

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

**December 3, 2003**

**Roosevelt Hotel  
New York, New York**

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF	Bruce Freeman, <b>Chair</b> , New Jersey DFG&W
Bill Alder, Massachusetts Gov. Apte.	Timothy Target (DE)
Vito Calomo, proxy for Rep. Verga (MA)	Roy Miller (DE)
Jerry Carvalho, proxy for Rep. Naughton (RI)	A.C. Carpenter, PRFC
Gil Pope, Rhode Island Gov. Apte.	Jack Travelstead, Virginia MRC
David Borden, <b>Vice-Chair</b> , Rhode Island DEM	Bill Pruitt, VMRC
Eric Smith, Connecticut DMR	Catherine Davenport, Gov. Gov. Apte. VA
Lance Stewart, Gov. Apte. (CT)	Preston Pate, North Carolina, DMF
Fred Frillici, proxy for Sen. Gunther (CT)	Damon Tatem, North Carolina, Gov. Apte.
Gordon Colvin NYSDEC	Harold Mears, NMFS
Pat Augustine, New York Gov. Apte.	Bob Ross, NMFS
Brian Culhane, proxy for Senator Johnson (NY)	Jamie Geiger, USFWS
Tom Fote, New Jersey Gov. Apte.	

### Ex-Officio Members

Mike Howard, LEC Rep.  
David Simpson, Tech Chair

### ASMFC Staff

Bob Beal  
Vince O'Shea  
Toni Kerns  
Nancy Wallace

### Guests

Paul Forsberg, Viking Fishing Fleet (NY)	Robert Wiegand, United Boatmen (NY)
Matt Richards, NYSDEC	Didi Bradshaw, F/V Dorothy B VIII (NY)
Anne Mooney, NYSDEC	H. Russell Dye, DNR (MD)
J.T. Holland, PRFC	Herb Moore, RFA (NJ)
Gordon Birkett, PRFC	Bill Cole, USFWS (NC)
Anne Lange, NMFS	Jeffrey Marston, NH Fish and Game, LEC
Melissa Dearborn, NY Fishing Tackle Trade Assoc.	Steve Meyers, NOAA Fisheries (MD)
Kevin Bradshaw, Aqua Star Inc. (NY)	Peter Anderson NYSDEC
Chris Moore, MAFMC (DE)	Carol House, Fishing LLC (NY)
Marla Trollan, MAFMC (DE)	Jim House, Northfolk Cptns Assoc. (NY)
Dan Furlon, MAFMC (DE)	Dr. Gene Kray, RFA (PA)
Neil Delanoy, Captree Boatmens Assoc (NY)	Charles Patterson, Eddie & Ann Fishing (NY)
Bill Hogarth, NOAA Fisheries, (MD)	Davis Paris, F.P.G.P. Fishing Boat (NY)
Michael Cannon, MLC Fishing Inc (NY)	Charles Lynch, NOAA Fisheries (MA)
	Harley Speir, Md. DNR

TABLE OF CONTENTS

Call to Order, Mr. Bruce Freeman.....1
Approval of Agenda.....1
Approval of Proceedings, August 25, 2003; Summery Minutes.....1
Public Comment.....2
PRT 2003 FMP Review.....5
Discussion of Addendum VIII.....9
Development & Timeline of an Addendum.....34
Discussion of Draft Addendum XI.....36
Adjournment.....42

INDEX OF MOTIONS

PAGE 1

Approve proceedings of August 25, 2003 and summary minutes of October 8, 2003. Motion carried on Page 2.

PAGE 13

Motion that the board adopt Issue 1, Option 1, status quo, and no other action for Addendum VIII on Issues 2, 3 or 4. Motion carries on page 33.

PAGE 17 – SUBSTITUTE MOTION

Motion to adopt Issue 1, Option 1, and Issue 4, Option 2. Motion failed on Page 28.

PAGE 30

Motion to table. Motion failed on Page 33.

PAGE 38

Motion to approve Draft Addendum XI for purposes of public review and comment. Motion carried on Page 40.

ATLANTIC STATES MARINE FISHERIES COMMISSION  
SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT BOARD

Roosevelt Hotel  
New York City, New York  
December 15, 2003

- - -

The meeting of the Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Terrace Room of the Roosevelt Hotel, New York City, New York, on Monday, December 15, 2003, at 10:15 o'clock, a.m., and was called to order by Chairman Bruce Freeman.

CHAIRMAN BRUCE FREEMAN: This is the meeting of the Summer Flounder, Scup and Black Sea Bass Board. As I think many of you can see, Joe is not here doing the minutes; and we do have a substitute which, quite frankly, looks a lot better than Joe.

But, she's not familiar with each of us as Joe has been over the years, and I would ask either I would identify the speaker, or if I forget, please identify yourself so that she does not become confused when listening to the tape as to who is speaking.

We have an agenda that each of us should have received. There are additional agenda back on the back table for those of you who don't have one.

**Approval of Agenda**

I would ask that you look at the agenda, and we will follow that unless there's any comments to make a change, anyone has any changes or additions to the agenda. All

right, seeing none, we will follow the agenda.

**Approval of Minutes**

We have the minutes of the August 25<sup>th</sup> board meeting. We need to approve those. There's also summary minutes of the October 8<sup>th</sup> meeting in North Carolina.

This was at the end of the joint Council-Board meeting on summer flounder, scup and sea bass. These are summary minutes. They were not recorded. I'd like a motion to approve those or, if necessary, to modify those. Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. **I move that we accept the minutes and/or proceedings from the August 25<sup>th</sup>, 2003, meeting, and the supplemental** — do we want to call it "supplemental?"

CHAIRMAN FREEMAN: They are summary.

MR. AUGUSTINE: -- **and the summary meeting minutes of October 8<sup>th</sup>.**

CHAIRMAN FREEMAN: All right, I need a second for that. **Second by Vito Calomo. Are there any comments; any additions; any changes to the minutes? Seeing none, the minutes are accepted.**

## **Public Comment**

At this time we have an item on the agenda for public comment. Are there any people in the audience who would like to make a comment at this point? We will try to reserve time for any discussion. Yes, come forward, please.

MR. HERB MOORE: Thank you. Good morning, Mr. Chairman and members of the board. My name is Herb Moore. I'm counsel and director of government affairs for the Recreational Fishing Alliance.

The Recreational Fishing Alliance is a non-profit lobbying organization representing recreational fishermen and the recreational fishing industry.

I'll just comment briefly on Addendum VIII, just to kind of kick things off, take my opportunity while I have it. Basically, ever since Addendum VIII was released to the public back in February, I believe, the Recreational Fishing Alliance has taken a strong stance in opposition to recreational paybacks.

Pretty much, every point that we've had an opportunity to comment on the recreational overage repayment strategy, we've taken the opportunity, and we're strongly opposed to it. We feel like there are some issues at the foundation of the summer flounder management system that need to be addressed before we move forward with plans such as these.

So, frankly, we'd like to see the recreational overage repayment strategy taken off the table here today. There have been opportunities for it in the past -- haven't gotten to where we want, but we'd like to see that happen today.

Basically, the issues that we feel need to be

addressed before such an overage repayment strategy is put into effect are, Number 1, the 60/40 allocation.

We're pleased that the Mid-Atlantic Council is going to be addressing that allocation. We feel like it needs to be reviewed, especially in light of the National Standards of Magnuson.

We look forward to seeing the results of that review. And, secondly, in our opinion, the recreational overage repayment strategy is building something on a foundation, and that foundation is MRFSS.

We feel like that foundation is weak. It's not as strong as I think a lot of people here would like to see. We feel that the MRFSS data used to calculate the recreational harvest is unreliable in many instances.

We feel like that system needs to be reviewed before such an elaborate scheme, such as the recreational overage repayment strategy, is built on that foundation.

At the last Mid-Atlantic Council meeting and Joint Mid-Atlantic Council and Board meeting, there were a lot of questions raised as to the reliability of MRFSS, particularly, as we saw in New York and New Jersey for this past summer.

A lot of times the MRFSS data is inconsistent with what we experience in the recreational fishery. MRFSS data shows recreational catches up, yet all other indicators, party and charter boat data, marine fuel sales data, marine service data, weather data, all indicate that the recreational catch couldn't have gone up the way MRFSS said.

We feel like that needs to be addressed before an overage repayment strategy is put

into effect. This is a fishery that everyone has worked hard to rebuild.

We're very fortunate to be able to sit here today and take comfort in the fact that the stock is at a record level, that the biomass is in a healthy state, thanks to sacrifices from everyone, frankly, commercial, recreational, hard work from fishery managers.

Frankly, from our perspective the recreational fishing sector has sacrificed a lot to rebuild this fishery. The public has sacrificed a lot to rebuild this fishery. We feel like a recreational overage repayment strategy will simply punish that same public that has worked so hard to rebuild this fishery.

So, I strongly urge you to take a look at the issues we all know are on the table, issues that need to be addressed, and I think we need to look at those issues before this plan goes into effect, so I'd like to see it off the table today. Thank you.

CHAIRMAN FREEMAN: All right, thank you. Any other comments from the public? Tony.

MR. TONY BOGAN: Thank you, Mr. Chairman. I'd like to just comment on two things real quickly. One is one of the action items on the agenda today which is --

CHAIRMAN FREEMAN: Tony.

MR. BOGAN: I'm sorry, Tony Bogan from United Boatmen. First is Addendum VIII, and then the second thing is more or less a request or a little information piece for the board itself. As far as Addendum VIII goes, Herb pretty much already echoed United Boatmen of New York's and New Jersey's sentiments on the whole issue.

We've given the Summer Flounder Management Board an extensive paper trail, for lack of a better word, of both instances of variability of MRFSS that have not been explained, federal references -- the most recent being environmental impact statement from this year -- all leading to the same conclusion that has been in existence to date, which is MRFSS was never intended for, nor is it capable of being used in the manner in which Addendum VIII proposes to use it.

One of our real big things with Addendum VIII coming into this meeting was there were a number of people that I've been speaking with over the last, say, six months that were concerned that, based on the MRFSS numbers coming out for summer flounder from New York and New Jersey and coming out for scup from the state of New York, here you go, they were concerned that this is going to give the people that are in favor of Addendum VIII, the proponents of Addendum VIII, more ammunition. I see it as exactly the opposite.

The ridiculous assertions that MRFSS is making about the state of New York and New Jersey for summer flounder for this year certainly should not give someone cause to think Addendum VIII is a good idea.

If anything, it should be the exact opposite. Think about it, summer flounder fishing in the state of New York in the months of May and June the likes of which even God hasn't seen since 1983?

The best Wave 3 of fluke fishing in the state of New York since Ronald Reagan was in his first term in office, that's what MRFSS is saying happened in the state of New York this year.

You've got a lot of people in the state of New York -- from the state of New York

that are here today that I guarantee you will tell you that nothing of the kind happened this year.

So, with an addendum such as Addendum VIII, which is based solely on MRFSS -- and that is its entire premise is MRFSS -- how anyone could honestly feel comfortable moving forward with it at this point in time or even just tabling it indefinitely like has been happening meeting after meeting is beyond me.

