry, one of the options in the public information document that would be going out for public comment would be an indefinite extension of the status quo provisions that are in place right now.

MS. FRYERMAN: If I may, I understand that. That's one of the alternatives in the PID. But when you inform the public that you would be considering this addendum in May to extend the

current plan, what is the public comment activity on that?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: It wouldn't be an addendum to extend the current state-by-state allocations for a year. It would simply be a board action. The public comment opportunity would be at the May meeting. That's the purpose of the 30-day notice; or, the public could supply written comments prior to the May meeting, and those would be supplied to the Summer Flounder Board members before the meeting.

CHAIRMAN FREEMAN: Okay, other comments, other public comments. Joe, also identify yourself for the record, please.

MR. JOSEPH WAGNER: Yes, Joseph Wagner. I'm a black sea bass trap fisherman from New Jersey, and I have been for quite a while, and I also was a black sea bass advisor since this plan started way back when.

One of my things is -- the last two years one of my questions is what have we done? Here we are now two years down the road. I know it -- every fisherman that I know that's a black sea bass fisherman knows that it's do or die again for us at this point in time. A few of us are here sitting at the meeting.

Quite a few guys did not come, because they've talked to different people in different states. They've talked to their representative. They've already voiced their opinion how we feel about this program.

Now just from over the years to see how slow the wheels turn, there's a right good chance that this could end up going back the way it was. We all know in this room -- truthfully, no one in this room -- everyone knows in this room that if it goes back the way it was, yes, a handful of us are going to catch a few fish fast and get a little bit of money for them, and that's going to be it.

Nobody is going to benefit. The system that we have may not be 100 percent right for everyone. It may not be 50 percent right for everyone, but I

think if you took a census of all the people that have participated in this fishery over the last two years, which I think most of the state representatives have done in some sense, are going to find that the people who mainly make their living off of black sea bass or a substantial amount of their living off of it are much happier than the way it was.

I just don't want to leave this room today and see us in May have some kind of glitch, and even if we don't, end up having this in another year from now go back the way it was. Because even if it just goes back for one month the way it was, with the abundance of fish that are out there, if that one month happens to be in the beginning of the year, guess what?

The whole rest of the year for every state sitting in this room could very well be done. That whole year could be lost, and for someone like myself -- and there is only a handful of us that actually make -- 99 percent of my living comes off of black sea bass, and it has for the last 26 years.

Before then, when I was a deckhand, that's where it came from. We're done. We can't afford to have a year with no business. You can't come in here and tell this hotel that you've got to shut the doors for next year, you can't be open for business but the following year, well, we're going to throw you a bone and you might be able to open up.

You just can't stay in business not knowing where you're at. I don't want to ramble this on but I just want to make a point, the fishermen who are die-hard sea bass fishermen who depend on this fishery, they know this meeting is going on right now right here.

A lot of them are expecting to have a vote out of this today. I know a lot of the fishermen around my area, they said, call me up when you get back. Let me know what happens. I mean, I figured over the last two years if there was a lot of complaints coming in, and somebody came up with a different system that's going to work better, how come none of us advisors were notified?

We haven't heard anything. I've talked to Chris Moore a few times on the phone. I've talked to not as many people as I talked to the year before, the last two years, because I've been happy the last couple years.

It's not 100 percent, but its certainly 1,000 percent better than what it was. Just look at the prices of fish. Ask some of those dealers up there in New York, who have had a steady flow of fish coming in, who have gotten some of their markets back.

Talk to some of them guys. I know they're a lot happier. All of my fish go to New York. A handful might go to other places, but the majority of them go to New York. They're happy, the dealers.

We as the fishermen -- I feel like the last two years we kind of knew what it was going to be like, and we figured we're going to come to this meeting, and it's going to be do or die.

Now we're prolonging things and prolonging things. This is something that should have been talked about. When we do -- if we put this extension in for another year, what's to say nothing is going to happen for the next year?

That's basically all I got to say. I'm very happy with the system the way it is. I could live pretty much for the rest of my life with it the way it is and make a living. That's basically it. Thank you.

CHAIRMAN FREEMAN: All right, thanks, Joe. Mark.

MR. MARK HODGES: Yes, my name is Mark Hodges, and I'm a trap fisherman also, but I'm from Virginia. I pretty much earn 100 percent of my income off of sea bass, also, and I don't -- I had reiterated a lot of what Joe said that this hasn't just been going on for two years, and you're trying to get another year extension or a two-year extension. This has been going on for five years for us.

Each year, it's not just a decision on what kind of traps we're going to set, how many traps

we're going to set, when we're going to set them, when we can fish, when we can't fish, but you have to look at the personal side of it.

I can't plan on borrowing money. I can't plan on buying a car. I can't plan on fixing my house up. I can't plan on moving. You cannot make a financial decision based on what in the world is going to happen to you from the next month or from the next year. It's completely ridiculous.

Now here we're trying to drag this out again through this commission. Why can't each state go back, have their own daggone meetings, two or three meetings across the state, figure out what those fishermen want, come here and work it out and vote on it? I mean, it's ridiculous.

You've got to drag it out. You're worse than the federal government. Just have some compassion for us guys that are out there. I mean, sure, most of the sea bass fishermen are not full-time fishermen, meaning that they earn a substantial percentage of their income off of sea bass, but there are a lot of us out there.

In my region, if I'm not able to make 90 percent of my catch in sea bass, there's not enough different types of fisheries left for me to get involved in to stay in business, so I'm basically out of fishing, plus, the capital investment I've put out and all the traps, rope and everything else.

Sure, I can sell my boat, but then I've got to go look for a job at almost 50 years old. So, please have some compassion and realize what the delays and what one year here and one year there does to a person.

How would you like to have a job where you don't know whether you're going to get a paycheck next year or not? I appreciate the time. Thank you.

CHAIRMAN FREEMAN: Thank you, Mark. Anyone else? Mike.

MR. MICHAEL SCOTT: My name is Michael Scott. I'm a sea bass fisherman from New Jersey. Basically, what Joe said and Mark said

is correct. I mean, it's heartaching to not know what's going to happen in another year.

I mean, it seems like we just keep rewinding the tape and playing it over and over. We went through this two years ago. I see the same options up on the board, the same people wanting different allocations, because their state didn't land as much as another state.

That shouldn't be the case. It should all be based on historical participation and the state-by-state, what each state caught. Let the fishermen among them states hash it out who gets what. That's about it, you know. Thank you.

CHAIRMAN FREEMAN: Anyone else? Joan, go ahead.

MS. JOAN BURKO: Joan Burko, Point Pleasant, New Jersey. We really need to know pretty quick. This has been -- like they said, all the sea bass fishermen, if you depend on them for your livelihood, like we do, you've been worrying about this for the past two years, and you know that the time is coming that this is going to expire, and you need to get it extended.

We already had our meetings in our state. Plus our state moves like a snail when it comes time to putting regulations through. If we don't have something by May or June, we're not going to have our regulations be able to put in place by the next year.

We just need to know pretty quickly -- all the fishermen in the other states, too. I mean, if you depend on it, then you would have known all along that this is going to happen. We are happy with our state-by-state.

We would have liked to have had a higher percentage of the quota, but at least we know what we're up against. You know how many traps to put out. We can better utilize the resource. We would just like to keep it like it is and have it extended indefinitely. Thank you.

CHAIRMAN FREEMAN: Thank you, Joan. Anyone else? All right, back to the board.

David Borden and then Pres Pate.

MR. BORDEN: I would just offer a quick comment, Mr. Chairman, that I appreciate Gordon's change here in the motion, but from our state delegation's perspective, it's still unacceptable.

We're going to vote against it; and if the motion fails, I'm going to make a motion that we prepare an addendum to extend the current system for two years while we work through some of these PID issues.

CHAIRMAN FREEMAN: Pres Pate.

MR. PATE: Thank you, Bruce. I was just going to speak to the concerns that the fishermen have just raised, and even though we can't vote on this today to establish an official position by the board, I can certainly voice my support for extending the current management scheme for one year under the flexibility that we have in the plan.

We can't predict what the outcome of the amendment is going to be, but that will be an opportunity for them to come and make similar comments in the future. Certainly, I support it and I haven't sensed any lack of support from other members of the board for extending it into 2005.

CHAIRMAN FREEMAN: Other comments? All right, need a caucus? Take a one-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Back to the motion. Do I need to read that motion? All right, the motion we are about to vote on is **move that the board appoint a plan development team to develop a public information document that incorporates the various options in the staff's March 2004 management options paper and schedule hearings to receive public input on the options. The commission staff would also notify the public of the board's intent to consider extension of the current allocation system through 2005 for action by this board**

**at its May meeting.** That is the motion.

All those in favor of the motion, please signify by raising your right hand; those opposed, same sign; abstentions; and null votes. The motion is tied. It fails, four to four to four to zero. All right, back to David Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. I would **move that we direct the staff to prepare an addendum to extend the current sea bass allocation system for calendar year 2005 and 2006 for action at the May meeting.**

MR. GOLDMAN: Second.

CHAIRMAN FREEMAN: The motion has been made and seconded by Ed Goldman. Discussion? Gordon.

MR. COLVIN: A question for the maker of the motion. Could you explain why you picked a two-year time window as opposed to one year or longer than two? What is your intent that time frame would bring about?

CHAIRMAN FREEMAN: David.

MR. BORDEN: Thank you, Mr. Chairman. My intent here is to allow time for the board to consider whether or not they want to develop a PID and take a PID out to solicit comments from the public. I think two years is a realistic period of time to do that.

The other point that I would make, while I have the microphone, is I think as this agenda evolves and the discussions evolve, you're going to find there are going to be a lot more important issues that the board wants to formulate addendums on in terms of these three species, and so I'm looking at a longer period of time rather than a shorter period of time.

CHAIRMAN FREEMAN: I have Pat Augustine then Dave Pierce.

MR. AUGUSTINE: Thank you, Mr. Chairman. Am I under the misconception that it's possible for us to do this after Bob Beal having said that we would only do this for one year, and that was

assuming that we already had established the fact that we were going to go ahead with an addendum or an amendment? That's not true? That was what you had said, so I need some clarification.

CHAIRMAN FREEMAN: All right, let me defer that to Bob.

MR. BEAL: What I said was the board can extend for one year without an addendum just through board action. But if the board initiates an addendum, they can extend one year, two years, five years, indefinitely. It's up to them. It just anything longer than one year has to be done through an addendum.

CHAIRMAN FREEMAN: Okay, I had David.

DR. PIERCE: I believe the two years is too long a period to wait. **I would amend this motion to delete the words so the number, the year 2006, and 2006, so it would be the allocation system for 2005 for action at the May meeting.**

I think a one-year delay is fine to give us an opportunity for further reflection on what needs to be done as opposed to two years, which is a major postponement of action that I think needs to be taken.

CHAIRMAN FREEMAN: All right, was that a friendly motion, a friendly suggestion or was that --

DR. PIERCE: Well, it's friendly suggestion, but I'm not sure if my esteemed colleague would accept that. If he would, certainly that would be my preference just to make it a friendly amendment. If not, then it would have to be through a motion.

CHAIRMAN FREEMAN: Well, I would ask would the maker of the motion and the seconder agree as a friendly motion?

MR. BORDEN: I consider that an unfriendly amendment.

CHAIRMAN FREEMAN: Okay, then, David,

do you want to make that as a substitute.

DR. PIERCE: Yes, I would make that as a motion to amend to delete 2006 so it would just be for 2005.

CHAIRMAN FREEMAN: All right, I need a second. Mr. Augustine seconds the motion.

MR. AUGUSTINE: Second that unfriendly motion.

CHAIRMAN FREEMAN: Do you want to speak on that, Pat, or do you just want to be recognized?

MR. AUGUSTINE: I would like to second that unfriendly motion.

CHAIRMAN FREEMAN: Okay, comments. Pres.