I can't see how anyone would have confidence in this current system as it's proposed. The second thing I would like to just comment real quickly on is something that you're going to be hearing a lot more of both today and in the future.

Part of the problem with the summer flounder recreational fishery is an old one, and it's one that people that were around long before I was have been bringing up. The summer flounder recreational fishery, as all recreational fisheries, is based in pounds.

Recreational fishermen do not catch pounds; we catch fish. All of the fishermen and men and women sitting around this table, a lot of you fish recreationally, some as a living, some as a pastime.

How many of you have come in at the end of a day of fishing and your buddy asks you how you did fishing and you say, "Oh, I caught 22 pounds today"? No one. I don't see any hands from the audience either because that's not how it works in our fishery.

There was a comment made at the Mid-Atlantic Council meeting last month in Delaware, asking how far over the summer flounder TAL for the recreational quota, rather, we went this year and it was said,

"Oh, about 25 percent."

Well, in reality, again, we don't catch pounds. According to the MRFSS numbers, we were only 9 percent over our quota in numbers of fish, and that's what we are given in numbers of fish.

The TAL might be figured out in pounds, but when each state is given their target, they're not given their target in pounds; they're given it in numbers of fish. And even with those ludicrous numbers from the state of New York, we are only 9 percent over our quota in numbers of fish.

If you took an equally ludicrous number from the state of New York for this year and said, oh, New York was only 50 percent over its quota this year -- by the way, the recreational sector would have hit their target right on the nose for numbers of fish.

So that is something that we are going to continue to try and push both from the commission, as well as the council and National Marine Fisheries Service to try and figure out a way to stop pushing the recreational angler into a situation where they are given, hopefully, continually increasing quotas with a decreasing number of fish.

From the years 1996 through the year 2000, we had the exact same recreational TAL, 7.41 million pounds. In 1996, we were allocated 5.3 million fish for 7.41 million pounds. By 2000, we were allocated 3.3 million fish for the same TAL.

Over a five-year period, the recreational fishery was given the same TAL and we were allowed to catch 1.9 million fewer fish for the same poundage.

In this year, we were allocated 4.1 million

fish with a TAL that was 25 percent larger than the base frame I just gave you, yet we were 1.1 million fewer fish than when that poundage TAL was first implemented in 1996, which was 7.41.

So the recreational fishery, as a whole, has been given either steady or increasing TALs with a consistently decreasing number of fish. Every year we get more pounds or the same pounds, we get fewer fish for it.

That's because you're dealing with a system that looks at pounds in a fishery that does not catch pounds. So, that's something. I don't know how it should be addressed. That's why I'm bringing this up to you right now at the public comment period.

We're going to be focused on a lot of other things the rest of the day, and I just wanted to kind of throw that out on the table that is something that desperately needs to be looked at.

Because, if you look at a target number of fish, we were supposed to land 4.122 million fish this year. According to MRFSS, we landed 4.497, about 375,000 fish over our TAL, supposedly, in numbers of fish, which is less than half of what MRFSS claims New York went over this year.

So, you tie in the variability of MRFSS with the problems of having a number of fish given to states but based on a system starting in pounds, that's where a big part of the problems in these supposed overages is coming from. Thank you very much, Mr. Chairman. I'll end it there, so I don't take up too much time.

CHAIRMAN FREEMAN: Thank you, Tony. Anyone else in the public who would like to speak at this point? All right, seeing none, we'll continue with the agenda. Plan

Review Team, Toni.

### **2003 Recreational Compliance**

MS. TONI KERNS: Okay, in front of you, you will have a memo that's dated December 12, 2003, on the summer flounder, black sea bass recreational compliance review. On the agenda it says we're going to take an action here, and actually, no action is needed. It's just an update on the status of the fishery.

All states are consistent with what the board accepted or approved, except for Massachusetts. With the black sea bass fishery, the board approved that Massachusetts would have a 12-inch, 25-fish possession limit and open from January 1<sup>st</sup> through September 1<sup>st</sup>, and then reopens again September 16<sup>th</sup> through November 30<sup>th</sup>.

This is a coast-wide measure that all states apply. Massachusetts has a 20-fish possession limit, which is lower than everyone else, and their season is open from May 10<sup>th</sup> through December 31<sup>st</sup>, so they don't have that two-week closure in September and do not have the December closure.

For scup the board approved that Massachusetts have a 9-inch maximum fish size, a 100-fish possession limit for party and charter boats and a 50-fish possession limit for all other modes. Their season would be open from May 10<sup>th</sup> through October 6<sup>th</sup>.

Where they are not consistent is that they have a season from January 1<sup>st</sup> through October 6<sup>th</sup>. Having the season open from January through April doesn't increase the percentage of their allocation, because it doesn't have an affect.



There is no real fishery during those four months. In May the nine days that they are open that they said they wouldn't be, that adds a 5.5 percent increase in their landings. That's all.

CHAIRMAN FREEMAN: Any comments? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. I just had a question about process here, and I'm wondering why we're reviewing state recreational regulations for 2003 in December of 2003 and just wondering if that's really the best time for us to be doing this as part of our process. Thank you.

CHAIRMAN FREEMAN: Well, one of the reasons was that going into the recreational fishery, each state was to have specific size and bag limits and seasons; and except for these two exceptions, the states, in fact, had those.

I don't think the board members were aware that some of these changes occurred and want to make certain that everyone is cognizant of how the fishery is being conducted. Bob.

MR. ROBERT E. BEAL: I think where Vince may be going is that for the recreational measures for these three species, it may be appropriate to have an additional review kind of above and beyond the normal annual compliance for these species and have the board implement a requirement that once a state implements its recreational management measures for a year, they notify the commission, and the commission can inform the board as to what the states are doing.

The timing probably makes more sense to review these measures sometime in May or

June. We have a meeting in June this year, so reviewing these measures in June makes a lot more sense prior to the fishing year really starting. The board would be notified if any state is doing something that differs from what the board has approved earlier in the year.

CHAIRMAN FREEMAN: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'm glad you did present this paper at this particular point in time. We do have a lot of folks here from New York, who have consistently told our representatives, between Gordon, Brian and myself, of the unfairness of Massachusetts having the opportunity to go to 9 inches and 100-fish possession limit for 2003.

What it did was, again in 2003, it gave a very negative impact or had a very negative impact on the nearby states, particularly New York wherein our season started at a different time, and we ended up with a limited bag limit.

So, it had a very negative impact on our party boat/charter boat folks. And, again, I hope that when we all review this as board members, that we look at that inconsistency as we apply the new regulations for 2004. I just wanted to get that on the record, Mr. Chairman. Thank you.

CHAIRMAN FREEMAN: Thank you. Dave Borden.

MR. DAVID V.D. BORDEN: Yes, thank you, Mr. Chairman. There are a couple of different issues here. One is the issue that Vince raised, which I think is poor policy for us to be reviewing at this stage, something that probably should have been reviewed in May.

I would hope that would be corrected for next year, and in 2004 that there would be a preliminary examination of each state's regulations early on in the process, so that we can take corrective action if its warranted.

Then there's a second issue to me, which is actually more problematic, since the state of Massachusetts did not adopt the regulations that the commission approved, then the issue is what was the consequence of that and what appropriate actions, should the board take at this stage.

I mean, it's somewhat problematic to me that this examination by the technical committee doesn't include an examination that says this is what the consequence of that action was. For instance, to what extent did this allow landings in the state of Massachusetts well above and beyond what was authorized by the previous commission action.

So, to me, I think the first issue can be easily corrected with a process change. The second one is much more problematic. We all agreed to the regulations, and then a particular state went and adopted something that was not consistent with the regulations.

So, what is the process for reacting to that, and what was the consequence? If, in fact, they had landings that significantly increased mortality on these stocks, then my assumption is that all of us are going to pay in the following year.

CHAIRMAN FREEMAN: Dave Pierce.

DR. DAVID PIERCE: I've got a question about the timing. The timing does seem a little bit strange in regard to what Dave Borden said. I also concur it would be helpful if there was more to this particular

review, notably, what were the consequences, but that's water under the bridge, so to speak.

With regard to the scup measures, if I recall correctly -- and I think I do -- last year Massachusetts was told that we could have a 22 percent increase in our recreational harvest relative to the previous year.

That was certainly good news; however, we indicated that we would not change our regulations from the previous year, we would go with status quo and not take advantage of the 22 percent increase.

Therefore, this criticism of Massachusetts regarding our not being consistent seems a bit inappropriate. We said we would maintain status quo. We did not change our regulations; therefore, I don't see where there is a particular problem with regard to scup.

We did learn, by the way, at the last board meeting that the increase in scup landings that we had in Massachusetts were due primarily to rental and to private vessels, not party charters, so that's another issue that we have to address in our state in the context of what we need to do for 2004.

I mean, 2003 has come and gone; and as far as I'm concerned, nothing was done in an inappropriate manner by the state of Massachusetts, not at all. The comment made by Pat about there being some unfair advantage for party and charter boat operators in Massachusetts, I think that's an inappropriate comment to make.

If there is some advantage or unfair advantage, I would appreciate it if the staff or someone would actually write something down and describe exactly how that unfair advantage occurred.

It's rhetoric and it doesn't do any good as far as I'm concerned, so no problem with regard to Massachusetts. We kept the status quo. We did not liberalize our regulations. Even though we could, we decided we would not do that.

With regard to black sea bass, well, we didn't change our regulations largely because we don't have a recreational fishery for black sea bass -- a recreational fishery of any significance prior to and after the dates that -- well, we don't have a recreational fishery in December.

We were supposed to close in December, but, again, why enact a regulation in our state when there is no need? There is no recreational fishery in December. So on the books, it says through December 31<sup>st</sup> but the recreational fishery for black sea bass is over well before then.

And, similarly, there is no recreational fishery for black sea bass before May 10 of any consequence because black sea bass tend not to arrive on the scene until about that time.

Certainly, the recreational fishery doesn't get going until after that time. So, it didn't seem sensible for us to make that change just for the sake of making a change when the fish weren't on the grounds.

I will admit that we should have, I suppose, closed the fishery for a two-week period, September 2 through September 15. That was an oversight on our part. We can certainly rectify that in 2004.

However, I think that the record will show, based upon our last meeting, that there wasn't any concern about black sea bass landings in Massachusetts, and I don't think

in any other state, since the landings were below all of our recreational fishery targets.

So, we'll make the change for 2004 if, indeed, that needs to be done to close it down during that two-week period in September. We'll be looking at, of course, our recreational fisheries for sea bass as well as for fluke as well as for scup in the upcoming months as we prepare for what needs to be done in 2004.

CHAIRMAN FREEMAN: All right, I have Gordon, but I'd like to make a suggestion, since we have other items on this agenda we need to get through today, that we suspend the discussion on this issue and take it up at the March meeting and have staff prepare any background documents. Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman. I'd be happy to have the last word on this today, if that's what you're suggesting, but I would like to be heard on the issue.

CHAIRMAN FREEMAN: Yes, go ahead.

MR. COLVIN: First of all, I have a couple of staff questions, if I could, on the black sea bass issue. Does our black sea bass management program provide any conservation equivalency option for the states?

MS. KERNS: No.

MR. COLVIN: Was there any calculation of the trade-off effect of the 20-fish limit versus the failure to implement the two-week closure?

MS. KERNS: No.

MR. COLVIN: Observation. I suspect that dropping from 25 to 20 accomplished very little, if anything, in terms of reduction to

trade off against failing to implement the two-week closure.

I can tell you that our fishermen have told us that the two-week closure in September hammered them. If you don't believe me, there are some of them in the back of the room who would be happy to underscore the point.

So there, clearly, was an adverse impact of that, and it is not something that we should just say it's water under the bridge and let it go.

I'm not quite so sure I agree with Dr. Pierce's conclusions about "no harm, no foul" on scup, either. If not with respect to affect on the resource itself, but with respect to the process and the agreements that we must keep among each other once we've made them.

Now a question I have for staff is where do we stand at this point on our commission policy on compliance assurance? I believe we've adopted a compliance assurance policy into the charter and have directed the boards to adopt management plan amendments and addenda to help us address these very situations when they occur. Can I be enlightened on the status of that, please?

CHAIRMAN FREEMAN: Go ahead, Bob.

MR. BEAL: Thank you, Mr. Chairman. Gordon, you are correct in that the Policy Board did adopt the process to incorporate changes, once amendments or addenda are being developed for a species, including in those documents something to address short-term non-compliance or delays in implementation of certain regulations.

Summer flounder, scup and black sea bass was the first priority on that list that the Policy Board approved, so as we go through

this year, there are a number of management documents that may be developed for all three of these species, Amendment 14 and also a series of addenda, and that process will be incorporated into the appropriate document, whatever the most appropriate timeline is so it will be worked into one of those documents.

MR. COLVIN: If I can follow up, Mr. Chairman.

CHAIRMAN FREEMAN: Yes, go ahead.

MR. COLVIN: Thank you, Bob. I appreciate that. I would point out that if that process had been completed, we would know exactly what to do at this moment with the situation that we're confronted with here.

I would expect that we will be in that position before the end of 2004 with respect to the same question. I would ask, Mr. Chairman, since you want to defer further discussion of this until March, to perhaps consider, during that discussion, whether any follow-up action with respect to any 2003 issues that emerge of this nature is in order at that time.

CHAIRMAN FREEMAN: I would think that would be a very reasonable request. If there are any objections and if not, we'll also include that in our March discussion. All right, then we'll move on.

#### **Addendum VIII Discussion**

Discussion of Addendum VIII, this is the so-called pay-back provision. We've heard comments. Staff has prepared a document summarizing the actions taken by the board to date, and I would ask Toni to review that.

MS. KERNS: Okay, I wasn't really going to review this too much, but at both meetings

that we've been at, the public has addressed their concerns for the addendum and the unpredictability and the lack of precision of the MRFSS catch estimates.

We've also discussed that the recreational summer flounder overages affect the overall TAL for both the commercial and recreational two years after the overage.

For example, if there is an overage in 2003, then the TAL will be affected in 2005. Overages only affect the TAL when the recreational fishery is over their overall TAL, not if just one individual state goes over.

How much of an affect the overage will have on the TAL is dependent on several factors, such as the overage amount and the current biomass of the stock. It's important to understand that it's not a pound-for-pound affect.

It's more of a one-to-one affect is on the biomass. When there is an overage, it's going to affect the rebuilding of the stock, and so the commercial fishery isn't necessarily losing 60 percent of the overage amount in their fishery nor is the recreational fishery losing 40 percent of their overage.

The National Marine Fisheries Service also has concerns for using MRFSS data for paying back overages. They've noted that a recreational repayment plan would need to address the uncertainty of the MRFSS data.

The approaches to use to address this uncertainty would be critical to any non-compliance under the ACFCMA. We've also addressed the measures to achieving the F in what the law mandates from that.

We've also discussed how the stock

becomes more abundant as the population grows and that we anticipate that the recreational fishermen will take greater portions of the fish and they'll be more readily available.

We've reviewed the process of conservation equivalency. We've also reviewed in-season adjustments and how it's difficult to use MRFSS data to do those adjustments, and as well as the discussions of postponement of the addendum and TAL, that the public is not pleased with watching the board postpone this addendum over time. They'd like to see action on it.

CHAIRMAN FREEMAN: Okay, in addition, if you look on your packets, there also was a table summarizing comments by various groups, both at the public hearing documents as well as comments sent in writing.

Just to reiterate, we raised this issue, this Addendum VIII issue at the June meeting which deferred it to August. At the August meeting we deferred it to the next meeting. This happens to be the next meeting we brought it up, so this issue is pending. And, the request at this time is what the board wants to do with this particular addendum. Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. With regard to the staff report on the first page, just to correct an omission, with regard to the section about the law mandates, that's a reference to the finding or the decision in NRDC v. Daley.

The judge's determination there was it must have at least a 50 percent chance of achieving the F. As it's written here, it might imply to some people that it's a requirement that you must have only a 50

percent, but the judge's decision was at least a 50 percent, allowing room and expectation that it could be higher than a 50 percent chance. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Okay, other comments. Tom Fote.

MR. THOMAS FOTE: I also remind the board that decision was made against the Mid-Atlantic Council. It was not made against the Atlantic States Marine Fisheries Commission. It was not made in regards to our plan. Thank you.

CHAIRMAN FREEMAN: Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman, a couple of different points, one on this issue of 50 percent. It's my understanding the way that the system works now, since this is a joint plan between Mid-Atlantic and the Commission, that if there is a recreational overage, then the year following the recreational overage, when the technical committee starts looking at the numbers, that it will factor that overage into subsequent calculations.

Toni said what actually takes place is there is a two-year delay. But when they do that, it seems to me that what they're going to look at is they're also going to look at the extent to which we met our obligation under the law to meet the 50 percent requirement.

And if in fact we didn't, then they're going to be more conservative; is that a correct interpretation? Before you answer that, Bruce, or somebody at the table, if in fact the recreational fishery is 20 or 30 percent over what they are assigned by the plan, then it seems to me you're not meeting your obligation to have a 50 percent requirement so that will be taken into account in subsequent analysis.

I just want to make sure that's a correct interpretation because if it is, then it poses very significant problems for the process that we have to continue to work on.

CHAIRMAN FREEMAN: To answer that, David, I saw Chris Moore. Is he in the audience? Chris, come up to the microphone, please. We need a technical answer to that question. You heard Dave Borden.

DR. CHRIS MOORE: Actually I heard part of Dave Borden's question. I'm Chris Moore, Deputy Director of the Mid-Atlantic Council. If I understood your question, David, you were asking about what happens if there is a recreational overage in terms of --

MR. BORDEN: Yes, let me restate it, with your concurrence, Mr. Chairman.

CHAIRMAN FREEMAN: Yes, go ahead, David.

MR. BORDEN: Chris, according to the documents we have in front of us, when the recreational fishery goes over -- and they're not always over, sometimes they're under, but when they do go over, then there is a consequence two years after the fact.

That's what this document says. And it seems to me that one of the obligations that the council has is to make sure that there is a 50 percent probability of meeting your target. So, two years after there is a recreational overage, how is the federal system going to react to that?

DR. MOORE: In terms of how the federal system would react to that, one of the ways that we deal with recreational overages is by accounting for them in the stock assessment.

So, in terms of an actual affect on the stock for 2003, if we saw an overage, for instance, we made the projections for 2004, we would assume that the recreational landings in 2003 would be exactly what we thought they would be when we set them in 2002.

So when we go over and we do the stock assessment next year, we'll account for that overage in terms of its affect on the stock. That will affect the overall stock structure and the overall amount that's allocated to the commercial and the recreational fisheries.

As you know, there is no direct penalty to the recreational fishery when they go over. What we do each year is we do an end-of-the-year comparison, basically. Look at the performance of the fishery and decide whether or not we have to modify recreational limits, possession, size and season limits.

MR. BORDEN: Yes, but there's no -- I guess the point that I'm trying to get at, I guess there is no mechanism in the federal plan to be more risk-averse, to raise the probability requirement.

DR. MOORE: Well, I think as Vince said, when we talk about the 50 percent probability, we can go to a higher probabilities each year when we establish a TAL. There's nothing that prevents us from saying, well, we want to be 90 percent certain that we're going to achieve our target.

But, each time we do that, remember when we're sitting down making that decision, we have to make an assumption as to what the landings are going to be in the year. So when we sat down in August of 2003, we had to make an assumption as to what the landings were going to be in 2003.

And our assumption was that the recreational fishery would do exactly what we thought it would in terms of saying that the landings would be exactly at 9.6 million pounds or 9.2 million pounds. The fact that they went over means that in fact it's less likely that we'll achieve our particular target in 2004.

MR. BORDEN: Okay, thank you. To me, and I've talked to quite a few recreational fishermen about the issue on the paybacks and so forth, and I think I understand the concerns up and down the coast with using MRFSS which I think are probably justified.

But that issue aside, it still doesn't deal with the issue of overages and meeting our targets. It seems to me that if the process wants to be consistent, we've got an allocation in the plan.

I know there are some divergent views on whether or not that is a fair allocation or not, but until it's changed it is the allocation, and it seems to me that we have to make sure that both the commercial and the recreational constituents adhere to the allocation. Otherwise, we're essentially violating the plan. That's one point.

And then the second point is to the extent that the future recreational overages continue, they compromise two years afterwards the allocations for the recreational fishery and they also compromise the allocations for the commercial fishery.

I still think it's a problem that needs to get addressed in some manner. I'm not totally comfortable with any of the alternatives in the document.

I have one other question, Mr. Chairman,

with your indulgence. On the MRFSS, just for my own clarification, the NMFS qualification and concern about using MRFSS, does NMFS -- that has always been in the context of state-specific use of MRFSS.

Does NMFS has the same concern about using MRFSS if we were to fashion a system where we use that on a coast-wide basis? It seems to me the PSEs or whatever improve substantially once you look at it on a coast-wide basis as opposed to the state-specific basis. So, Harry, could you clarify that, are you concerned about both uses or just one?

CHAIRMAN FREEMAN: Harry Mears.

MR. HARRY MEARS: Thank you, Mr. Chairman. Actually that wording doesn't come from NMFS, per se. It comes from a staff summary of the comments during the public comment period. And certainly those concerns as written are valid.

We had a detailed discussion of the ways that the survey has been used in past years and also modifications to the survey that were made in the year 2001 that are continuing into 2004. Maury Osborn presented to this board a recent synopsis of what MRFSS can do and what it can't do.

I would refer anyone on this board to the minutes from the August meeting, which we all have. The bottom line, as I remember it, at the current time MRFSS is very difficult to use in season; however, off season on a year basis it has a lot more valid use in terms of availability of the data to be used for management decision purposes.

And also, secondly, that the accuracy to be incorporated or that can be expected from the MRFSS survey has been enhanced, and

the ability to do that into the future, as described in the minutes, depends upon future funding to the program.