MR. PATE: My only comment is, Bruce, if we are only going to do it for a year, why do an addendum, just do it by board action, give 30-day notice. It puts us right back where we were ten minutes ago. We're running ourselves around in a circle here.

CHAIRMAN FREEMAN: Other comments. Tom.

MR. FOTE: Call the question.

CHAIRMAN FREEMAN: You're not following procedure, Tom. Other comments? All right, do we need a caucus on this? Does anyone require a caucus on this vote? I see no indication. We'll call the question for the amendment.

All those in favor of the amendment, please raise your right hand; those opposed to the motion, raise your right hand; abstentions, and null votes; no null votes. The motion fails 6 to 3 to 3 to 0. I'm sorry, it's 6 opposed, 2 in favor, 3 abstentions. The amendment fails. Further comment? David.

DR. PIERCE: Well, I'm assuming that the opposition to the motion was that it's an

addendum as opposed to just an action by the commission to extend it for another year, so I would move to substitute.

The motion to substitute would be that the board extend the black sea bass measures for 2004 into 2005. In other words, to do what we can do just -- well, Vince, what is the appropriate language, then; instead of an addendum what?

CHAIRMAN FREEMAN: David, in my opinion, what you're asking to do is the motion just defeated. The only difference is one -- you're going to do as an addendum as opposed to a vote. Now if I'm wrong, please indicate, but my interpretation is just another way of going back to the issue we just dealt with. Bob.

MR. BEAL: Let me try a different tact. There is no action the board can take today to extend the current management program through 2005.

There are two things the board can do to notify the public that they are considering extending the current plan, and that is either charge staff with notifying the public with providing 30-day notice that the board may consider taking action at its May meeting, or they can initiate an addendum to extend the plan through 2005 or later. There is no motion that can be made today, or no action that can be taken to extend the current plan.

CHAIRMAN FREEMAN: All right, we're back to the motion, the main motion or the only motion. Tom.

MR. FOTE: Move the previous question.

CHAIRMAN FREEMAN: All right, any further comments? Do we need a caucus? Anyone need a caucus on this? All right, the motion reads move that the staff prepare a draft addendum to extend the current black sea bass allocation system for 2005 and 2006 for action at the May meeting.

All those in favor of the motion, signify by raising your right hand; all those opposed, same sign; abstentions; null votes. The motion passed seven for, two against, three abstentions, no null

votes. All right, Mr. Colvin.

MR. COLVIN: A question for the staff. I believe the next step then is for the staff to prepare the draft addendum, bring it to the board. The addendum, in its normal course of action, would include a series of options or alternatives relative to the questions. What will the options be in this addendum, if you can tell me now?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Gordon, I think all the input that we have right now is more or less a binary decision, should the board extend through 2005-2006 or not. I haven't heard of any other options that the board would like included.

MR. COLVIN: If we don't, then we default. If we don't extend, we default to coast-wide quarterly quotas?

MR. BEAL: Actually, the current commission plan is silent on what happens after January 1, 2005. I don't believe there is a default mechanism in there; so without the language that says we default to quotas, we essentially default to an annual coast-wide quota because we do set a coastwide -- the plan does require the board to set a coast-wide commercial quota for black sea bass.

MR. COLVIN: I guess I'm wondering what latitude there is for board members to suggest options for inclusion in the draft of the addendum that the staff will develop, Number 1; Number 2, I'm wondering what options there might be to use the public hearing process on the addendum to get broader public input on where they'd like to see this whole thing go.

CHAIRMAN FREEMAN: Is that a rhetorical question?

MR. COLVIN: It is not.

MS. KERNS: If you want to add something that would not be -- okay, Bob.

MR. BEAL: The board needs to be clear on

what their intention is as far as getting information to staff. If the members of the board are comfortable with additional options being put in there, we can provide the time. Get in touch with staff within the next two weeks, and we'll include that in the draft that the board will review at its May meeting.

There is limited latitude, as I said earlier, of what can and can't be done through an addendum. Essentially, all we can do is modify state shares. We have to retain the state-by-state system, but we can modify state shares.

MR. COLVIN: I don't want to protract this too long, but I wonder if we don't also have the option in the default, as I kind of implied, of a quarterly or a seasonal rather than a total annual program via addendum. I would think that we probably do.

As I said, I very much appreciated the views I heard of the fishermen here today. I can tell you I was a little surprised to hear some of the views from some of the New Jersey sea bass pot fishermen, because every time I go to a Mid-Atlantic Council meeting -- and maybe it's just because I mainly hear from trawlers at those meetings -- I get a very different view of what those fishermen think of the current management system.

I don't mean to suggest that anybody is wrong, just that when we only hear from a few people, we don't get the whole picture, and that's why from the outset of this meeting I've been trying to find a vehicle by which we can get kind of a comprehensive, complete series of inputs on the whole picture from Massachusetts to North Carolina.

If we're going to have hearings on an addendum, why not use that opportunity to at least get public input on the whole picture? Is there any reason we can't do that?

CHAIRMAN FREEMAN: Let me ask Bob to, once again, answer that.

MR. BEAL: Gordon, questions could be included in the public hearing draft soliciting

comment on what folks want the future of black sea bass management to look like. They need to be framed as just kind of scoping questions.

They won't be actionable through the addendum, but they will be questions of the public as to what they would like to see in the future. That can definitely be included as public comment solicited during the open comment period.

MR. COLVIN: Thank you, and if I can contribute to that, that would be very helpful. I appreciate that and I'll shut up now.

CHAIRMAN FREEMAN: Gordon, if I have such a prerogative, then I would ask that other board members submit your ideas or your concepts to staff, and we'll try to put that in the document, bring it back to May, and then we could take it from there. I have Pres and then Tom.

MR. PATE: If we include all of the array of suggestions that -- this is a question for Bob -- suggestions from the other board members for the document to go out for public scrutiny for the addendum, and for those reasons or others get wrapped around the axle in making a decision on what we want to do, I'm assuming, Bob, that since we've chosen that addendum process, that does not foreclose our opportunity to extend by board action later on the current management measures for another six months, if we find it necessary?

MR. BEAL: That's true, Pres, the board still has the ability to extend through 2005 through board action.

CHAIRMAN FREEMAN: All right, I had Tom Fote.

MR. FOTE: Bob, what I would request, when any of those options are put in there, put it clearly that this could not be done by an addendum, this can be done by an amendment to the plan; then we have to go through the amendment process. In the meantime, the only choice we have is to extend the current plan.

I mean, we're going to send out a document, but

I don't want to confuse the public, and they're going to expect us to change things next year because they're going to see the document, and all of a sudden we're going to tell them that we passed an addendum that's two years, or we can't even do it because it's not able to be done under this document, so I want to make sure that's perfectly clear when it goes to the public.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. Just so I'm clear, as I understand it, the intent is to use this addendum hearing process as a preliminary scoping process, and I want to make sure that if the suggestions that start coming in start to get in the way of trying to accomplish the primary purpose of having this addendum ready for you to take your action in May, that you will allow me some discretion to sort of moderate and trim that out and work with the proposers. It may be if we had that understanding that some of the things that may be asked, if it finds out it's going to bog this thing down, that we would have a way to sort of pull that out.

The primary intent, as I understand it tonight, is that you want us to get this addendum completed and back to you in May and to the extent practicable, do some scoping at the same time. If we have that clarification, then I think that's the work we'll plan, Mr. Chairman.

CHAIRMAN FREEMAN: Is there any objection to that request? Tom.

MR. FOTE: I would sooner see the board members basically take a look at the document before it went out and get it back to us and let us basically decide what goes into there.

CHAIRMAN FREEMAN: Well, I would suggest that we need to give staff the latitude. We'll all get that opportunity in May. We don't want to drive the staff completely crazy, but we need to give them some latitude; and then if there are controversial issues, they'll make us aware of it.

Then we can talk about it in May so we're not

precluding things, but we need to at least get a reasonable document together. All right, if there is no dissention, we'll move in that direction. Any other comments? Now, we'll move into the fun stuff, summer flounder.

### **SUMMER FLOUNDER and SCUP RECREATIONAL PROPOSALS**

MS. KERNS: I'd like the board members to pull out Memo Number 31, dated March 9, 2004, on the 2004 summer flounder and scup recreational fishery proposals. If you do not have this document, please raise your hand, and one will be given to you.

That was not in the meeting materials. I tried to pass it out to everyone yesterday. As a general comment, the Technical Committee would like to note that the uncertainty associated with the estimated landings under liberalized regulations and in the face of increasing stock size, this uncertainty stems from the use of historic minimum size and possession limit reduction tables taken from a period when stock sizes were smaller and size composition was more truncated.

As stocks continued to recover, the use of tables generated during the more depressed conditions may cause the underestimation of landings possibly leading to harvest overages. The TC recommends the exploration of alternative methods to estimate landings under liberalized regulations.

Options include the use of size composition data from trawl surveys, using data from volunteer angler surveys, such as in Maryland, and building a buffer in landings projections taken from stock growth into account, such as how New Jersey and Virginia did their proposals.

In addition, uncertainty could be reduced by polling data regionally and by incorporating multiple years. There are several states that were allowed liberalizations this year, and so that's just a general comment to those states that were allowed liberalizations in their regulations.

The state of Massachusetts is proposing to

remain status quo for the 2004 fishery with a 16.5 minimum size, seven-fish possession limit and open all year. They were allowed to increase their landings by 35.7 percent. The Technical Committee approved this.

CHAIRMAN FREEMAN: Let me just interrupt for a second. There is a table that was handed out that also may aid – it was a table -- actually, I think Chris Moore developed it, entitled "Summer Flounder Recreational Management Measures by States", and it's for a three-year period.

You may also want to refer to that table. It gives you a historical perspective of what we had, what we, the various states, had and also a table of what our target was and what our landings were for 2001, '02, and '03 and our target for 2004. So if you refer to that table and the information Toni prepared, I think it will make it easier to see where we're going. Thank you. Pres, did you have a comment?

MR. PATE: A question, Mr. Chairman, if you want motions on these individual proposals or are you taking them collectively?

CHAIRMAN FREEMAN: I think, Pres, we could probably do them collectively. Let's try it in order to speed things up unless you have objection.

MR. PATE: No.

MS. KERNS: Continuing, the state of Rhode Island had three options. The first option, 17.5-inch fish, a possession limit of five fish and open from April 1 through December 31. The second option is a 17.5-inch fish, six possession limit, April 1 through December 31.

The third option is a 17-inch fish, eight-fish possession limit, open April 1 through December 31. They were allowed a 24.3 percent increase. All three of these meet this liberalization and were all approved by the TC.

The next is the state of Connecticut. Their regulations for the 2003 fishery were 17 inch, six fish, open all year, and they will remain

status quo. They were allowed a 2 percent increase. The Technical Committee approved these regulations.

The state of New York had a large number, 23 options, that they proposed. They are a 17-inch fish, seven possession, May 1 through July 24; 17 inch, seven fish, July 15 through September 6; 17.5 fish, seven possession, May 1 through August 13; 17.5, seven fish, June 20 through September 6; 17.5, seven fish, June 1 through August 21; 17.5, seven fish, June 15 through August 31. I don't think I'm going to continue to read all of these. You guys can read. All of these meet a 48.5 percent reduction, which is what they needed to do, and the TC approved all of these.

The state of New Jersey needed to reduce by 1.3 percent. They've changed their season to reflect this from May 5 to October 11. This was approved by the TC as well.

The state of Delaware had eight options. All options were approved by the TC. They were allowed a 33.6 percent increase. None of their options used up all of this increase. I believe none of them exceeded a 10 percent increase.

The state of Maryland has changed their regulations to a 16-inch fish, three possession limit and open all year. They had a 225 percent increase. This includes 220 percent of this increase and was approved by the TC.

The state of Virginia was allowed to increase their regulations by 66.7 percent. They listed a suite of options, 11 options to change in their fishery that range from a liberalization of 19.5 to the highest of 14.4 percent liberalization. The TC approved all of their options.