So, at the current time, Dave, I think the minutes from the August meeting speak for themselves, and that there are at the current time very specific circumstances that MRFSS can be used and also other type of circumstances that depend upon future funding in which it can be used beyond the current-day purposes.

CHAIRMAN FREEMAN: Gordon Colvin.

MR. COLVIN: Mr. Chairman, I'd like to offer a motion at this point in time; and if I get a second to the motion, may I be recognized right away to explain the basis of my motion.

**I would like to move that the board adopt Issue 1, Option 1, status quo and no other action for Addendum VIII on Issues 2, 3 or 4.**

Issue 1 covers the question of the base period for the recreational allocation. It does not address the overage situation. My motion implies that there would be no action taken on Issues 2, 3, and 4 with respect to the overages.

CHAIRMAN FREEMAN: Gordon, my understanding is that when we addressed this issue back in June we, the only action we took -- well, we took two actions. One is Issue 1, Alternative 1, we already took that action and voted.

That has been done so I think your motion -- the only aspect of your motion different than that is that we simply deferred the rest of that. Whether we take any action on Addendum VIII, it just keeps deferring that.



MR. COLVIN: I'm just trying to get an action in front of us because I don't believe the addendum itself with respect to Issue 1 has been adopted.

CHAIRMAN FREEMAN: Toni or Bob.

MR. BEAL: Thank you, Mr. Chairman. Where we are, Gordon, is that what Bruce says is true. The board did pass a motion for Issue 1 with status quo, which is the 1998 base period. And then the idea was that the board was going to go through each of the issues and select an option and then have one final motion to approve the addendum with the selected options.

So, this motion is fine right now. It just reiterates what the board has already done and it takes a final action on Addendum VIII, so process-wise I think it simply reiterates a statement that the board has already made.

CHAIRMAN FREEMAN: All right, then I just want to make certain, Gordon, that the board had acted on the first part of this but, as Bob indicates, we could include this again, and I would rule it in order.

MR. COLVIN: That's my intent is this be the one motion the board needs to act on today to adopt the addendum.

CHAIRMAN FREEMAN: It's probably better than trying to deal with it. All right, Gordon made the motion. Is there a second to the motion? **Tom Fote seconds the motion.**

MR. COLVIN: Thank you, Mr. Chairman, if I could.

CHAIRMAN FREEMAN: All right, Gordon, yes.

MR. COLVIN: I think early on it was our view that we supported the adoption of a pay-back schedule and it had something to do with getting this process started. Over time we've become convinced that this is not the way and means to institute a pay-back program for recreational overages.

Let me say, however, this doesn't mean that we're of a view now that there doesn't need to be accountability. We do need to move forward with accountability for how we're managing both the recreational and commercial quotas in this management program.

I think the difficulty is that what we've learned since we initially put this addendum together is that the current program of using the catch estimates from the marine recreational fishery statistics survey is not well suited to do this job for a couple of reasons.

There are three principle reasons why we no longer feel we can do this now. I think the first is something we talked about two meetings ago, and that is that we do not have the capability at present using MRFSS to make in-season adjustments to recreational management measures when catch rates exceed our expectations as we are able to do for commercial.

And until we're in a position to do that and detect surprises early and react to them, it's very difficult to adopt this kind of an approach.

Secondly, as we've learned -- and I think some of this was pointed out by industry in their comment period last year -- that with respect to New York's tautog landings for the calendar year 2002, there are problems there that became evident even advance of the surprises we saw this year with scup and

fluke in New York and New Jersey, that the level of precision and the manner in which a very small number of intercepted recreational trips are expanded into catches in the millions of animals is just not suitable, it's not precise enough, and there is simply no confidence among the user community about the use of the data for that purpose.

And until we can improve the situation that we have to where we have confidence, that we as managers have confidence and the fishing community itself has confidence, we're not going to be there. I think the challenge that we face is to do what we've got to do to get confident because we do have to build accountability into this system.

The third thing -- and we also spoke about this a meeting or two ago -- is what Harry just spoke to, and that is the reluctance of the National Marine Fisheries Service to concur in any action that we take that would base an adjustment on MRFSS estimates.

And with that key partner not on board, I don't think a program will succeed. So for those reasons we've decided that now isn't the time to do this. I would also point out that back when this motion was originally made, there was a great deal of concern and to some degree impatience on our part with respect to the institution of necessary improvements to the process of the state-by-state recreational quota management program we were using, as well as getting started with a comprehensive amendment to the Fluke Plan to address this and some other really important issues that we've spoken about.

Since then the track record suggests that we are doing better on the question of recreational overages, at least until this year, although, as Tony Bogan pointed out, if you look on a coast-wide basis, it's not all that

awful.

And we have taken action, I think, and I'm confident that there will be follow through on the action taken at the recent meeting in Kill Devil Hills to move forward on Amendment 14 and to address all of the issues it needs to address in amendment form with both partners working together, which is the preferred way to go, rather than going it alone on our own as Addendum VIII would have.

So, Mr. Chairman and members of the board, I thank you. That's the underlying reason for my motion. I think we'll find that all of New York is on board with this despite our previous support for some other course of action. Thank you.

CHAIRMAN FREEMAN: All right, thank you. I have a number of hands, Tom Fote and I had Jerry, Dave Pierce, Dave Borden. Go ahead, Tom.

MR. FOTE: Tom Fote. One of my concerns all along has been in this plan is that we haven't really increased the recreational catch. Let's look at striped bass. When we talk about an increased recreation catch, we talk about the increased numbers of fish that people are taking home.

We do the same thing with weakfish, but what has happened on summer flounder is a real dichotomy. We basically have said we have a recovered fishery that we've been increasing the number of fish.

In all intents and purposes we've actually been reducing the recreational take as far as numbers of fish that are going home. That means that anglers, individual anglers have been less fish for them to take home. Let's compare the numbers.

If you're down in numbers of fish -- and that's exactly what's happened. We basically look at one individual taking fish home; and if there is 800,000 anglers and they're actually -- that's not increased participation.

It's just the opposite. In New Jersey we've gone down in participation. We're actually having a smaller success rate because people are taking less fish home to eat yet we're going over.

That doesn't make any sense on a recovered fishery. It's the quota, the size limit. We have also eliminated whole groups of individuals from catching and keeping fish because of raising the size limit.

This was a back-bay fishery back in the early days, in Chesapeake Bay, and basically in New Jersey and Barnegat Bay and Delaware Bay, and when you raise the size limits to 17 inches or 17 or 16.5, you turn that from a back-bay fishery into an ocean fishery.

And they're the only people allowed to keep summer flounder because they can fish in 60 or 70 feet of water and get those 17-17.5 inch fish. The people in the small boats, the people that fish from the docks and piers have been eliminated.

And we have to address that problem. I've been saying the same argument for nine years and we haven't gone anyplace on that. That's totally discrimination and we shouldn't be doing that. Jimmy Rulhe from North Carolina agrees with me 100 percent.

We've been trying to figure out a system to handle that, whether it's a slot limit for those individuals. But it's just a difficult situation when you go to the public, you say we're rebuilding the stock; we're better than we

were 10 years ago yet you're taking less fish home.

They don't care if one guy takes a 10-pound summer flounder. If they can't keep any fish, it's a bad fishery and they don't see any recovery.

CHAIRMAN FREEMAN: Jerry.

MR. GERALD CARVALHO: Thank you, Mr. Chairman. I agree with the comments that Tom Fote has made regarding the problems in the recreational fishery. Gordon's support, as I understand it, for his motion is that we can't depend upon MRFSS data for individual state pay-back scenario, that we need better data, we need to do more things.

This issue is an issue of equity. It's where one user group pays back for its overage and another user group doesn't pay back because for some reason we don't have a plan, an equitable plan that allows them to participate in that manner.

On Issue 4, if we change the allocation of the quota based on recreational overages so that the commercial quota was determined, based on a TAL calculated without the recreational overages, it would address that equity issue.

If the recreational overages were determined on a coast-wide basis, Harry's -- Harry can correct me if I'm wrong, my understanding is that MRFSS data is accurate enough on a coast-wide basis but not on a state-wide basis.

If we don't have data that's accurate on a coast-wide basis to that level, we're in a lot more trouble on all the species, both recreational and commercial. So there is an avenue to address this.

We can put it off and look for excuses why we haven't addressed it. It should have been addressed two years ago and now we're looking to put it off again. I don't think it's right to do that. Thank you.

CHAIRMAN FREEMAN: Okay, I had Dave Pierce.

DR. PIERCE: I agree with Gordon that it would be appropriate for us to adopt Issue 1, Option 1. Obviously we've done that already so this is almost just a confirmation of what we've already concluded.

It makes a great deal of sense in light of the problems we have with MRFSS data that might be precise in some states but not necessarily accurate, and I guess the question is survey design. Are we really getting the real numbers?

I don't think we are, especially in light of what happened in New York this year, the huge, alleged huge recreational landings of scup, far in excess of the target that was set for New York.

I do agree with Jerry, however, that we need to give some serious consideration to the impact of the recreational fisheries overages on the TAL. There is a consequence of that. **I would make a motion to substitute and that would be to -- I'll read the words -- move to adopt Issue 1, Option 1, and Issue 4, Option 2, with the balance of that language being struck from the motion; in other words where it says "and no other actions to be taken under Addendum 13," that would be struck. So move to adopt Issue 1, Option 1, and Issue 4, Option 2.**

CHAIRMAN FREEMAN: I'm just trying to get my Addendum VIII to see what that is. Our motions are oftentimes referring to the document and --

DR. PIERCE: I'm referring, Mr. Chairman, to the amendment and Page 10, Issue 4, change in allocation of quota-based on recreational overages. And there are two options for us to consider; the status quo which is 60/40 and then the other option which is a bit complicated, but nevertheless it's a strategy that has been proposed and it seems to make sense.

I haven't been convinced that it is inappropriate, so I make that motion to substitute, Mr. Chairman, and let's see what other board members have to say about that.

CHAIRMAN FREEMAN: All right, it's a motion to substitute and there was a second. Jerry, second that?

MR. CARVALHO: **I second.**

CHAIRMAN FREEMAN: All right, discussion on the substitute. Eric.

MR. ERIC SMITH: Mr. Chairman, we're a little paperwork deficient over here, not having that document in front of us. Could Dr. Pierce read what Issue 4 is so we have it clear?

DR. PIERCE: Okay, Eric, and for those of you who don't have the amendment in front of you, it will be difficult to understand. Option 2 is a strategy to try to account for the excess removals by the recreational fishery.

And, essentially what this does is modify the 60/40 split between commercial and recreational and results in, frankly, an increased percent for the commercial fishery in a following year to account for the overages of the recreational fishery the previous year.

The only problem with this, as I see it, this option, is one identified in the document itself, and that is the last paragraph, the last sentence on Page 10 reads, “Should this option be implemented, it would change the 60/40 allocation of the annual quota and thus require a change to the federal management plan”, so I need to highlight it for the benefit of the board so that everyone understands that.

Nevertheless, it is the only option we have that tries to deal with the problem identified by Jerry and that is described fairly clearly in the amendment itself. We brought this to public hearing for a very specific purpose, and we need to accomplish that purpose. And this is the only option we have to consider.

CHAIRMAN FREEMAN: Further comment? Pres Pate.

MR. PRESTON PATE, JR.: Thank you, Mr. Chairman. I haven’t heard a single thing different about the inadequacies of MRFSS or our ability to constrain the recreational fishery in a fair way that I haven’t heard for the last two and a half to three years.

What I have heard for the last two and a half and three years are resounding dissatisfaction stated by the commercial fishermen that we are not treating them in an equitable way. Jerry Carvalho has stated very well that issue of inequity and I believe that it is so.

I think in everyone’s hearts around this table they also believe that it is so. I support Dr. Pierce’s motion because it is at least a step in the right direction of trying to correct a deficient management process.

I had supported in the past the idea of

recreational pay backs. I, like Gordon, in reflecting on that position for the last couple of years, have become increasingly uncomfortable with that because of the inadequacies of the MRFSS program.

But yet that is the only tool that we have to try and estimate what the recreational landings are. I don’t think that we can accept the deficiencies of that method of estimates as an excuse to try and not solve a terrible problem of equity within this fishery.

At least this motion will put us in a step in that direction. It may be that once we hold the recreational community more accountable for their landings in excess of what the TAC allows them to have, that there will be sufficient outcry to change this problem, that there will be enough support for the National Marine Fisheries Service and this commission and the Mid-Atlantic Council to come up with some tool that is better than the MRFSS survey.

But until we have that tool, I think not taking this action to solve a problem that has been so clearly before us for such a long time is irresponsible on our part, and I support the motion very strongly.

CHAIRMAN FREEMAN: All right, there’s a clarification that needs to be made relative to this motion, the implications. I’d ask Bob Beal to simply comment on that so we all understand what has to be done. Bob.

MR. BEAL: Thank you, Mr. Chairman. I’m not commenting for or against the motion. I just wanted to highlight something to the board. The very last sentence under Option 2 notes that if this approach is implemented, the 60/40 allocation in any one given year would be altered or may be altered if there is a

recreational overage.

So in order for the quotas to be consistent between state waters and federal waters, the federal plan would have to be amended as well to establish a process that they use this identical approach to establishing the commercial and the recreational harvest limit and the TAL for the commercial fishery. That's just a note.

You know, if the commission does this and the federal government doesn't, we may end up in a situation where we have quotas that differ somewhat between state and federal waters, both in the commercial fishery and the recreational harvest limits, so I just wanted to highlight that for the board that that's a nuance of this approach.

CHAIRMAN FREEMAN: All right, further comment. Tom and then Gill.

MR. FOTE: Way back when we started the summer flounder amendment, I was around during that period of time. We basically looked at years to basically set up what the split should be.

When we basically had the years where the recreational catch was strongest it was basically determined by the board and the council those years should be thrown out because the statistics weren't that good to use those years yet it showed it an overwhelming recreational catch.

We looked at that going back and forth. There is a lot of discussion whether the 60/40 split has been the proper split to begin with. I voted against it way back when the 60/40 split was set up.

Again, the numbers of fish the recreational community is catching is less than it was catching seven years ago. It is a lot less than

it was catching seven years ago. This doesn't address this problem at all. All it does is add fuel to the fire.

Also, I looked at the comments that came from the public hearings. From the written comments, there was no comment that supported this motion. From the public comments that I've seen here, it was like probably about 2 to 3 percent. I might be a little off in my math because I haven't really done the computation.

But if you look at the chart that we had, there wasn't a lot of comments for it. This is an option that we did not get a lot of support from the public when we were out there. They didn't even discuss it as a viable option. I have to vote against this motion.

CHAIRMAN FREEMAN: Okay, Gil, I had you, but I neglected to indicate that Pat had his hand up, so I'll go to Pat and then, Gil, to you. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I wasn't going to make a motion yet. I think to address this from a 60/40 point change right now would be not only inappropriate, but I was going to make the same notation that Bob did, that you'd have to change the federal plan.

And as you all may understand and recall, the folks over in New Jersey, the Boatmen's Association, very aptly presented by Tony Bogan at previous meetings, have a petition for rulemaking out there that went to the federal government, NMFS, and then was moved back to the council.

And at this point in time, the council has not finalized action on that 50/50 recommendation that was made with several caveats listed in there as to how it could be handled. So I think to go forward with this

at this point in time, it would be out of order.

Secondly, it seems to me we're talking about all the numbers of fish we're not catching or are not able to catch and that the stock is rebounding very nicely. And, the big thing is that we have not really put on the table a method of addressing recovered stocks, or recovering stocks in this particular case.

It just seems to me, as Tom had pointed out, when the average weight of fish go up as the size of fish goes up, inevitably you're going to have fewer and fewer fish to take home. So, what we are doing in the council, we have a committee -- as a matter of fact, our chairman suggested that one of the major initiatives that we take in one of our subcommittees is to look at how do we deal with recovering fish stocks.

I would like to take this opportunity to invite ASMFC to participate in that to possibly look at what we can do with our FMPs to deal with our recovering fish stocks. Primarily striped bass is one.

I think fluke is another one we have to look at followed by scup and black sea bass. So, I cannot support this motion and I do agree with the comments Gordon made earlier. Thank you.

CHAIRMAN FREEMAN: All right, I have Gil Pope.

MR. GIL POPE: Thank you very much, Mr. Chairman. There is a lot of things going on all at the same time here. One of the things that I'd like to see is I'd like to see almost a MRFSS committee put together at this particular point in time that will look into the use of MRFSS and how we use it in all of our ASMFC plans, federal plans, when it should be used, when it should not be used.

It's used for VPA calculations. It's even used for stock calculations to determine both the recreational and the commercial. So, when can it be used, where should it be used, these are all questions that the public is bringing to us and saying it shouldn't be used here; it should be used there and so on and so on. It's inaccurate here; it's accurate there.

Maybe this is something that should be going on at the same time as Addendum VIII and also all of the other fisheries management plans that we have in action. It seems like really we haven't solved that one problem.

Number 2, as far as the 60/40 split, that is going to be coming up in the rulemaking changes. There is many different ways of looking at that. You look at it on a state-by-state basis, on a regional basis, on a coast-wide basis -- the way it was done, it was done on a coast-wide basis where you included all the states in the calculations; whereas, if you had looked at it on a state-by-state basis, in one state, say in New Jersey, it was 60/40 recreational, it was the other way around.

But in the case of Rhode Island, it was 95 percent commercial and 5 percent recreational. So, how do you handle that particular situation? That will come up later. And I have to agree with the comment that Tony Bogan said that we should be figuring out a way, also, as we go along in this process, of changing over from poundage to numbers of fish.

And these are all problems that are being brought up for the last two and a half years. Preston brought that up. And these are all things that we talk about and we bring them up at meetings, but they never seem to be channeled somehow into problem-solving

committees or problem-solving areas to where we can plug them in to what we're trying to do and have it all make sense. Thank you very much.

CHAIRMAN FREEMAN: All right, Eric Smith.

MR. SMITH: Thank you, Mr. Chairman. I can't find a way to support this motion. This clearly is the -- of all the issues addressing this problem in the addendum document, it was probably the most compelling one but it still is trying to do something based on a database that isn't up to the task.

I continue to believe the way to address this problem is be aggressive when we set the management measures each year so that we have a high probability of coming in close to the target. This motion, frankly, is a step away from that so I can't support it. Thank you.

MR. BEAL: The chairman had to take a break for a minute so I'm just going to step in for a couple people. Next on his list was David Pierce and then I'll move around.

DR. PIERCE: Eric just made a very important point, and that is states must do more to ensure a high probability of not exceeding the target. To date we haven't done that. Despite the recommendations given to us by the Monitoring Committee, by Chris, more specifically, year after year after year after year we don't do that.

As a consequence, we end up with overages, at least we've had a number of years, with some substantial overages, and now we have a year, 2003, with a very large overage. Frankly I think there is a very high probability of our having the same overage next year.

That means their fishing mortality is going to skyrocket. It means we'll be way over where we need to be, and that's going to have tremendous implications for 2005-2006, relative to what the TAL will be, what the recreational harvest will be, what the commercial quotas will be.

There needs to be a way to force the states, every one including Massachusetts, to do more than what we are being allowed to do. We try to fine tune. Fine tuning doesn't work with MRFSS data. We know that. There's too much imprecision. There is too much inaccuracy. We get burned.

Massachusetts had a 20 percent allowance. We could have 22 percent. We didn't change our regulations but we went more than 22 percent. Now we have to pay the penalty of a sort in 2004. We have to come up with some restrictions to further cut catch.

So, frankly, I think this strategy provides the necessary impetus, the teeth, to convince states that they have to do a bit more; otherwise, we end up with this change in the split between commercial and recreational.

Forty percent at a minimum for the recreational fishery should be the case, at a minimum. I don't want to cut the percent share for the recreational fishery, not at all. It's an extremely important aspect of this industry, commercial-recreational.

Perhaps the percent should be 50 percent, maybe 60 percent, I don't know. I don't want it to go below 40 percent, but something needs to be done in order to convince all of us to do more. I'm quite concerned, as I said, that we're going to end up in 2004 with a set of restrictions that won't do enough.

MRFSS data will reveal, again, large



overages of our targets. And, frankly, then we are going to be doomed with regard to 2005. I want to do as much as possible to prevent that possibility, because I'm looking ahead and I see a real black cloud on the horizon for 2005 for both recreational and commercial.

So, that's the intent of my motion, not to try to adversely impact the recreational fishery, not at all. The recreational fishery is high up on my list of priorities. But we have to do something meaningful, and I think this is it.

CHAIRMAN FREEMAN: All right, I'm going to go through the list. I had Pat Augustine next.

MR. AUGUSTINE: Thank you, Mr. Chairman, two comments. Relative to Mr. Pope's comment about MRFSS, again, our chairman, Mr. Freeman, is participating in a council group. In January we're going to have the MRFSS folks answer some 15 or 20 questions specifically why, where, when, how.

And we're going to move forward. We're going to concentrate as that as one of our issues for this year. I'm sure the ASMFC will be interactive.

And then one question to Dr. Moore, unless Dan is here, to answer the question, will we have to change the management plan if we go to 60/40? I know the answer is yes.

And without asking them to come to the microphone, it seems to me that unless we want to go away from having a seamless plan between the federal government and ourselves, I don't know how we can support this motion. I just think we're going down a wrong path. And with that, I'd like to call the question if there aren't any other speakers.

CHAIRMAN FREEMAN: All right, Harry Mears.

MR. MEARS: Thank you, Mr. Chairman. I cannot support this substitute motion only because I strongly support the original motion, especially the third reason that was given. This is a joint plan.

It requires joint, very close, effective, joint coordination between state jurisdictions, the National Marine Fisheries Service and the councils. And, this would certainly prejudice a decision to a lot of the factors that have to be given very careful consideration.