MR. TRAVELSTEAD: Mr. Chairman, just a point of information.

CHAIRMAN FREEMAN: Yes, go ahead, Jack.

MR. TRAVELSTEAD: There is one option that was approved by the Technical Committee for Virginia that's not on the list. That was 17 inches, eight fish, and a open season of March

29 through December 31. I just want to make sure that's added to the list.

CHAIRMAN FREEMAN: Jack, go ahead and give that to us again.

MR. TRAVELSTEAD: Seventeen inches, eight fish, and an open season, March 29 through December 31.

CHAIRMAN FREEMAN: Okay, thank you.

MS. KERNS: The state of North Carolina had a 193.5 percent increase, and they have proposed a 14-inch size limit, eight- fish possession limit, open all year. This would make their regulations consistent with their regulations in their bays, and that would use 55 percent of their increase. This, as well, was approved by the TC. Those are all the proposals.

CHAIRMAN FREEMAN: Okay, those are the entire proposals. A.C.

MR. CARPENTER: Mr. Chairman, they're not the entire proposals, because the PRFC wasn't listed here.

CHAIRMAN FREEMAN: That's true.

MR. CARPENTER: But as in prior years, we would select from either a Maryland or a Virginia-approved plan that meets our particular needs the best, and that has been the practice of the board to include us in that fashion.

CHAIRMAN FREEMAN: All right, without any objection, then we'll continue what we've been doing previously. Tom.

MR. FOTE: Just a technical question. I was trying to understand Virginia's proposal with the one-day closure.

CHAIRMAN FREEMAN: Before we get on that, any objection to A.C.'s request? All right, go ahead, Tom.

MR. FOTE: I was wondering how much credit you got for a one-day closure, because I remember hearing the old arguments from the

Technical Committee about recoupment, so I was wondering how we worked those out, what they actually gave you. Well, could it get asked by the Technical Committee to give me an --

MS. KERNS: Can you repeat your question, Tom.

MR. FOTE: Well, I'm looking under some of these proposals. It says one-day closed July 19 and I'm saying what do you get for a one-day closure? I remember the discussions of the Technical Committee years ago that there really -- because you're going to recoup on either side of it, what do you get?

MS. KERNS: If less than two weeks are required for the reduction, then you can have a one-day closure. Does that make sense?

MR. FOTE: No, I'm sorry.

CHAIRMAN FREEMAN: Let me ask Dave Simpson to just quickly review that.

MR. DAVE SIMPSON: If a state can achieve its required reduction with less than a two-week closure, it can do that so it could close one additional day. I think Rhode Island's proposal had several of those things in there.

The one thing that the Technical Committees typically don't want states to do is close every Wednesday and Thursday through the summer and count that because of the recoupment issue, so it's a little bit different.

CHAIRMAN FREEMAN: All right, any other questions? Pres, did you have your hand up?

MR. PATE: **Thank you, Mr. Chairman, to be recognized to make a motion that the board approve the proposals as presented in the staff report.**

CHAIRMAN FREEMAN: All right, we have a motion. Second?

MR. FOTE: Second.

CHAIRMAN FREEMAN: Mr. Fote seconds

the motion. Discussion on the motion which is approval of the various state proposals as just reviewed by staff. Discussion? Is there necessary caucus? Tom.

MR. FOTE: I just really appreciate that most of the states were more conservative than they had to be, but I also listened to the disclaimer put out by the Technical Committee, and I guarantee you we'll bring that back to the states also. Some of us might even be more conservative than we're getting approved for.

CHAIRMAN FREEMAN: Okay, other comments? David.

MR. BORDEN: Yes, thank you, Mr. Chairman, this will be brief. Our delegation is a little bit confused on why the Rhode Island proposal is April 1. Fish don't get there usually until the first week in May or second week in May, and this may be a typo. I'm not going to propose anything different. I just want to note that on the record, because if it is a typo, we're going to want to come back and propose something different.

CHAIRMAN FREEMAN: You're supposed to supply us with the answer, not the question.

MR. SIMPSON: That's what was in the proposal.

CHAIRMAN FREEMAN: That's apparently what you proposed. I suspect it was -- you had the time and you just used it up. You guys are okay. Let's take the vote. All right, is there need for a caucus?

Your issue is noted, David. If it is a typo, the Technical Committee approved what you had presented; and if that's what you presented, that's what they approved. If it is some other date, we'll make that correction.

Need for a caucus? No need for a caucus. We'll take a vote on the motion: move that the board approve the summer flounder proposals as presented in the staff memo. All right, all those in favor, raise your right hand; those opposed, same sign; abstentions; and null votes. The motion carries 12 to 0 to 0 to 0.

All right, just one point and I'll ask Toni to comment. There was discussion at the Technical Committee relative to trying to account for increased year class strength as reported by Chris Moore and others, I believe.

The 2002 year class was higher than normal. Those fish normally would recruit into most states minimum sizes this year, if they haven't already. It could very conceivably increase the catch rate, and various states had looked at ways for accounting for this when they go back to putting their proposals in place.

I would perhaps ask Dave Simpson quickly to review or comment on this issue. I just want to make states aware of the fact that you recall this payback on Addendum VIII was a very charged issue.

The commercial fishery is very concerned that recreational overages were impacting their catches. We had a vote on the issue. It was a split vote, but states have committed to try to make their targets realistic. We all had made that commitment. I want to make sure we carry through on it.

There was no requirement in the plan for a state to do this, but when you go back to your states and finally adopt your regulations for 2004, we need to keep in mind that we need to be very conservative, so we don't exceed our targets. David, perhaps you could just comment quickly on some of the techniques.

MR. SIMPSON: Well, as Toni started out, the Technical Committee did talk about that, and most states did include some kind of a buffer in their calculation or projection in terms of setting their regulations for 2004 to take into account increases in stock size, whether it be increases in fish that are just coming up to the gauge, so to speak, and in overall stock growth.

Maryland looked at some of their volunteer angler data. They looked at the PR vector information coming out of the stock assessment, and some other alternative approaches were discussed, looking at trawl survey size

composition to get an idea of what is coming in or what might come into that area, looking at it at a more regional level.

The other issue in general that was discussed was given the uncertainty of doing this stuff state-by-state, to consider pooling data regionally or incorporating multiple years of data into this assessment and calculation of what minimum size bag limit and season to set.

So states were taking some precautions, but it is noteworthy that the states that, in effect, had underages last year tended to be -- the largest ones tended to be to the south and the overages or near overages tended to be in the sort of Upper-Mid-Atlantic.

There was discussion back in the Monitoring Committee meeting about availability in 2003 being a little bit different, less fish being less available in the southern range, Virginia and North Carolina, even Maryland, and perhaps more available in the New Jersey-New York area, so that's something for states to keep in mind in '04. That may not play out next year.

CHAIRMAN FREEMAN: All right, thank you, Dave. I just want to make certain we all make every effort to continue to keep our catches at or below the target. We have a partnership with the commercial industry, and we want to make sure we carry through on that partnership. All right, enough said on that. Mr. Colvin.

#### **NEW YORK SUMMER FLOUNDER PROPOSAL**

MR. COLVIN: Thank you, Mr. Chairman. This morning at our seminar we learned that we shouldn't bring new information to the body during the meeting and expect the body to act on it, and I'm sorry but I'm going to have to violate that rule and ask for consideration of a proposal that New York will offer that represents some new information that the board hasn't seen before.

I have an excuse. The excuse is that the basis of this relates to the unusual and extraordinary circumstances New York finds itself in with

respect to the catch estimate generated by the MRFSS program for 2003.

Staff has distributed a memorandum, which I have submitted to the board, that provides the basis of the proposal and the motion I'm going to offer.

I'm not going to read the memorandum, and I'm not going to orally address every point that it makes, but I will ask that the board members, if you have an opportunity, to please look at it, consider what it says, and I'm going to ask that it be made a part of the record of this proceeding.

If you will just look for the moment at the graph on the back, since we last met, we've received the final estimates that included all of the MRFSS sample through Wave 6, so we kind of have the final picture.

Though these figures are preliminary and not yet final by MRFSS, they are out there now through Wave 6. I would just like to point to a couple of things. You will notice that the estimated number of angling trips for New York for 2003 is something in the vicinity, actually a little over 5.5 million trips.

You will also please notice that estimate is the single highest annual trip estimate in the entire MRFSS time series going back to 1981. It is only the third time since 1981 when our number of trips has exceeded 5 million, the other two being back in the early to mid-'80s.

Please notice, also, that the number of anglers estimate was about 700,000, a figure almost 200,000 higher than it has been for the preceding ten years. We just don't find these estimates credible. Yet, they drive the harvest estimates for fluke and, as I indicated earlier, scup and other species.

It is remarkable to us to think that this level of effort could have really been achieved, and this level of an increase in effort in one year could really have been achieved from that level which prevailed during the last part of the '90s and the early part of this current decade in the state.

This belief is further reinforced by the information that has been provided by our industry. Yesterday members of the commission were provided with a copy of a report that was generated with input from a number of people in the fishing industries in New York state and consolidated by Melissa Dearborn of the New York Fishing Tackle Trade Association.

Most of that is information that you have heard before. You've heard it in December. You heard some of it in January, pointing out the difficulties with data behind it that our anglers experienced with respect to weather conditions, and that our recreational fishing business experienced with respect to lower sales volumes and lower numbers of trips and customers carried in our for-hire fishery.

That information just doesn't square with these effort estimates. Now we learned of the higher catch estimates and had early indications of the increased effort estimates last summer, as did others of you, particularly folks in New Jersey, who were seeing the same trend and were equally surprised by it.

At that time we started asking questions and asking for information and detailed information on the nature and conduct of particulars of the MRFSS survey for last year to see whether something in the survey design, in the actual design and seasonal geographic distribution of intercepts and the manner in which the telephone survey was conducted might have changed, or some unique condition might have been encountered that might explain this extraordinary increase in the effort estimate and the catch estimate.

The MRFSS staff at that time and in the fall indicated to us and to this board that rather than respond to all of the individual requests for information they were receiving, some of which were coming from industry as well, that they would conduct a comprehensive and detailed review and issue a report to us that laid this all out and addressed all of our questions.

Most of us, based on the statements that we've been provided with, expected that we would see

this report, hopefully, in time for our January meeting, at which time we were going to finalize the reductions or increases that states would be allowed or required to impose this year.

That report, as you will recall, was not forthcoming at that time, but the MRFSS representative indicated that it would be forthcoming at some time in the near future, not later than the middle of February. We're still waiting for it, and that is my excuse to the board as to why I haven't been able to get you this information in a proposal sooner.

Frankly, we've been waiting to review this MRFSS data in detail to see if there is a "Eureka" somewhere, something that explains what happened, something that we can review, find, discover, to base a proposal that might adjust our circumstances based on what happened. We can't do that.

The only thing we can offer you is this final effort estimate that we've seen and hope that you share our incredulousness about this level of increase. That stated, we've been scrambling to try to figure out what else we can do.

New York's fluke regulations have been extremely stable for three years. They've been essentially the same for the last three years. Our catch estimate was just under 700,000 fluke for 2001 and again for 2002, almost identical. Then for 2003, with almost the same regulations in place, it went to over a million and a half.

That has led to a calculation under the process that we have that we're supposed to reduce our landings by 48.5 percent. We're supposed to cut our fishery in half, with all that means to our industry and those who are employed in it, based on this data, based on a presumption that we believe that the reality is that the effort increase really occurred that was measured by MRFSS and that our catch doubled, more than doubled, from 2002 to 2003.

We should believe that the likelihood is, because that is how our process works, that the 2004 catch at status quo would again be a million and a half as opposed to 700,000, which it was the

two preceding years.

We don't think there's any more reason to think that it would be a million and a half than there is to think that it would be 700,000. We really don't. So, as I said, we've been casting about for options and have come up with a proposal that I'd like to offer to you now. It's something different.