In addition, the statement that approval of this motion as it pertains to the option in the draft addendum would require a change in the federal plan is simply not true. It certainly would require discussion in terms of what transpired at this meeting.

But the only way to go forward effectively is to do this jointly with the council because it is a joint plan. Approving this at the current time is just simply the wrong motion, at the wrong time, at the wrong place. Thank you.

CHAIRMAN FREEMAN: Thank you, Harry. Vito.

MR. VITO CALOMO: Thank you, Mr. Chairman. I just want to start mine off with saying I agree with Preston, what he said in his original statement. There is a problem here. But I also say why should we bury our head in the sea when we know there is a problem.

Second of all, MRFSS may be a blunt instrument but it will get the job done, and we're obligated to do the job. And, third, Mr. Chairman, is we have federal management plans, whether it be the New

England Council or the Mid-Atlantic in this case, and we also have a regional administrator that's very knowledgeable what to do.

I think we need them to hear our message and say we have a problem here and we need to work in conjunction with the federal management plans. I think we need to send that message loud and clear at this time, so I don't believe we should just bury our head in the sea. I believe we should take action. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Thank you, Vito. I have Tom Fote and then Gordon and then Bill Adler. Tom.

MR. FOTE: In response to Dave Pierce's statement about states need to take this seriously, the states did take this seriously. If you look at how many states went over and how many states were under, an overwhelming majority of the states were under what they basically could have taken this year.

Let's look at New Jersey, for an example. We basically last year was 40 percent under in 2002. Instead of going and relaxing our regulations, the charter boat fleet, the party boat fleet and the recreational anglers did not.

We added a couple days onto the season but we -- according to the tables, we could have gone to a 16-inch size limit and had a no season. Nobody was thinking about that. We were looking at how to keep within the quota.

We took very, very conservative estimates according to the tables we received. New York did the same thing. They had a big underage last year. Who is going to figure you go from a 40 percent underage one year

by now changing the regulation except for maybe 10 days and go to a 9 percent overage.

That's a 49 percent jump in one year. It just doesn't make it. Everybody looked at those tables and took them seriously, and we will take them seriously again this year to try to come up with the best conservative to stay within our quota.

I think every state did that. And if you look at the majority of the states, they were. If it wasn't for -- and I'm not blaming New York -- if it wasn't for the craziness that went on in New York with the numbers, we would have been way under again this year because the majority of the states are looking to do that. There is nobody trying to weasel every fish out of this any more, and that's not a fair estimation, Mr. Pierce.

CHAIRMAN FREEMAN: Okay, Gordon Colvin.

MR. COLVIN: I, too, will be unable to support this motion. At the same time, I have been intrigued by this option since it was conceived for the addendum and shared the views that have been expressed by some of the board members that here is a way to solve one aspect of the problem that's short of a direct payback.

The big drawback -- and there are some others but the big drawback being that it really requires an amendment to the federal FMP as well as the state FMP to make it work. We do not want to be in a situation, as we have been in a couple of other occasions, where the National Marine Fisheries Service is managing Quota A and the states are managing Quota B.

It's just a recipe for disaster, as we learned with scup and some other things. I do think

that this approach has sufficient merit, that I would expect it to be on the table as we move forward with our dialogue on the amendment to the Fluke Plan, that we are promised to be working on next year along with so many of these other issues we've been talking about today.

And it may well be that in our wisdom we'll find some other approaches that are equally intriguing, equally interesting to put up alongside it as well.

I hope that we do. I do also share the concern that Eric Smith brought up that this is just -- however, at the end of the day this is still, when you do the math, potentially a use of MRFSS to enforce paybacks just in a different way, and it may create some terrible complication.

I do think it deserves a lot more attention, and hopefully it will get it in the amendment process. I'm not sure how to emphasize it enough that we are disappointed that we've come to this point because we do strongly believe in the development of accountability for the quota management program.

I will point out for the record and, you know, duck when you start throwing things at me, that I do feel, as I've said so many times before, that our unfortunate decision to whack this recreational quota up into state quotas is complicating and compounding the problem.

I still hope that at some point in the future the board members and the states will be willing to revisit that decision, which we did not support and have tried to convince you on numerous occasions to reverse. Thank you.

CHAIRMAN FREEMAN: Thank you, Gordon. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. It's not that I am against what Gordon's motion was about the payback by recreation, but the thing is I don't want a recreational overage to come back to bite the commercial quota.

It looks like unless this current substitute motion passes, that this will happen. If there was another way to do this, I'd be certainly satisfied with the original motion idea.

But, it sounds like this will all come back down, as they calculate the stock, that it will come back and result in a lower quota for the commercial people over the recreational people. And, obviously, if the commercial people had gone over, there would be hell to pay. I just think that we'd better do something to equalize that. I'll stop there. Thank you.

CHAIRMAN FREEMAN: Thank you, Bill. Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. A couple of different points. First of all, it's unacceptable to me to pass the original motion and put this off for another two to three years. We've been discussing this for a number of years.

And, there have been lengthy, labored discussions on the need to get on with this and address it in one form or another. I mean, for anybody to not -- and I'm speaking to the original motion because it's imbedded in this -- for anybody to support the original motion is essentially saying you're not going to take any action on this problem that has been well documented.

Now, there have been a number of states to the south of Rhode Island, and I'm not referring to Rhode Island, that have basically worked with their commercial

industry to stop litigation.

I'm fully cognizant of the fact that regardless of how we proceed here, there probably will be some litigation on either the part of the recreational groups or the commercial groups, probably an equal probability on both sides.

But, I think the former motion guarantees litigation. I think in the context of the federal plan, specifically the Fair and Equity provision in Magnuson-Stevens, where we've gone through a process where we allocated a percent to each of the user groups, and now we're not adhering to that.

So to me -- and I'm not an attorney -- that seems to be a fairly issue for some attorney to argue. I would prefer to have the commission address this right up front as opposed to having the courts resolve an issue for us.

On the issue of close coordination with the Mid-Atlantic, I totally agree that's highly desirable and I think we should do everything in our powers to coordinate with them. But, the reality is here we have a completely different set of regulations in state waters than we do in federal waters, and there is good reason for that.

The fact of the matter is the bulk of the recreational fishery is in state waters. Now on this issue of requiring a plan amendment, I'm not sure I agree with the last sentence on Page 10 which says that it would require a plan amendment to change the split.

We're not talking about changing the split. The recreational allocation in this particular case will still remain at 40 percent, but the regulations that the commission would be establishing would be based on 40 percent less what the overage is, so it doesn't change

the allocation at all.

It leaves the allocation exactly the same way it was before, but the regulations that we would design would be designed to meet the lower number. Now, the other point I would make is that the continuing recreational overages here should get treated exactly the same way the commercial overages get treated.

I've said this before. This is not a question of David Borden picking on the recreational component of the fishery. We take commercial overages off the following year. That's what we do. We penalize the commercial fishery for their overages.

I think it's incumbent upon us to have a system which treats the recreational component exactly the same way. I have to make -- so the bottom line from my perspective is I intend to support the motion to substitute.

I think this is such an important issue up and down the coast, that when you take the vote on this, the minutes should specifically record how each of the states vote on this, because this is going to be an issue that will come back and I'm sure we want to have the record very clear.

The other point I would make is I think it's terribly ironic, given the comments from NMFS about this issue of achieving the 50 percent probability. I mean, that's an issue where we had a federal plan essentially compromised because the Summer Flounder Plan was taken to court and the courts ruled that you had to have a 50 percent probability of meeting your rebuilding targets.

And yet consistently, when you have these overages, you don't meet that requirement. I think this is something else that is

undoubtedly going to ultimately get litigated by somebody unless we address it.

So, my whole point here is that I know that there are some undesirable aspects of this; I understand those. I appreciate those, but I think it's more important for the commission to deal with this issue based on principle than it is to essentially put it off for the next two to three years. Thank you.

CHAIRMAN FREEMAN: All right, we heard the discussion; we're going to vote. All right, let me just indicate the status we have. This meeting time-wise is almost over. We have a number of issues that are very important to a number of states that we haven't even covered yet.

We can go through lunch on this if necessary. It looks like we will at any rate, but I want to try to focus our discussion and then take an action. Gordon, you had a comment. There's a number of people in the audience that would like to comment before this vote would be taken. Anymore comment from the board?

MR. FOTE: My only comment was going to be to listen to the audience since they made the trip here to basically speak about this.

CHAIRMAN FREEMAN: All right, we'll take brief comments from the audience and we'll take a two-minute caucus, and then we'll take the vote on the substitute motion. Tony Bogan.

MR. BOGAN: Thank you, Mr. Chairman. Tony Bogan from United Boatmen of New York and New Jersey. I would like to agree with something that Mr. Borden just said, only my meaning is the exact opposite of his.

You penalize the commercial sector for going over. In a lawsuit filed in 1997 by the state of North Carolina, North Carolina Fisheries Organization, it was stated clearly on the record by the circuit court that is exactly what the commercial overage is.

It is a penalty meant to deter the commercial sector from going over solely because they have the ability to adjust their behavior in season. The only reason that penalty was instituted was because it can be adjusted.

And as has already been stated very eloquently by Mr. Colvin when he gave his several reasons why he made the initial motion he made, the recreational sector does not have that ability.

Another thing I would like also mention is Mr. Adler commented on how if the commercial sector had gone over there would be hell to pay. Well, in 2001 the commercial sector was over by 1.5 million pounds, about a half million pounds less than the recreational sector is over this year.

Even though the commercial sector pays back, that does not negate the effect that a commercial overage has on the TAL for the recreational sector as well.

So, I don't have last year's landings numbers, but I know in 2001 it was a million and a half pounds, within a half a million pounds of what we supposedly went over this year. And that affect on the TAL, despite the fact that it is "paid back the following year by the commercial sector," the impact on the stock is not negated.

It is clearly stated by the circuit court that there is no conservation benefit whatsoever from the payback from the commercial sector. It is solely as a penalty because they have the ability to change their behavior in

season with a semi-real time.

I mean, it's certainly not real time. Let's face it; they report every couple of weeks and by the time it's all done, you have absolutely nothing comparable to that in the recreational sector whatsoever.

So to do what Mr. Borden suggested, and you do it on one sector, you do it on the other, fine, you give me the type of quality in information that they have, then I'll come back and talk about it.

But as has been clearly stated already, MRFSS is not even remotely close to what the commercial sector has, and nothing on the table for MRFSS or ACCSP even brings it remotely close to what the commercial sector has as far as data collection.

So that's my main comment on this substitute motion, and I'd like to say that I hope the states will not support the substitute motion and will support Mr. Colvin's original motion. Thank you very much, Mr. Chairman. I had a couple other things but I know you're pressed for time.

CHAIRMAN FREEMAN: Thank you, Tony. Anyone else? Herb Moore and then this gentleman in the blue next, right after Mr. Moore.

MR. MOORE: Thank you, Mr. Chairman. I'll keep my comments brief as well. I know in August Tony Bogan from United Boatmen entered into the written administrative record the regulatory impact review from the Mid-Atlantic Council and the National Marine Fisheries Service.

I know it's in the record. Frankly, I don't feel like it's gotten much attention. I haven't heard it discussed all that much, so I'd just like to take a very brief excerpt out

of the regulatory impact review, again from the council and from NMFS, which says:

"In the recreational fisheries overages in one year may result in lower bag limits, larger minimum size limits and/or shorter seasons than would otherwise have been allowed had the overages not occurred. Increased harvests in one year are, thus, paid back by decreased harvest opportunities the next year.

"Furthermore, the council and NMFS recognize that overages in any of the fisheries of 2003 could have additional negative impacts on the rate of rebuilding. Given the history of the summer flounder fishery, the mitigating influence of annual overage adjustments and the fact that the stock has shown continued improvement during the rebuilding period despite the overages that have occurred, the cumulative impacts of overages are not considered to be significant.

"Likewise, the impacts of any overages that might occur in 2003 as a result of these fishery specifications are also not considered to be significant." Thank you.

CHAIRMAN FREEMAN: Thank you, Mr. Moore. The gentleman in the blue shirt. Please identify yourself.

MR. NEIL DELANOY: Neil Delanoy, Boatmen's Association. An important fact that's missed here is the difference in the commercial fishery and the recreational fishery. Commercial fishermen generate their income from pounds of fish caught multiplied by the dollar value and then sold.

If they go over their quota in one year, they generate more money in that year and then their quota is reduced the following year. They generate less money, but there is no

net loss. So there is no real penalty if they go over.

The problem is if you make the recreational industry pay back, those paybacks are going to be done by size limit, shorter season or lower bag limit. All of these will decrease the number of passengers carried, which is the main way that the recreational industry generates income.

So, if you have an exceptional year and you catch a few more fish one year, or if MRFSS data is off one year, maybe you generate a slight increase in that one year, but the next year if you're reduced 50 percent in your season or in what you're allowed to catch, you're going to have a tremendous decrease in the number of passengers carried and a significant financial loss.

So it doesn't -- the approach of treating both sides the same doesn't really because it penalizes the recreational sector significantly when they really have done nothing wrong. So you're taking a punitive approach to an industry who had done nothing wrong.

All they did is go fishing. They happened to have more success or the MRFSS data that year maybe was a little bit off. They did nothing wrong and now they're going to be penalized with significant financial losses. Thank you.

CHAIRMAN FREEMAN: All right, thank you. Any other comments from the public? Yes, please step forward and identify yourself.

MS. MELISSA DEARBORN: Melissa Dearborn, New York Fishing Tackle Trade Association. I know you're pressed for time so I won't reiterate points already made except to say that the New York Fishing

Tackle Trade Association would not support this motion to substitute.

We would support Mr. Colvin's original motion, specifically putting aside concerns I've had about MRFSS. And many of you have heard me state them before, specifically for the reason that Tony said is that until we have a tool that we can adjust mid-year, it just could be devastating to the industry, even if we see that we're going to down the road halfway through the year and that we could be in trouble, without having a mechanism to change our season mid-year, we would just have our hands tied behind our backs with no chance for any type of prevention of going over. So until that point is addressed, we would just urge you to please not support this motion. Thank you.

CHAIRMAN FREEMAN: Thank you. Other comments from the public? All right, seeing none, we've heard the discussion. We'll take a two-minute caucus and then vote on the substitute motion.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Take your seats, please; caucus is over. Board members, please take your seats. All right, we're going to do a roll call vote. Okay, Toni is going to call the jurisdictions. There will be one vote per jurisdiction. Go ahead, Toni.

**MS. KERNS: The Commonwealth of Massachusetts.**

**MASSACHUSETTS: Yes.**

**MS. KERNS: Rhode Island.**

**RHODE ISLAND: Yes.**

**MS. KERNS: Connecticut.**

**CONNECTCUT: No.**

**MS. KERNS: New York.**

**NEW YORK: No.**

**MS. KERNS: New Jersey.**

**NEW JERSEY: No.**

**MS. KERNS: Delaware.**

**DELAWARE: No.**

**MS. KERNS: Maryland. (No Response)  
Virginia.**

**VIRGINIA: No.**

**MS. KERNS: PRFC.**

**POTOMAC RIVER FISHERY  
COMMISSION: Yes.**

**MS. KERNS: North Carolina.**

**NORTH CAROLINA: Yes.**

**MS. KERNS: Fish and Wildlife Service.**

**U.S. FISH AND WILDLIFE SERVICE:  
No.**

**MS. KERNS: National Marine Fisheries.**

**NATIONAL MARINE FISHERIES  
SERVICE: No.**

**MS. KERNS: That's it.**

**CHAIRMAN FREEMAN: All right, any  
abstentions and no null votes. The count  
I have is the motion passes 7 for and three  
--**

**MR. AUGUSTINE: Fails.**

**CHAIRMAN FREEMAN: Oh, I'm sorry,  
the motion fails. (Laughter) Now I wanted  
to see how many people were paying  
attention. And Pat Augustine, it didn't  
phase him at all. The motion fails. There  
are seven no's and four yeses. All right,  
we're back to the main motion. Tom Fote  
and then Jerry.**

**MR. FOTE: Since we've had a lot of  
discussion on the main motion and the  
substitute motion, I'll call the question.**

**CHAIRMAN FREEMAN: Well, Jerry, do  
you have any comments?**

**MR. CARVALHO: Yes. My question is  
directed toward Harry. It's two questions.  
The first question is, is the summer flounder  
MRFSS data accurate on a coast-wide basis?  
And the second question is will the MRFSS  
estimate be used in the stock assessment?**

**MR. MEARS: Jerry, you ask questions that  
are probably better asked at this meeting in  
January. As I understand it, and as  
discussed at the August meeting when  
Maury Osborn gave her report, is that, yes,  
MRFSS is accurate on a coastal basis.**

**Where it runs into problems is when it's  
envisioned to be used in-season and in the  
timeframe where the needed data would not  
be available for the subsequent year's  
specifications. So, again, that's the answer I  
think to your first question.**

**To your second question, I believe you  
asked is MRFSS data used in stock  
assessments; is that fair?**

**MR. CARVALHO: Yes.**

**MR. MEARS: Yes.**

**CHAIRMAN FREEMAN: Okay, we're**



back to the main motion. A.C.

MR. A. C. CARPENTER: As I understand the main motion --

CHAIRMAN FREEMAN: Just for the record, A. C. Carpenter.

MR. CARPENTER: We're going to put on hold the ideas that were brought forward in Addendum VIII except for setting the years. Is that the intention of this motion?

CHAIRMAN FREEMAN: That's my understanding. I'd ask the maker of the motion if he would like to respond. Gordon.

MR. COLVIN: That's both its intent and I believe that's exactly what it does.

MR. PATE: Mr. Chairman.

CHAIRMAN FREEMAN: Mr. Pate.

MR. PATE: I disagree. I think this does away with it until someone brings it up. It doesn't put it on hold. It doesn't table it. It doesn't set it aside. It kills it.

CHAIRMAN FREEMAN: Mr. Colvin.

MR. COLVIN: It takes no action on behalf of the commission unilaterally to address an issue which is and should be on the table jointly for the commission and the council in Amendment 14, along with a number of other high-priority, important issues that we need to get together and work on collectively, ASAP.

CHAIRMAN FREEMAN: Mr. Borden.

MR. BORDEN: Thank you, Mr. Chairman. I think I agree with Mr. Pate's interpretation of this. My interpretation is if the main motion passes, this concludes our regulatory

action on this issue and, therefore, we will have to go forth and start a whole new regulatory action on this which, given the process, it could take years.

That was a part of the concern that I raised before. If this were a motion to simply table action on this until we jointly deliberate on this issue with the Mid-Atlantic Council and figure out the most expeditious way to address this concern, I could support that, but I can't support the motion the way it stands now.

CHAIRMAN FREEMAN: All right, you heard the discussion. We'll take a two-minute caucus. Mr. Carvalho.

**MR. CARVALHO: I'm not sure if we can do this, Mr. Chairman, but I'd like to make a motion that we table this until we have a joint meeting with the Mid-Atlantic Council on this issue.**

**MR. CALOMO: Second.**

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

CHAIRMAN FREEMAN: Yes, Mr. Colvin.

MR. COLVIN: If the motion is to table, what happens to the disposition of Addendum VIII with respect to Issue 1?

**CHAIRMAN FREEMAN: That is a valid point. We already agreed on Issue 1, which is status quo. That really does need to be addressed.** Eric Smith.

MR. SMITH: Mr. Chairman, I think back in June we voted for the part of this motion that was to keep making 1998 as the base year. We did not vote on the other part which would have been no further action

under Addendum VIII; so functionally to table this now, it seems to me we're tabling the second half of that motion, no other actions on Addendum VIII at this time, but we already took a previous action that passed.

CHAIRMAN FREEMAN: Bob.

MR. BEAL: There are four issues in Addendum VIII. In order to finalize Addendum VIII, we need to address all four of those issues one way or another. For 2004 the commission is moving forward with a conservation equivalency process that's consistent with Issue 1, Option 1 in the paper, and that's the 1998 base year.

1998 serves as a base year for the allocation for the recreational fishery. If the board chooses to postpone any additional action on Addendum VIII to -- I think it just needs to be very clear how the other three issues in Addendum VIII will be handled, and Addendum VIII is not finalized until those other three issues are addressed.

So, we just need to clarify is the intent of the motion to only address Issue 1, Option 1 in Addendum VIII, and that becomes the addendum, and the other issues are going to be dealt through another addendum at a later time or through Amendment 14 with the Mid-Atlantic Council. That just needs to be clarified in either the discussion supporting one of these motions or in the motion itself.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: My expectation was that if my original motion passed, that the commission would have adopted and would publish Addendum VIII, and that the only thing in it would be the issue of the baseline year for the state recreational quotas, and that there would be no other content in

Addendum VIII.

MR. AUGUSTINE: That's clear.

MR. COLVIN: That could have been done with a simple motion to adopt Addendum VIII, Issue 1, Option 1, and no other language in the motion beyond it. I think the additional language in the motion is frankly moot.

CHAIRMAN FREEMAN: The chair would agree. The action taken by the board was we dealt with Issue 1, and then the other three issues we just delayed so we really never took complete action. So I would agree with Gordon's understanding of where we stand at this point. Dave Pierce.

DR. PIERCE: Perhaps it would speed things along if we just had the maker of the motion agree that we should just move to table Issues 2, 3, and 4 until such time that a joint meeting with the Mid-Atlantic Council can be convened.

That way we get rid of the ambiguity about the first issue, Option 1, which we've already passed. So if that makes it easier, Mr. Chairman, I would suggest that.

CHAIRMAN FREEMAN: Well, the motion, unless there is a change in the attitude of the maker and the seconder, the motion stands. Jerry.

MR. CARVALHO: I'm not sure, Mr. Chairman. You'll have to help me with this, but on a motion to table I don't know how much discussion is allowed. My intent was to put this entire proceeding off until we have a joint meeting.