It's something unique, and I admit that it will be a stretch for many of the board members to agree that it's approvable, but I ask you to put yourselves in our shoes and imagine that you were confronted with what we are confronted with in terms of this effort estimate increase that has no explanation and is totally unrelated to the trends that the industry sees in their business and the reduction in the economic impact associated with it that we are being asked to shoulder.

Our proposal, I think the motion is ready to go up, is admittedly an outside-the-box proposal. Let me move it and then explain a little bit about it.

**I move that the board approve New York's proposal to reduce its projected recreational summer flounder landings for 2004 by 20 percent on condition that:**

**Number 1, the Technical Committee verifies that the final measures that New York selects achieve a 20 percent reduction; and, 2, that New York maintains such measures in place for the 2004, 2005 and 2006 fishing years.**

The measures that we would need to put in place to achieve a 20 percent reduction will require a minimum length, a creel limit and a season that are at least as restrictive as any we've ever had for fluke. If we leave our size limit at 7 inches, the season will be shortened --

MR. AUGUSTINE: Seventeen inches.

MR. COLVIN: At 17 inches, the season will be shorted, and the creel limit will be reduced enormously. Even a 20 percent reduction will be very costly to our industry, and many people in this room today from our industry are very

concerned about the effect of this proposal and are not entirely comfortable with it at all.

Nonetheless, we think that it is appropriate to bring a proposal of this nature to the board that does contemplate a significant reduction -- and 20 percent is -- and also to represent to the board that whatever happens, if our catch drops to 700,000 again, if the quota continues to go up and there is no reason to think that it won't, we'll maintain those regulations until 2006. That's our proposal.

Mr. Chairman, members of the board, I thank you for listening to me. I thank you for entertaining this and I will be happy to answer your questions.

CHAIRMAN FREEMAN: Thank you, Gordon. Is there a second to that motion?

MR. CARPENTER: Second.

CHAIRMAN FREEMAN: A.C. Carpenter seconds the motion. All right, discussion by the board. Mr. Borden.

MR. BORDEN: Thank you, Mr. Chairman, a couple of questions. One would be to the staff -- and actually, I discussed this with Gordon last night -- does the plan allow this? Regardless of whether it's a good idea, does the current plan allow this?

CHAIRMAN FREEMAN: Once again, we'll turn to Bob.

MR. BEAL: Thank you, Mr. Chairman. The current conservation equivalency program that the states are operating under only works on a year-by-year basis, and the proposals that were approved or the options that New York did consider that were approved earlier in this meeting achieve the 48.5 percent reduction that is associated with their annual conservation equivalency process that is consistent with the plan right now.

I think, as Gordon mentioned in his comments, this is a bit outside of the normal process and the current conservation equivalency program as we

have it right now.

CHAIRMAN FREEMAN: David.

MR. BORDEN: Okay, so it really deviates -- and I'm not trying to put words in either Bob's or Gordon's mouth, but it really substantially deviates from the rules that all the rest of us have had to adhere to over the last couple of years.

Before I say anything else, I'm sympathetic to the plight that he finds himself in, because the state of Rhode Island was in this position about three years ago. We had to reduce our recreational catch by 50 percent, if my recollection is correct.

I know how painful that was for our constituents, but I guess the thing that troubles me about this is if we're going to approve this for New York, one is the principle of it. Does it apply to everybody else? If somebody else around this table has an overage, are they going to be able to do the same thing?

Then the other aspect of it that I find very problematic -- and I am sympathetic to Gordon's concerns on the timing. He couldn't avoid bringing it here at this point, but the reality is what we should have is a full technical evaluation of this before we even consider it.

I mean, one of the questions that I've raised before is what is the consequence of this strategy for every other state around the table? In other words, if New York is over by 48 percent, and they don't change their regulations enough to stop that overage, then what is the consequence?

The next time we do an assessment, it seems to me that what that means is that everyone else has to pay back some portion of that overage. I've done that a couple of years in a row on scup, helping out Connecticut one year and this year New York, so I'm not predisposed not to do that, it's just I want to understand what the implications are, and the only way you can do that is by having a technical analysis of the issue completed.

Then, I guess, from a technical perspective -- and I'll stop after this. I've got a whole bunch of questions. I'm curious, Gordon, if you wouldn't -- with your indulgence, Mr. Chair, I'd like to ask him a question.

If next year the stock assessment is done, and it requires all of us to reduce our landings by 20 percent because of stock status, does this mean that New York will reduce their landings by 40 percent?

CHAIRMAN FREEMAN: I don't want to get into a debate, but I'll certainly allow that question, Gordon, if you would care to respond.

MR. COLVIN: That's a difficult question to answer, Dave, but if next year -- because it sort of depends on what happens this year, and I can't really answer the question, but I would say this. Maybe this is helpful.

If we were operating under this kind of a proposal, I can envision two circumstances under which we'd look to possibly change our regulations subject to bringing it to the board and discussing it.

We might seek to liberalize our regulations if we found that "Eureka" that I spoke of and developed some clear understanding of what went wrong with the MRFSS estimate in 2003.

We might seek to make our regulations more conservative to some appropriate degree in the event that a stock assessment indicated a change in the stock picture, such that the biomass was decreased.

CHAIRMAN FREEMAN: David Pierce.

DR. PIERCE: Yes, like Gordon, I'm also troubled by the fact that we don't have that report that was promised to us. It certainly has put Gordon in a bit of a dilemma, a major dilemma, and it has disadvantaged us as well. I'm assuming that we'll eventually get it but not in time.

I have a couple of questions. One relates to -- well, they both relate to the figure that Gordon provided in this letter of participation and effort

in New York. Indeed, there was a rather large increase in the number of anglers from 2002 to 2003 and the number of trips as well.

I wonder to what extent was that increase caused by private rental as opposed to charter and party? I think Gordon referenced charter and party individuals of operations, and they can't explain this increase. I guess they've canvassed their own organization and they can't explain it, but if it's private rental, maybe that would explain the increase.

The reason why I say that is in Massachusetts, for scup not for fluke, we had a dramatic increase, and that was due to private rental and not to the party and charter, so that's my first question. Was it private rental or was it party/charter? Has one or the other contributed to this particular increase?

In addition, my other question would be in 1999 to year 2000, we had an even greater increase in the number of trips, at least the same amount as from 2002 to 2003, yet no objections were raised back then regarding that increase, I assume, because it didn't result in any proposal for or a needed decrease in your take.

But I do notice that the number of anglers from 1999 to 2000 did not increase at the same rate that it did increase from 2002 to 2003, so I don't turn to Gordon this, I turn to Chris Moore, Mr. Chairman, with your indulgence.

Now, Chris, you're here. Thank you for being here. If anybody knows this database, it's you. I mean, you have worked on this for a number of years and you have advised the councils and this board to some extent about what to do with the recreational fisheries and what the data mean, what the data suggest.

Do you have any reaction, any thoughts to this increase from 2002 to 2003? Is it the kind of increase that we could actually consider to be a real increase in light of the availability of fluke in New York?

MR. CHRIS MOORE: Dave, the only way that I can address that is to tell you I'm waiting for this report from MRFSS, just like Gordon is, to

see exactly what they have to say about it.

Based on my discussions with MRFSS staff and some of the earlier presentations that I have heard, there are actually concerns that they have relative to 2002. That is something, I guess, that we'll see in the report. I'm waiting to hear from them, and I really can't comment at this point.

DR. PIERCE: Okay, so, therefore, if 2002 is the problem, then the increase from 2002 to 2003 may not be as significant as it appears, but the data point itself representing 2003 landings -- 2003 trips may be correct?

MR. MOORE: Yes, at this point. Again, I haven't seen this report that Gordon referenced earlier, but every indication that I've heard from them is that, in fact, that the 2003 data point is correct.

DR. PIERCE: Okay, again, we have to wait for the report. I guess I tend to believe the 2003 data point might be correct, and one reason why I think that is so is -- well, no, I'm looking at 2002 data and I shouldn't. I think 2002 data may be incorrect as MRFSS has suggested, and if, indeed, it is incorrect, then the 2003 data point may be real.

Therefore, it has to be addressed; and if we don't address it in 2004, then we run the risk of, again, having landings of fluke for the recreational fishery in New York being much higher than we need them to be.

Of course, the same situation applies for some of the other states in the mid and to the south where we have already been advised that we may be running the risk of overshooting the recreational target, perhaps, by quite a bit.

That's something we really can't afford to do in light of the fact that not too long ago we decided, as a board, I think it was as a board, not to address recreational fisheries overages even though we went to public hearing with some strategies to do so.

CHAIRMAN FREEMAN: All right, I had Anne Lange.

MS. ANNE LANGE: Thank you, Mr. Chairman. During one of the earlier breaks, based on discussions earlier in this meeting, I called Dave Van Voorhees in our science and technology office and asked about the status of the report for the 2003 MRFSS estimates.

He indicated to me that he had expected the report to be completed tomorrow, the 12. In fact, he has quite a few members of his staff working on it. That report will, in fact, be done by the middle of next week and distributed to the commission and the states.

He also indicated that the results of that have not changed significantly from what was reported as preliminary information at the January meeting, which, in fact, was that the estimate, while they found a few errors in the data, corrections to that did not result in significant changes in the estimates.

That does not address the questions that Gordon had as far as why there was such a great increase. It may, in fact, be related to what Chris indicated, that the 2002 number may, in fact, be the more erroneous number. But, again, their preliminary information, the results are the same as what was reported in January, that the number is fairly close.

CHAIRMAN FREEMAN: Tom and then Gordon.

MR. FOTE: These numbers are very surprising to me. I've followed fish and wildlife statistics over the years, and I've always lorded it over New York that we had about 400,000 more anglers, and we did a whole bunch of more trips.

I would love to have had this chart with New York and with what New Jersey did last year, because it would be very important for me to be able to look at the comparison of the two states, because I question the number of trips.

I'm looking at 2001 and 2003, and I know the weather from 2001 and 2003. In 2001 we had long seasons. We had warm weather and 2003 was a lot less trips than in 2001, as I've seen it. I don't know, Gordon, do you have any of that

information about New Jersey here?

I mean, it would be very helpful because I could sit and look and compare the two databases, because I think I have the same problem you have. I also want to know if you have gone up by this much, are they figuring that I went up and New Jersey went up by the name number of trips.

I also think that we basically get penalized here as you might get, because they basically calculate the number of trips, and you had an open season for fluke. Even though fluke was not available, they just extrapolated those figures to maybe push you up.

We would want to assess with ours, because we don't have that many fluke. I mean, we closed the season down, so basically the intercepts might not have shown up the fluke in those intercepts for the longer part of the season. So those are all the questions I have, and I can't get answered without having the information before me.

CHAIRMAN FREEMAN: Gordon, I had you next.

MR. COLVIN: I'm glad to hear that report is finally going to be forthcoming, and I'm not really surprised that it's the view of the MRFSS staff that they'll stand by the catch estimates.

I think one of the things we want to do is to dig into the details and start looking at how the actual, as I indicated before, the distribution of sampling effort and things of that nature might have changed.

I know David did tell me at one point that at least on the intercept side there were changes in the distribution. There was a reworking of the distribution in the intercept estimates. I don't know what might have happened with the telephone interviews.

We had already pretty much discounted, by the way, 2002 based on the comments we had from the MRFSS staff before as an '02 to '03 one-year trend sequence and started looking more at

2000-2001. We're looking at an increase from those years to 2003 of about a million trips -- from about 4.5 million to 5.5 million.

Now, some folks in the industry pretty much confirmed what Tom just said, that the first of those years, 2001 was a heck of a good year. Now you would think that an industry, people who are in the business, would feel real good about a year in which they had a million more trips than the last year of record.

You would think that would generate a heck of a lot of business and a lot of revenue for the industry, but you've all heard, as well as I have, what the industry in New York and New Jersey have said about the nature of their business last year. This just doesn't square.

CHAIRMAN FREEMAN: I have Gil and then Dave Pierce and Rick Cole.

MR. POPE: Thank you, Mr. Chairman. This points out something that we should have been looking at all along on we need a new policy on how we address huge outliers, overages. Massachusetts has had them in striped bass, New Jersey, as well.

It has happened in our own fluke fishery back in 1988 where we went from a half a million pounds to 2.5 million the next year and back to a half million pounds the following year. It's not the angler's fault that this is happening, yet the people that we are trying to make pay for these guesses that we are making are the anglers themselves, the businesses themselves.

I would like to see us start using some common sense. I don't know whether it's going to be now, whether it's going to be next week or whether we're going to start working on this, but it's a huge problem in the recreational fishery.

It's getting worse. It doesn't seem to be getting better. Any time you use one year's data, and especially the MRFSS, you're going to run into these problems. You're going to have to come up with buffers of some kind to buffer this information.

I don't know how else to tell you to do it. Otherwise, we're going continue to have these wild swings. Virginia had one where it was up and down 50 percent, yet we made them do it. Rhode Island was up and down 50. They made us do it. So, I don't know if we can start from here.

I don't know if this is a one-time deal that New York is looking to have here, but we need to go farther than this. We're just letting this ride. It's showing up in every fishery. It's something that we really have to work on in the future. Thank you.

CHAIRMAN FREEMAN: Let me ask Dave Simpson to make a comment at this point.

MR. SIMPSON: I just wanted to point out that every year we go through this process where states submit proposals that are expected to achieve a certain target result. Those plans are reviewed by the Technical Committees, and in the case of New York and all these others states were approved last year. So everyone, a year ago, expected what New York did to achieve the target harvest rate.

I think this just sort of points up the problem of working with individual state landings estimates on a year-by-year basis and kind of argues for a need to pool these things and do these things either more regionally or on the coast, because if you look at the total landings in '03 and our target for '04, we did pretty well.

Some states implemented measures that they thought would deliver the target landings and they were way, way under; and in the case of New York, they implemented measures that they thought would hit the target and they were way, way over.

I don't know how much of it is availability that can change from year to year and we have no control over that, and how much of it is a MRFSS estimation problem, but everybody is vulnerable at one point or another to this sort of thing, either being way under or way over, and over, of course, is the much bigger problem. But it argues for pooling data in my view across states or across multiple years.

CHAIRMAN FREEMAN: Okay, I had Dave Pierce and then Rick Cole.

DR. PIERCE: Gordon, getting back to the question I asked a little bit earlier on, the 2003 data, would you happen to know the percent of the total number of trips that were attributed to private rental versus party/charter?

MR. COLVIN: I don't, Dave. That's one of the things we hope to get out of the report. The other thing we were also looking for that would be part of the report, we're trying to get a sense of the trends of directed trips.

We're really interested in the change in the proportion of trips directed at fluke and scup. We think that might be an important indicator as well. Hopefully, we'll have that soon.

CHAIRMAN FREEMAN: Rick.

MR. COLE: Thank you, Mr. Chairman. I'd like to focus my concerns on the process that we follow, the conservation equivalency process. As everyone around this table knows, we've worked pretty hard at this process for the last four years.

The Technical Committee has worked very hard at it trying to iron out a process that we all can follow and that can guide us in our management strategies. Honestly, I thought we were doing pretty good, especially in 2002, the first year out of the last seven that we were under.

I had some hope that we were starting to get somewhere with this. Then, of course, here comes 2003 so now seven of the last eight years we've exceeded our harvest cap. But, nevertheless, I think the process has credibility.

I think we will continue to refine it, but we have to follow it. We have to follow it collectively. Gordon indicated that it's difficult to be in his shoes. Well, we've all been in his shoes.

In 2000 we had to have a greater than 40 percent reduction in our harvest because of an overage in '99. We went from a 15.5 inch minimum size

fish to a 17.5 inch minimum size fish, and we've been at 17.5 consistently for the last three years.

I'm going to try to promote that we stay at 17.5 for 2004 when we have our public hearings next week. My point is that we have to all collectively continue to support this process. We can't change it when it doesn't suit us.

If we have any hope of achieving our harvest cap, we're going to have to continue to hold the line. Changing the rules on an annual basis to suit a specific situation is not going to allow us to achieve those goals. So, unfortunately, I can't support this motion.

CHAIRMAN FREEMAN: I had Tom Fote.

MR. FOTE: This is my second and last time, because I'm going to play by the new rules. I understand and I agree with Rick, but I also agree with what happened in 2002. We took tables that were good in good faith.

New Jersey looked at a table that says we would have a 47 percent reduction, that we basically were 47 percent under. I mean, we took that in good faith in 2002, so did New York when they looked at the 2002 tables.

We now know that 2002 was wrong. We weren't told that until after the season was finished. We had no way of reacting to that. New Jersey was very conservative, over my objections, because I wanted to go -- I looked at that 47 percent reduction, and I said, well, we could be a little more relaxed.

Ed Goldman here, standing next to me, was on the Marine Fisheries Council, and Tony Bogan sitting back there says, Tom, we don't want to take a chance, so we're only going to take about 15 or 20 percent of that 47 percent and add it to our season, because we did not want to go over.

What happened? We went over by 9 percent. Now, it's not going to cause us as much pain to do that reduction. I can guarantee you when I go back there, there's going to be a lot of discussion of going greater than what these tables approve, because that's why they're afraid.

They want to live within the bounds, and I think we're all trying to do that. But we have to have tables that are accurate. I don't mean that we're not going to get any better tables, but we know when a year is bad.

When 2002 is bad, how can we basically penalize a state by going by a table that had some kind of abnormality in it? That's what I'm looking at. I'm trying to understand that. We could all be in the same position, and that's what I'm looking at.

If they hadn't told me that 2002 was wrong, that they hadn't done that, and we had the same amount of confidence in 2001 and 2002, and they had gone over, I would be less understanding.

But they have already stated that in 2002, they actually threw out the people that were doing the contract and extrapolated the figures from 2000 and 2001 to get the 2002. They didn't tell us that beforehand. There was no disclaimer then, that that's what went on. I'll shut up there, and I'll not say another word until we vote.

CHAIRMAN FREEMAN: All right, I had Eric Smith.

MR. SMITH: Thank you. I agree with Rick Cole, in part. Part of our job is protecting the interests of the group. I think the rules of golf call that "protecting the field", but I'm not quite sure.

But if that is what it calls it, I mean, it really rings true in my mind, because that's what we're supposed to do. We're supposed to make sure the process is protected against the challenge against its rules.

However, when in this case data is so volatile, I think protecting the field also means protecting a single member from unintentionally being abused. That's kind of where I see New York, the pickle that they're in.

As a lot of people have said, that's the same pickle we could all be in at any time, because

that's how volatile MRFSS is. You just don't know. It's Russian Roulette with fish.

I can support this in part. The part of it I can support is the part where in New York's letter they said to get past the hump of that wildly weird year of 2003 where the catch went up 2.5 times even though fishing conditions were much less, and effort on the grounds was much less, I could support a motion to say averaging those three years is appropriate, and then you deal with the percentage you need.

What I can't support is the part of this that maintains such measures in place for three years, because I think that jumps over the line a bit. I mean, without an addendum to allow that procedural change, I think that reaches too far, but we can look at the data and we can be suspicious of it just on the face of all the information that has been presented.

From my own personal sense of feeling comfortable with any kind of change, I could support the three-year averaging. I don't know if that influences an adjustment in the motion or not. I haven't thought through it enough to pick words and try and decide how I would change the motion, but I would leave that to Gordon and Pat to think about, and Brian.

CHAIRMAN FREEMAN: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. We are in a difficult situation, and unfortunately we even have a paper in front of us from Najih Lazar that questions the MRFSS ability to do the job that we're asking it to do.

We've looked at our party boat guys, our charter boat guys, the bait and tackle people. We work hand-in-glove with them. They're very honest in what information they bring to the table. The document that all of you received yesterday afternoon before you left, that I asked you to please take a look at before you left, is about the best information we can put our hands on.

As has been stated by Gordon, we've asked the MRFSS people for this information that they promised six or seven weeks ago. We still don't

have it. Now we're going to have it tomorrow. I sense the feeling around this room is you'd like to help us, as we have tried to help some of you other states, but not to this degree, so I'd like to go ahead and agree with what Eric suggested.

As bad as a three-year average is, it's better than looking at trying to convince you folks that we should live with a 20 percent hit for the next three years. Yes, it is against the Compact. It is against conservation equivalency.

But there is a reality check here. Sooner or later, we're all going to hit it. If you haven't been hit by it by now, you're going to be hit by it. It appears there is no way to beat or attack the so-called best scientific information that is available and ever come out a winner.

It doesn't get any better. It only gets worse. I think the difficulty of it is when we've asked for where the intercepts occurred in our particular case, and as New Jersey did in the last couple of years, the answer is, well, we can't get it to you.

By the time they get it to you, it's after the fact. And it's in such a form that it takes an Einstein to decipher what it's all about. So we're faced with two basic problems. The basic problem is that we're going to put a lot of folks out of business for data that sucks. It's so bad; it's terrible. Excuse me or using that word.

Not only questionable, it's questionable, it's flawed. And we are not using common sense, which is the thing that we're brought together for. It is a Compact. We ought to look out for each other.

Maybe our conservation equivalency amendment is too cleanly written that it doesn't give us any flexibility. It's black and white. Maybe that's the way it's supposed to be also. But there is no room for situations such as this. If we leave this room and take a hard hit, I know in New York we're going to take a beating. Our folks have put a lot of effort into justifying, validating, bringing forth the information they did and what they've done and so on.

I just really feel this has become a travesty that

we are stuck and faced with this situation. So, if, Eric, you would like to go ahead and amend that motion, I would want to second it.

If you don't, I would like to request to amend that motion to change the 20 percent to 36 -- I think it's 36 percent, an average of three years, whatever that number is, from 20 percent to I believe it's 36.4, a three-year average, if someone has that information available.

MR. COLVIN: It's 20 percent, Pat.

MR. AUGUSTINE: It is 20 percent for three years?

MR. COLVIN: A one-year reduction based on a three-year average is 20 percent.

MR. AUGUSTINE: Okay, Gordon tells me it is a one-year reduction of 20 percent based on a three-year projection; and if that's the case, I would suggest one year and then drop out the -- maintain such measures in place for the 2004, 2005 and 2006 and only make it for 2004.

CHAIRMAN FREEMAN: Let me indicate, Pat, as kind of going back and forth. What I need -- if someone wants to amend this motion, we need to do it so we understand what that amendment is. Gordon.

MR. COLVIN: Well, let me just clarify one item for the record, if I could, Mr. Chairman. I want to address something that Eric pointed out to me. There is a typographical error in the memo, at the end of the paragraph. Maybe this is the source of the confusion.

There is a paragraph near the bottom of the second page that ends in the figure 24 percent. That's supposed to be 20 percent. I think that's the correct number. That's the same number that's picked up then on the next page. I thank Eric for pointing that out to me.

CHAIRMAN FREEMAN: **The wording up on the board, is that your amendment? Move to amend to remove 2005 and 2006 --**

MR. AUGUSTINE: Yes, if that motion fails, I'll change --

CHAIRMAN FREEMAN: -- from the previous motion.

MR. AUGUSTINE: -- the 20 percent to another number.

CHAIRMAN FREEMAN: All right, that's your motion. Eric Smith seconds that motion.

MR. SMITH: May I make a comment on that?

CHAIRMAN FREEMAN: Eric, yes.

MR. SMITH: I'd like to make sure the record is clear, at least the record in our minds. The basis for this -- now that Gordon confirms that number change, it had me confused enough to go over and ask him what was going on here. Now it's very clear.

With that number as 20 percent, the 20 percent comes from simply averaging the three years. There is no big confusion in the motion anymore in my mind. It's a question of whether we think mathematically with data that's that variable, it's justified for us to take a three-year average.

I believe in scup a few years ago that's exactly what we did for precisely the same reason. There was highly variable inter-annual changes in scup data, and the board decided to do that, so I would support the motion to amend. It doesn't lock things in for three years, which I think is out of bounds, so I support it.

CHAIRMAN FREEMAN: All right, further comment on the amended motion. David and then Pres.

MR. BORDEN: Yes, thank you, Mr. Chairman. I appreciate those that are making the motion to amend, but it doesn't remedy the problems with the main motion. In other words, there is nothing in here that causes us to reduce mortality.

If the numbers are right, if Anne's statement stands and Gordon can't find any errors in the process, what this means, like a withdrawal from a bank account, we're going to withdraw 48

percent, and then we're going to pay back 20 percent; so not only are we not paying back the principal, we're not paying back the interest on it. So, I mean, it's better, but it's still not good. I'm going to vote against this.

CHAIRMAN FREEMAN: All right, Pres Pate and then I have A.C. Carpenter.

MR. PATE: Thank you, Mr. Chairman. I'm not prepared to vote in favor of either of the motions either, but for different reasons. I think the motion to amend essentially -- well, let me explain it in a reverse order.

My decision to not support the main motion is not that I totally object to the concept. I think it has some merit that could benefit the process in total, not just singling out New York as being the recipient of the benefits of a different way to judge the level of recreational landings and make the necessary adjustments.

This is something that I have thought about as a possible alternative to the way that we are managing the recreational fishery coastwide.

Dave Borden made some very important points in his first comments on the main motion, pointing out that there are some underlying questions that cannot be answered today and some technical analysis that is not available to us today, so that's the basis of my objections to the main motion.

My objections to the motion to amend are simply that we would be making the decision, if approved, that the pain inflicted upon New York is too great for them to endure. But, as has been pointed out, there are others that have had to endure an equal amount of pain, and there have not been any noticeable exceptions to those situations.

That's not to say that I'm not sympathetic to the plight, but it seems to be somewhat arbitrary for us to find the deficiencies of the MRFSS estimates as a basis for reducing the reductions for New York down to a 20 percent basis, and I'm not comfortable with that.

CHAIRMAN FREEMAN: Thanks, Pres. A.C.

MR. CARPENTER: Thank you, Mr. Chairman. I will not support the amendment to the motion, and I'd like to explain why I did second the original motion. It was primarily because, contrary to what we learned this morning, Gordon brought a proposal that was outside of the box, and I really think it needed to be heard, and I think it needed to be discussed, and I think we've all benefited from that discussion. The thing that particularly I found attractive with Gordon's proposal was the idea that there would be some consistency in regulation and a promise on the part of the state that they would maintain that for a three-year period and a reduction in their creel limit from seven the last two or three years to three.

It's more than cutting in half his creel limit. For that reason, I seconded the motion. After all the discussion that I've heard here today, I'm not sure I'm going to support either one of these motions, but I do appreciate the opportunity to listen.

CHAIRMAN FREEMAN: Thank you, A.C. Other comments from the board. At this point, I will take limited comments from the public. I know this is a very difficult issue. I know the board is struggling with this, and I suspect the people in the industry as well, but is there public comment? Tony.

MR. TONY BOGAN: Thank you, Mr. Chairman. My name is Tony Bogan from United Boatmen of New Jersey and New York. I'd like to start off my statements -- and I'll keep them as brief as I can -- to thank Toni Kerns from staff for going above and beyond the call of duty yesterday and the day before to get that information that all of you have here that was put together by Melissa Dearborn from NFTA. She was a big help in helping us get that out to you folks.

I'd like to address a few of the comments that have been made around the board in discussion of this motion. First of all, to something that Mr. Cole had stated earlier, that he felt that things were moving along well with the system,

I think you'll find that most of industry is going to disagree with that process.

If you look at what industry used to look like when stocks were depressed and what industry looks like today, it sure as heck isn't better. It's only worse.

I'm only going to touch for one second on the data aspect because not only did Mr. Colvin already give a good presentation of what both the state and the people from the state have been saying all along, this is about the data, not about the percent reduction.

This is about data that is claiming that -- and you've heard me say this a couple of times already -- that claims that just in the months of May and June alone New York had fluke fishing the likes of which God hasn't seen since Ronald Regan was in office.

I mean, that is a ludicrous assertion when you look at all of the other information that is here. Mr. Pierce had brought something up earlier about perhaps looking -- since 2002 has questionable effort data because there was an averaging of data for Waves 2 and 3 in 2002.

I'd like to point out that Waves 2 and 3 account for less than a third of the fluke landings ever in any year. The only effort issue with 2002's numbers was for Waves 2 and 3.

So Waves 4 and 5, when 70 percent of the fluke are landed in all the states, the data is considered to be accurate according to MRFSS with no caveats in there, so you're talking about an issue with MRFSS effort numbers that account for a minor percentage of the overall effort calculations for the year.

But I would go a step further than that. Don't question the increase from 2002 to 2003, look at the data that Melissa Dearborn gave you as well as what the state provided. We went back to 2001 and before, and all of industry -- and this is not just the for-hire industry -- showed a level of 2001 at an apex.

Take that as the apex even though it wasn't in

reality. Then 2002 was lower. Then 2003 was again lower, so 2003 was not just lower than 2002, and we can say, oh, well maybe 2002 was an underestimation.

No, it was lower than 2001, which is not considered to be an underestimation. So we show a three-year decline, MRFSS does not. There is a discrepancy there. Mr. Borden and Mr. Pierce both brought up, and, again, Mr. Pate just mentioned it again that, well, people have had to deal with this percentage overage in the past.

It is not about the percentage. If you could go back in time and take a year where any of these states have a 40-some-odd percent reduction and you have empirical data that questioned that reduction, would you turn around and say, oh, but you know what, since we had to do it, you'll have to do it anyway even though it might have been wrong?

That is what this is about. It's not about how much. If there were no questions, if there was no information from all of the New York industry, not just the for-hire industry, that couldn't dispute these MRFSS numbers, we wouldn't have a leg to stand on. We'd say, hey, you overfished by 40 percent.

We've got weather data from the National Weather Service going back to 1895 that shows that Wave 3 was the wettest recorded Wave in history, yet they supposedly had the second highest landings of fluke in history.

They are in contradiction of each other. This is not about the percentage of overage. It's about seeing trends in MRFSS that are inconsistent with not only what anglers and industry have observed, but actual trends and hard economic indicators that, by the way, are not just from the for-hire sector.

It was mentioned could these increases in effort come from the private sector. Well, they were across the board increases. MRFSS is actually telling the for-hire sector, no, you're incorrect; you didn't carry less people and last year you carried more.

But, nevertheless, it shows that all effort increases could not have been sustained when you look at the data provided by NFTA. These are bait and tackle sales. They are not unique to the for-hire sector. There were decreases in bait and tackle sales three years running for the entire state of New York, all fishermen.

So if they were buying less bait and buying less tackle, how on earth could they double their catch? What were they catching them on; tin hooks, cans with worms on them? It's just a ludicrous assertion.

It was mentioned about New Jersey, too. New Jersey's MRFSS numbers showed similar trends that were in contradiction to our information. It simply wasn't as big a number. And I have all those numbers for you, Tom, which I will be able to get to you but I don't have them with me. My computer is in the car.

Recreational fishing is a product of encounterment. If the people run into the fish, we catch them. If we don't run into the fish, we don't. That's a fact of life. That was brought up before, perhaps there was a switch in availability.

However, if it is an act of encounterment, which pretty much everybody has stated at one time or another -- I didn't make that idea up, you folks gave it to me over the years -- well, logic dictates you would have to have anglers to encounter those fish.

All the empirical data we provided which, by the way, is meant to supplement MRFSS, not to supplant MRFSS, that was not our intent, belies the assertions of MRFSS that we could possibly have had that increase in effort, because we're showing if there were more anglers -- maybe there were more anglers but they obviously weren't fishing because they didn't buy the bait, they didn't buy the tackle and they didn't go out on boats.

So the question remains how is that possible? And my last statement -- and I want to thank you for your indulgence because obviously this is a

slightly emotional topic -- this is an out-of-the-box solution.

This gives the ASMFC an opportunity to use empirical data to address perceived or real deficiencies in the best available data; in addition, to consider the economic impact of the regulations imposed.

While this is a state body and not a federal body, the Sustainable Fisheries Act says that if a stock is not overfished and if overfishing is not occurring, you must consider the economic impacts of what happens.

In other words, as long as the stock is doing well, you've got to consider it. If the stock is doing poorly, all cards are off the table, and we've got to start the stock rebuilding.

Well, we're in a situation with fluke where we're not in a problem situation. We're at trawl surveys and indices that are at record highs, stock levels that are returning to record highs, surpassing thresholds, so economic impact does need to come into play.

I'm going to leave it at that, because I know there are a few other people that want to speak. There are a number of anglers here from New York and party and charter boat operators, and I appreciate your indulgence, both you, Mr. Chairman, and the board as a whole. Thank you very much.

CHAIRMAN FREEMAN: All right, thank you, Tony.

MR. PATE: Bruce, could I ask Tony a question before he gets away?

CHAIRMAN FREEMAN: Pres, yes.

MR. PATE: Tony, did you go back in time and see if there was any correlation between bait and tackle sales for other years when there was a dramatic change in effort and landings like the change from 1997 to 1999 and then from '99 to 2000?

MR. BOGAN: I don't know how much of that is in Melissa Dearborn's paper that she

presented. I was down here in Virginia, and she was up in New York doing that. NFTA is the one that put together the bait and tackle aspect of it, so if there is not that level of information in the handout that you have, it would be something that is attainable.

The problem is as we go further back, we don't have that volume of information. Just like you go before MRFSS started, we don't have a volume of information.

I don't know how far back NFTA's data at that level of confidence goes, so I can't honestly say for sure, but I would say each year back further we go, the less likely it is we would have that volume of information to make that kind of analysis.

CHAIRMAN FREEMAN: All right, are there others who would like to speak? Yes, please come forward and identify yourself.

MR. DENNIS CANYA: Dennis Canya from United Boatmen. I also own two party boats out of Point Lookout, New York. I hear a lot of questions about how could this happen. Dave Pierce said to Gordon have you looked at private boats?

Well, Tony said it. Look at the charts Melissa put together. It took many hours of work. How could you have increased private boat use with decreased bait sales? I mean, they do use bait when they go fishing.

MRFSS showed party and charter up 16 percent. The charter, over the last three years, has been a downward trend, and it's a way downward trend. How could you say MRFSS is right and we're wrong.

I mean, the first year we showed a down, they showed a down. The second year they showed a giant up. We're still going down. If anybody sits at this table, after what they've seen happen over the last three or four years of MRFSS data for their individual state, it's been up and down.

I mean, how can a state be under by 225 percent? Is that as believable as being over by

110 percent the year before? Other states were other ways. I mean, the numbers just keep going up and down.

It kind of tells you that, yes, for a trend, it probably shows something, but as a state-by-state accurate figure it doesn't. I mean, we've made a few suggestions. We're still waiting for MRFSS to think about them and discuss them with us.

Why can't we average, like Gordon is trying to do here, MRFSS data over three years? None of the fishery is in a crisis anymore. I mean, that's kind of common with this type of numbers that you see just from New York and what Gordon put together on the back of this sheet.

It goes up and down every year, but the trend is straight down into last year. Kind of strange isn't it? I mean, all of a sudden people went fishing when it rained every day? Tony said a lot of stuff, too, about it's only the second and third wave that was wrong in '02.

I mean, the government looks like, it's like what they did with the dragger for two years, wouldn't admit they trolled the net wrong. Are they trying to cover up the MRFSS? I don't know. I don't care. Let's just get the accuracies right.

I mean, the industry cannot survive the way we're going. I don't care what state you live in. We can't go year-to-year anymore. Here it is March 12<sup>th</sup>. I have 21 charters booked in the month of May.

I don't even know what to tell them -- we can't fish? We lose 21 trips, \$21,000? Can you all take a cut in pay of \$21,000? I know I can't. Industry was better off ten years ago. I mean, Tony is absolutely right.

Ten years ago we had people buying bigger boats, faster boats and carrying people. Now the fisheries have come back. We have between New York and New Jersey 12 boats for sale, boats and businesses.

Four tackle shops in a small area have gone out

of business in the last year. This is with plentiful fish? The system has failed industry, and it has also failed the recreational fishermen. There is nothing wrong with admitting it.

If that's how you feel, let's correct it. No one is going to get upset. Bill Hogarth keeps saying we don't want to manage by lawsuit, but action by the council and the commission forces people to do this because they're fighting for their lives.

This is not New York wanting to get something different or we don't want to take our full reduction. There is no way we could have been over 110 percent, just like there is no way someone could have been under 225 percent. It's a mistake.

It sounds like most of you board members are not too happy with the 20 percent reduction. Is there another number besides 48.5 that you may be more comfortable with? Twenty-five percent? Thirty percent? We still feel that's wrong.

New York, at that proposal, that's going to put at least a third of the fleet out of business in two years because of the season. We have to have the time to make the money, and we have to have the product to catch the fish, and we can't rely on inaccurate data no more.

We brought up this for-hire survey information to MRFSS -- there is a bunch of flaws in that -- six weeks ago. We still haven't got an answer. I said this back a few months ago. The government has a job to do, too. And if you can't get it right, that affects us. Thank you.

CHAIRMAN FREEMAN: Thank you, Dennis. Is there someone else? Please come forward. I'll have two more speakers. We have time constraints. We have a number of issues we have to get through and get votes on for the scup fishery. Please, if you make your points, don't repeat the ones that are made by Tony or Dennis. If you have new issues, please bring them forward, but no repetition.

MR. GEORGE BARNBACH: I'm George Barnbach. I own the Captain Ron out of Captree

and work with the Captree Boatmen's Association. We have 25 party and charter boats out of Captree. I agree 100 percent with Tony and Dennis and what Melissa did with these charts, and it has the weather and we're questioning the data.

I'm a third generation, and here, I'm afraid to say, it's going to stop. We keep getting pushed all the way to the limit. We've done everything New York has ever done. Every year we go up an inch here. As fishing is getting better, we keep getting it back twofold. We keep getting hit on the head.

Like Mr. Pierce said here, how about the private sector? Do you have the quotes for them? Well, May and June, which you have in the charts there from Melissa, the weather was so bad, when you take our port alone, our boats average from 65 foot to 90 foot.

When we couldn't get away from the dock, do you think the private sector is going to have the little boats, the 20-foot, away from the dock?

Half of them, until June, were still on the racks with shrink wrap on them. When a fleet that big can't get out, there is no way that the private sector was going to even come close to this quota.

We do everything we've done over the years, full conservation. We do whatever we're asked to do, but now we're pushed. I'm 34 years in a full-day business. I cannot live with three fish. I'm going to be out of business.

And the size just keeps going. You just can't take it no more. We're coming to the end. I could see if there was no fish around. We've always been forward trying to help out the conservation, but when it keeps getting better and better, you just keep trying to put us out of business. With data like this, if the board can't even see the data and the weather and figure out what the problem here is, there is really a problem. Thank you.

CHAIRMAN FREEMAN: All right, thank you. Can you come forward, please. I would ask that,

if there is equal representation, you decide amongst yourself who is going to speak, because we are running out of time.

MS. DEEDEE BRADSHAW: My name is DeeDee Bradshaw. I am from Sheep's Head Bay, Dorothy B8. We're considered the West End. There is not much I can add to what Tony and Dennis and George have said without repeating it, but I will tell you something that is a little interesting.

My accountant, who has been doing my business for 25 years, has just finished my taxes for this year. With the phenomenal fluke season that we were supposed to have had, according to MRFSS, he insisted -- 25 years he is doing my accounting -- he insisted on a personal face-to-face meeting with me.

Do you know what he said? He said, "Your business is down so much in the last three years, I have one question for you and that is why are you in the party fishing business?" So I started with all the emotional stuff.

He says, "No, no, no, I don't want to hear that. What I want to hear is financially, as a finance, as a business, in economics, why do you continue to operate a business that's no longer making you money?" And he has been doing my accounting for 25 years, so this is just an indication of the fabulous year that we have had in the fluke industry in 2003. Thank you.

CHAIRMAN FREEMAN: All right, thank you very much. I'm going to have to close off the public comments at this point.

MR. MICHAEL BARNETT: Can I say something?

CHAIRMAN FREEMAN: Wait, wait. We've taken time. I understand you've come a great distance to be here, but we have business to conduct. We've added items to the agenda. This item wasn't even on the agenda.

We want to give people the opportunity to discuss the concept, but we've heard from you. If anyone has additional information that hasn't

been already indicated, I'll allow -- whoa, whoa, whoa, whoa. Is there anyone that has any information that already hasn't been said by the two representatives? All right, there's one gentleman. Please identify yourself.

MR. BARNETT: My name is Michael Barnett. I'm from Codfather Charters Freeport, New York. It's going to be very quick. I have a question. MRFSS takes our reports from us, the charter and party boat operation.

They say that we only represent 15 percent of the recreational community, and it's not used in this data. Can somebody answer to me why it's not used? That's the point of information I'm asking. We continually fill out these reports, but they don't use them.

CHAIRMAN FREEMAN: Well, we don't conduct the MRFSS program, and we're not the appropriate ones.

MR. BARNETT: Is there anybody here that can answer the question?

CHAIRMAN FREEMAN: Well, the people representing MRFSS are not here at this meeting. If you were at the meeting in January and that question was raised, they could have answered it but --

MR. BARNETT: I really don't have the money to go to all these meetings, but my point is we supply sufficient information and probably the most up-to-date information that you can get from anybody, because we are in a professional capacity, and it is not used.

But yet we get these hypothetical things from MRFSS every year that tell us we either went over, under, in between. Nothing is consistent. That's my point. Why aren't our reports used? Why have us make them out? Maybe somebody can look into that for us. That's all I'm asking. That's my point. You said did I have a different point, yes, I do.

CHAIRMAN FREEMAN: All right, thank you. We'll try to look into that issue. All right, back to the board. Are there any additional comments

on the substitute motion? Is there a need to have a caucus? I'm sorry, this is a motion to amend.

Do we need to have a caucus? I see no indication we need to have a caucus. **I'll read the motion to amend: it is move to amend to remove 2005 and 2006 from the previous motion.**

All right, all those in favor of the motion, signify by raising your right hand; all those opposed — okay, this would be in opposition — just to make certain we give everybody a fair count here. Those that support the motion to amend, please raise your right hand; those who oppose the motion to amend, please raise your right hand; any abstentions; any null votes. All right, **the motion fails 1 supporting, 8 against, 2 abstentions and no null votes.**

All right, back to the main motion. **That motion is move that the board approve New York's proposal to reduce its projected recreational summer flounder landings for 2004 by 20 percent on condition that:**

**1. The Technical Committee verify that the final measures New York selects achieves a 20 percent reduction; and**

**2. New York maintains such measures in place for the 2004, 2005, and 2006 fishing years.**

Do we need a caucus on this? Anyone need a caucus? All right, seeing no need, we'll take the vote. All those in favor of the motion, please raise your right hand; those who oppose the motion, same sign; abstentions; null votes. **The motion fails 6 in opposition, 4 in favor, 0 abstention, 1 null vote.** David Borden.

MR. BORDEN: Thank you, Mr. Chairman. I'm not going to make a motion, but I think we should all learn something from this. Everyone around the table that basically spoke against this motion, including myself, voiced sympathy for the plight that New York finds itself in.

I think it's incumbent upon all of us to commit ourselves to develop an addendum that

encompasses this type of concept and other types of strategies that basically avoid this situation and the problem, and that approach should be incorporated into an addendum and taken out and applied to everybody and have a full-fledged technical review.

One of the reasons I opposed moving ahead with the sea bass issue was because I anticipated this issue coming up. This is a much higher -- solving this problem is a much higher priority than most of the other things on our plate, and I think we ought to commit ourselves to doing that type of analysis and addendum.

CHAIRMAN FREEMAN: Gordon, you had your hand up.

MR. COLVIN: Thank you, and I'm glad you picked David first, because let me say that I appreciate what he says; and if nothing comes from this other than that, I will feel that the effort we put into this was well spent.

What I really also want to say is that I fully appreciate how late it is in the day and the week and that we came to you with something new that you didn't necessarily see coming, and I couldn't be more appreciative and New York State could not be more grateful for the attention, the level of debate and deliberation, and the consideration you gave to this proposal. I want to thank the board.

CHAIRMAN FREEMAN: Well, thank you. I would also like to say to the audience, I appreciate the time you've taken. I know it's a very important issue. The issues we've dealt with on scup and sea bass, especially, were really not on the agenda.

We've taken nearly two hours in additional time to try to address these issues. I want you to understand we look at these very seriously. You've heard the discussion. There is great anxiety amongst the people who voted no, because there is great sympathy.

We need to have a better system. But we're very cognizant of your concerns. We are trying to make the system work better. We all feel

your frustrations. I would ask Dave Simpson, as chairman of the Technical Committee, that the committee look at possible ways to have some sort of averaging of the years, so that we can get away from this problem that we're facing.

All of us have faced this at one time or another. Is there some system that we could perhaps go to and move to? I would ask, since Chris is here, Chris, if you could help in any way with your knowledge of the fishery and the information we use, to help support that effort. All right, thank you very much. All right, we need to move into scup, and I'll ask Toni to take over.

MS. KERNS: Thank you. From the earlier motion that we approved to amend the four state's total reductions, I would ask that those states send in their technical proposals in the next two weeks, so have them to me no later than two weeks from tomorrow.

I don't have a calendar in front of me to say what that exact date is, but two weeks, the 26<sup>th</sup> of March. With that, if there is no objection from the board, that it's agreed that after Technical Committee review, that those proposals would be approved upon the Technical Committee's approval.

CHAIRMAN FREEMAN: Let me just ask those states involved is a two-week period sufficient to get your calculations? I mean, they should be fairly straightforward. David, yes.

DR. PIERCE: Yes, two weeks is fine. I also have a request that I would like to make when it's the appropriate time, Mr. Chairman. Maybe it is right now, and it relates to a point that was raised at the Technical Committee meeting.

It's described in the document that Toni made available to us, describing the recreational fishery proposals, and in particular the Massachusetts situation relative to the dataset and the dataset that we need to use in order to provide the board with different management options that will allow us to achieve the 40 percent reduction that we agreed to go with instead of

35-40 percent.

The bottom line is that depending upon the options we pick, we under-represent the amount of actual cut. Seventeen percent to 38 percent, that's the range, and that's because the table that is in the addendum that we're supposed to use doesn't give us credit for an increase in our minimum size from 9 inches to 10 inches or 11 inches, depending upon which size we eventually decide to adopt, so I'm hoping that the board would be willing to let us use that Massachusetts data.

It seems consistent with what the Technical Committee has advised. There should be no problem with regard to that. In particular, if, indeed, for some reason, we do overshoot the amount that we're supposed to achieve as a target, then obviously we have to deal with that next time around, next year, so that there should not be any consequence to any other state.

It's just our making sure that we have the dataset to use that gives us the appropriate credit for increasing our minimum size either one or two inches.

CHAIRMAN FREEMAN: All right, let me suggest that you submit that to the Technical Committee and have them approve that; and if it is not objectionable to any state, we'll move in that direction.

Massachusetts has a particular problem, and Dave Simpson said that the Technical Committee should be able to come to an agreement on that. Without objection? David Borden, two weeks, your staff could get your proposals within two weeks?

MR. BORDEN: Yes.

CHAIRMAN FREEMAN: Gordon, two weeks to get New York's proposal?

MR. COLVIN: Yes.

CHAIRMAN FREEMAN: And who are we missing?

MR. AUGUSTINE: Connecticut.

CHAIRMAN FREEMAN: Oh, Eric, two weeks?

MR. SMITH: Yes.

CHAIRMAN FREEMAN: All right. As Toni requested, may I ask the board so long as these are technically approved, they don't need to come back to us? The only reason they'd need to come back if they're not approved? Is that agreed? All right.

### **SCUP TRIP LIMITS**

MS. KERNS: I have one last point of other business. At the meeting that we had in December that we tacked on to the end of the Mid-Atlantic Council meeting, we voted on the Scup 101 trip limits; and as the motion states, we voted to remain status quo with 15,000 pounds per week and an 80 percent trigger, at which the weekly trip limit would drop to 1,000 pounds.

Where it says the 80 percent trigger would drop -- or weekly trip limit would drop to 1,000 pounds is not status quo with what it was last year, that there would be a daily trip limit so was that your intention, Jack, to stay within -- it was your motion, that we would be -- instead of a weekly trip limit it would be a daily trip limit to keep it status quo with last year.

CHAIRMAN FREEMAN: Let me just try to summarize. The issue last year was that once we reach the trigger, it would be reduced to a 1,000 pound trip limit. It was interpreted -- we actually don't have verbatim minutes of the meeting.

It was the meeting that we kind of piggybacked, I think, with the Mid-Atlantic, yes. However, the understanding was is to remain status quo as we had in 2003, but it got interpreted as per week rather than per trip, and so the issue is -- and it has been brought to our attention by a number of fishermen that it is a substantial change so far as their conduction of business is concerned, whether in fact they need clarification on what the trip limit was. As Toni

indicates, it appears to be 1,000 pounds per trip and not per week, and it is a substantial difference to fishermen.

MR. TRAVELSTEAD: I was going to ask you to tell me what you think I said because I don't know what --

CHAIRMAN FREEMAN: Well, status quo would be 1,000 pounds a trip not 1,000 pounds a week.

MR. TRAVELSTEAD: Yes, I do recall that being the case.

MS. KERNS: I'd also like to point out that I don't believe we will even hit this trigger, but just in case we do.

MR. TRAVELSTEAD: But it should be 1,000 pounds per week, is that what you -- per trip.

MS. KERNS: To remain status quo, it should say 1,000 pounds per trip.

MR. TRAVELSTEAD: Per trip?

CHAIRMAN FREEMAN: The issue here, Jack, is that the winter fishery, once you get below 15,000 pounds a trip, it ends up being an incidental fishery. There is no way you could have a directed fishery at 1,000 pounds a trip.

The 1,000 pounds is meant to be a true bycatch in the croaker fishery or the fluke fishery, or whatever it happens to be. By making it 1,000 pounds per week, people have to keep track of how much they bring in each trip. The intent, based upon what we had in 2003, was the 1,000 pounds should be per trip.

MR. TRAVELSTEAD: Okay, yes, I definitely recall now, and it should be that it drops to 1,000 pounds per trip once you hit the 80 percent.

MS. KERNS: I can send a notice around to people.

CHAIRMAN FREEMAN: Anne, do you have a comment?

MS. LANGE: Well, isn't that what it says, that

the trip limits will be -- "weekly" wasn't in there a second ago. It said "at which the trip limits drop to 1,000".

MS. KERNS: It said the weekly trip limit drops to 1,000 pounds.

MR. TRAVELSTEAD: Just drop the word "weekly."

CHAIRMAN FREEMAN: Right.

MS. KERNS: Exactly.

CHAIRMAN FREEMAN: Yes, that is the problem because the weekly that's in there was the confusion.

MS. LANGE: I'm sorry, is it 15,000?

CHAIRMAN FREEMAN: Yes, the 15,000 was per week, but once you reach the 80 percent, it was 1,000 pounds per trip. This issue was to avoid a discard in some other directed fishery, I mean, a fishery directed for some other species.

So long as it is agreed by us that was a mistake in the interpretation, then we'll send a letter out to each of us indicating if your regulations don't allow per trip, you can modify them and do so. The reason for this to be up here was to demonstrate where the confusion arose. We want to correct that. All right, any objection? All right, thank you. Gil.

MR. POPE: I have no objection to the correction here. The only thing that I want to continue to stress, even though Toni just said we're not going to reach that trigger, is that in my experience in Rhode Island, 80 percent trigger with very large trip limits or in whatever, are very, very difficult to stop, very, very difficult to do in a timely fashion. At least we've found that to be true in Rhode Island.

I don't know who is doing the calculations on this, but I would urge that in some time in the future that we look at how these trip limits or these triggers are working at the higher sizes. Thank you.

CHAIRMAN FREEMAN: The issue, as I

understand it, Gil, at the present time, on the commercial side, it's not being able to catch the fish, that it's a deterrent. It's the markets simply are so overwhelmed with fish, the fish almost are down to less than \$.10 a pound, so that commercial fishing essentially stops direction. As indicated, we may not need this incidental catch rate, but in the event we do, we don't want to see fish wasted just because of our misinterpretation. David.

MR. BORDEN: I definitely distinctly recall Jack thinking that when -- no, I think it would be handy to have the language reflect the following, "at which point the limit drops to 1,000 pounds possession", then it's crystal clear. That's what we intended. That's a return to status quo.

CHAIRMAN FREEMAN: All right, we'll include that in the record. Thank you. Okay, we're up to stock assessment reports.

#### **UPDATE ON STOCK ASSESSMENTS**

MS. KERNS: Just a quick update on the stock assessments. An RFP went out for scup. There were no proposals turned in so an extension for that RFP went out for proposals for a scup assessment, and the deadline is March 19<sup>th</sup>. We have not received any proposals for someone to do that assessment yet.

On the black sea bass, it's going to be led by the National Marine Fisheries Service. It's scheduled for this spring SARC, and as far as we know, it's underway and moving along, and our Technical Committee will be involved in the process.

CHAIRMAN FREEMAN: All right, Eric had one item under other business.

#### **OTHER BUSINESS**

MR. SMITH: Thank you. One of the many facets of this whole scup dilemma that we faced in the recreational fishery over the last three or four months for this time around has been a growing feeling on a lot of people's parts that there is something that a lot of us feel needs to be looked at again more critically, and that is the

commercial to recreational split in the allocation.

It's in the eyes of the beholder. Everybody has a slightly different view on what the right proportionality of those two splits ought to be, but the fact is with scup, it's so disparate at 78 to 22, it really raises the question that maybe we need to really give that another hard look.

The way to do that is to imbed the reconsideration or simply the review of that issue and how it came about in the next addendum that doesn't count black sea bass or the amendment. It may be a more appropriate place, maybe the necessary place for it.

At this late hour, and even if it was early in the day, I wouldn't want to say much more than that. I sure wouldn't want to talk about percentages, because I might have an idea on what a good percentage is and everybody in the room has a different idea.

We shouldn't be thinking of it at that point. We should, in my view, just be thinking of the fact that 78-22 in my mind raises the question of whether that's an appropriate allocation of a resource between the two principal user groups.

I guess I just wanted to say that to try and not even engage debate, but if there was no violent objection, we would simply add that to the list of work products to be on that amendment. Thank you.

CHAIRMAN FREEMAN: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Under other business, as I recall, some two years ago there was discussion about looking at the biological reference points for summer flounder. In a recent brief conversation, if I may refer to one with Bob Beal -- don't want to put you on the spot, Bob -- I asked if it would not be time for us to go back and take a look at the biological reference points.

All indications are that the stock is growing in leaps and bounds, yet we're still only some 45 or so percent toward the target. It just seems to me that -- the Technical Committee said that they

were going to look at that, and I'm wondering if they have done that; and if they have, is there any way that in the near future we can go back and have a look-see at that. Bob could respond to that or Chris, I'm not sure which.

CHAIRMAN FREEMAN: Chris, would you like to respond?

MR. MOORE: Yes, I'll address it. In fact, we brought it up at the Technical Committee meeting that occurred in Providence in the end of February. I mentioned the fact that there was a lot of interest in revisiting the biological reference points for summer flounder.

I mentioned the fact that this next go-round for summer flounder, we're basically looking at an update of the information or an update of the assessment, but as part of that update, certainly, the Center is going to be looking at re-estimation of Fmax and a re-estimation of our target biomass.

I mentioned to the group that if anyone in the Technical Committee had any interest in providing additional analyses for review, that, certainly, it was something that we should think about. So, the question was brought up. Dave can address it as the chairman, if he wants, but we did discuss it.

MR. AUGUSTINE: Good, thank you. So, Dave, as chairman, do you have any intentions of bringing that up, or will you bring it to the attention of the committee to move it forward somewhere in the near future?

MR. SIMPSON: Well, I think, as Chris indicated, the best place to do that, I would think, would be during the update of the assessment where we're looking at the new data, things that are likely to change. The partial recruitment pattern might affect the Fmax calculation.

There are some other things that we talked about in terms of natural mortality and potential differences between males and females that might argue that the Fmax could be different, but we probably don't have enough time yet to

get a good handle on the differences between the two sexes.

The point is that it appears males don't live as long as females, so you'd expect a different M, which would affect the Fmax calculation. Things like that would be considered.

CHAIRMAN FREEMAN: Any other items? David Borden.

MR. BORDEN: This will be fast, Mr. Chairman. The scup assessment, we'll get the results of the scup assessment when, exactly when?

CHAIRMAN FREEMAN: Chris, before you retire, I hope.

MR. MOORE: Toni responded to that earlier. We have an RFP out basically looking for someone that is interested in doing a scup assessment that would be funded by the Mid-Atlantic Council.

That RFP has been out for a while. We haven't gotten any responses yet. We actually extended the date another 30 days, and we're hoping that maybe we might get a response. It closes on the 19<sup>th</sup>.

But to date, we've had zero, so that puts us in the position of trying to figure out what our Plan B is relative to a scup assessment. We have to have those discussions, if, in fact, we don't get anything by March 19<sup>th</sup>.

MR. BORDEN: Okay, but if it's going to be done, Chris, we would get -- I mean, regardless of who does it or how they do it, we would get results by what deadline?

MR. MOORE: If, in fact, we get a response by March 19<sup>th</sup>, because we had to extend the RFP another 30 days, we're not going to meet our deadline for the summer SARC, so we'd be considering the winter SARC as a possibility for a scup assessment.

So we won't have any additional -- to your point, I think this is where you're going with

this, we won't have any additional information on scup outside of what we usually get in August, which is a survey value.

MR. BORDEN: Okay, that is very helpful information. My suggestion, Mr. Chairman, is this board runs a substantial risk of having a train wreck on scup for a whole variety of reasons. I think most of us are aware of the deficiencies in that stock assessment.

I think at the next board meeting, the May board meeting, we have to sit down and really book out some time to figure out a strategy, a policy strategy on how we're going to proceed.

My own quick view is we need an addendum to this plan to address some of these things, one of which might be a simple addendum to allow recreational or under-harvest from the commercial sector to be credited to the recreational sector.

That was suggested, I think, at a Mid-Atlantic Council meeting. The point is we need to discuss those types of issues. We need to discuss the survey indices, our overfishing definitions and so forth.

If we've got to revise this, given the fact you're not going to have an updated assessment by the time we have to implement the '05 restrictions, which is what it looks like, we have to start working on it relatively soon. I think at the May meeting I would ask that you book out sufficient time so that the board can get into those types of issues.

CHAIRMAN FREEMAN: All right, without objection from other board members, we'll make a place on the agenda for that. No objection, we'll do that. Other comments? All right, seeing no comments, no other business, the meeting is adjourned.

I want to thank the board very much for its indulgence. We dealt with some very difficult issues, and I appreciate the cooperation everyone has shown on those.

(Whereupon, the meeting was adjourned at 6:08

o'clock p.m., March 11, 2004.)

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