I don't want to go through this process again on this same issue, to start from scratch. It's in place. We haven't solved the problem.

If the concerns by the maker of the motion are that we're going to solve it sometime in the future in a joint manner, the idea that we have to start the process from scratch again I find very unacceptable.

My intent of the motion to table was to put this off so that it could be addressed, as the maker of the motion suggests, at a joint meeting with the Mid-Atlantic Council.

CHAIRMAN FREEMAN: Jerry, let me just make a quick commentary. My concern is the Mid-Atlantic Council dealt with this issue and essentially voted it down. They understood the problems with the overage on the recreational side, but they essentially indicated the payback was not the way to do it and essentially voted that down.

If we go back with discussions -- and I'm certainly willing to do that -- we're going to go through the same comments I think we heard today, but now the council would have to change their position in order to see any movement; otherwise, it won't work. It's just going to complicate the issue and you've heard the comments from the Service.

My own feeling on this is, just my personal feeling, regardless of how this goes, I think everyone understands the problem with this overage. It's greatly tied to the way the information is collected.

The commercial fishing certainly is monitored very closely. Any overage is paid back. Recreationally it simply can't be done. We don't know the answer until two months after it's already occurred.

So, although you heard from recreational industry they'd be willing to modify their catch rates, there is no way we can do it under the present system because we don't

know where we are until after it's already done.

I would also comment that relative to 2003 there was a very severe change in attitude, and all the states looked very carefully at their recreational numbers based upon 2002. And as I think we all recognize, there seems to be something very peculiar with the landings in New York.

MRFSS has indicated it formed a task force. It's looking to see if in fact there are errors that were made to explain why this very large catch was made in New York, which was totally unrecognized by anybody until we got the MRFSS numbers.

But, we'll not get resolution to that until at least January, perhaps February. I'm not sure what that resolution will be, no one is at this point.

Nevertheless, if you exclude New York and look at the catches on the coastwide, the rest of the recreational catches of summer flounder is under the target -- exclude New York. And so there was this.

Now the question is, is that going to continue in the future. There is no guarantees but I suspect based upon the discussion that occurred here in other meetings, that the recreational fishery and community is going to look very carefully at increasing or even coming close to their target because of the problems we've seen.

But it's really a decision by this board as to what action it wants to take, but I'm just worried that we're going to get into a circular argument with the council. I don't see resolution. I'd like to see resolution somewhere.

MR. PATE: Mr. Chairman, may I be

recognized for a point of order, please? You called for a vote on this motion.

CHAIRMAN FREEMAN: Right.

MR. PATE: We had an improper motion to table after that call for a vote, and here we're sitting here listening to yet more discussion about the adequacies of MRFSS. Let's do something. I'm tired of listening to it.

CHAIRMAN FREEMAN: All right, we're going to vote on the substitute.

MR. AUGUSTINE: Point of information, Mr. Chairman. Is the motion deemed out of order to table or not? And, Mr. Chairman, may I call the question to table.

CHAIRMAN FREEMAN: All right, it has been determined by staff that the motion to move to table until such time that a joint meeting with the Mid-Atlantic Council can be convened is in order. That's the motion we'll vote on at this point.

Is there a need for a caucus? Seeing no indication that's necessary, is there a need to have a roll call vote? All right, then on this motion all those in favor of the motion, please raise your right hand; all those opposed, same sign.

MS. KERNS: Five to five, a tie.

**CHAIRMAN FREEMAN: All right, it's a tie vote, the motion fails.**

MR. AUGUSTINE: Call the question.

CHAIRMAN FREEMAN: All right, we're back on the original motion. Do we need to caucus on the original motion? Seeing none, is there a need for a roll call vote?

MR. FOTE: Yes.

CHAIRMAN FREEMAN: All right, there is a request for a roll call vote. This is on the original motion, and I'll have Toni call the roll.

**MS. KERNS: The Commonwealth of Massachusetts.**

**MASSACHUSETTS: No.**

**MS. KERNS: Rhode Island.**

**RHODE ISLAND: No.**

**MS. KERNS: Connecticut.**

**CONNECTICUT: Yes.**

**MS. KERNS: New York.**

**NEW YORK: Yes.**

**MS. KERNS: New Jersey.**

**NEW JERSEY: Yes.**

**MS. KERNS: Delaware.**

**DELAWARE: Yes.**

**MS. KERNS: Maryland. (No response) PRFC.**

**POTOMAC RIVER FISHERY COMMISSION: No.**

**MS. KERNS: Virginia.**

**VIRGINIA: Yes.**

**MS. KERNS: North Carolina.**

**NORTH CAROLINA: No.**

**MS. KERNS: Fish and Wildlife Service.**

**U.S. FISH AND WILDLIFE SERVICE:**  
**Yes.**

**MS. KERNS: National Marine Fisheries Service.**

**NATIONAL MARINE FISHERIES SERVICE: Yes.**

**CHAIRMAN FREEMAN: Are there any abstentions or no null votes. All right, the vote is 7 yes, 4 nos. The motion carries.** All right, we'll move on with the remainder of the agenda. I'll turn this over to Toni for discussion of the timelines for addendums and amendments.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: Just a comment that the last two joint meetings I attended of the Mid-Atlantic Council and Atlantic States were very productive. The problem was a lot of the governors' appointees and legislative appointees couldn't make those meetings.

We need to give a longer I think lead time for your governors' appointees and legislative appointees to make. I was able to make both of those, but I know a lot of people were not. And a lot of the discussion could have went on at that meeting so let's try to give people more lead time to know when the meetings are and if we're going to have a joint meeting because it seems that a lot of the governors' appointees and legislative appointees didn't know.

One was in Delaware; one was in Duck, North Carolina. The Duck one is very hard to get to. And the one in Delaware was two weeks ago, so, you know, it was this meeting on top of the other meetings.

Remember, governors' appointees and legislative appointees, most of them on the

commission are all volunteers. It's very hard to get time off from work to come to this so we need to figure out a better way of doing it.

**Development of Black Sea Bass Timelines**  
CHAIRMAN FREEMAN: All right, Toni.

MS. KERNS: Thank you. In January 1<sup>st</sup> of 2005 the current addendum for the black sea bass commercial allocation will expire. In order to have regulations in place by January 1<sup>st</sup> of 2005, an amendment or addendum process will need to be enacted by March of this year.

What I'm asking for is guidance from the board to let me know if you want to have the same addendum that's in place right now; and if that is true, then we'll go through with an addendum. If you want to make any changes to the process, then an amendment might be needed.

I'm not needing this information here today, but I'd like to get that information from you no later than January 15<sup>th</sup>. It can be through a phone call or an e-mail if there needs to be any discussion on this matter.

CHAIRMAN FREEMAN: All right, again, any comments, please get those to Toni so she can move forward. Go ahead, David.

DR. PIERCE: Just to make sure I understand this. So by the beginning of next year, no later than the end of January, perhaps, you need to have from us some comments as to what we would like to see in another addendum for the re-visitation of the percent shares of the black sea bass allocation for the commercial fishery. Am I correct?

MS. KERNS: Yes. And then if you want to see something different happen than what it

is in the current addendum, then let me know what that is and we can determine if that can be done through an addendum or if it will have to be done through an amendment.

CHAIRMAN FREEMAN: David, you are aware that there has been some suggestion to conduct the sea bass similar to scup where there is a coast-wide winter period and then state-by-state allocations in the summer?

That's a possible alternative. There has been discussion. The point is we need to know what the feeling of the board is, whether we need to move forward, because as you recognize, the state by state was put in for two years. That ends this year.

And so starting in 2005, if we do nothing, we go back to what we've had previously which is quarterly quotas coastwide. I think we had quarterly didn't we, Bob, quarterly? I can't remember if it was quarterly or every four months.

MR. BEAL: I think the way the current amendment is written we actually revert back to a coast-wide quota which is consistent with what the federal government has in place, one annual coast-wide quota.

CHAIRMAN FREEMAN: Okay, so just bear in mind that's the fail-safe. We do nothing, we just simply go back to a coast-wide quota, everybody competes for the catch. All right, any questions, any further question on that issue? Gordon.

MR. COLVIN: A quick comment on this. You know, we adopted the current amendment. It wasn't quick, simple and easy, those of you who were involved at that time can recall. There was a great deal of disagreement.

There were a number of commercial fishing organizations, commercial fishermen from different states who were and remain extremely dissatisfied with where we ended up.

And, one of the things that convinced at least New York and I suspect perhaps another state or two to ultimately vote to adopt the current structure of the Black Sea Bass Plan was precisely the fact that it sunset at the end of next year.

And, there was implicit in that decision to proceed that way a representation to the stakeholders that we weren't going to simply do a "rubber stamp" renewal of this management program but we were going to revisit it and engage a substantial public debate and dialogue on options.

I can assure you that the fishermen in New York who were opposed to this current program expect that to happen. They remind me of it constantly. So, I think simply to think in terms of a quick and dirty addendum to continue the status quo for a couple of years is not what we should be thinking.

I think we need to be thinking about asking the staff to generate meaningful alternatives to put on the table for discussion and possibly for an amendment if needs be, but to give the industry what I think we promised them or which was at least implicit if not explicit in our last action which was a comprehensive review and re-visitation of the issue. Thank you.

CHAIRMAN FREEMAN: Bob and then David.

MR. BEAL: I think in the interest of time the most productive thing to do is have staff leave this meeting, go back and put together

a comprehensive list of options. In those options there will be notes, which ones can be done through an addendum and which ones can be done through amendment.

When the board gets back together in March — and this draft will be ready prior to the March meeting -- when the board gets together in March, they can select which items they want to go out to public hearing.

If those options incorporate just addendum-type items, then we're going to forward with an addendum. But if they are larger and more encompassing and we need to do an amendment, then we craft that document and it becomes the public information document for the first step of the amendment process.

I think we can even probably get that underway in March if the document has got a complete suite of options for the board to consider. So in the interest of time, that's probably the easiest way to get done today.

CHAIRMAN FREEMAN: Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. Bob said somewhat what I was going to say, along the same lines so in the interest of time I won't repeat it. But to go back to Gordon's point earlier, my take on it was somewhat similar, but I would just note that there are a lot of states around the table, Rhode Island being one of them, that compromised on a number of issues and ended up with allocations which are less than either what we wanted or in some cases what we felt we deserved.

If we're going to go back and revisit all of those very hard decisions, I hope there is a significant amount of time and energy budgeted for this on the part of the staff because we're going to open up a number of issues, which are not going to be simple

issues to deal with.

And, it is probably going to require a great deal of time so as Bob looks at the alternatives, I hope he factors in the amount of time and money that has been allocated for this into that consideration. Thank you.

CHAIRMAN FREEMAN: Okay, other comments.

### **Discussion of Draft Addendum XI**

MS. KERNS: In front of you should be a copy of the Draft Addendum XI for the recreational scup fishery. Our goal today is to review the draft of Addendum XI, make any changes the board would like to see and approve this document for public comment or hearings for this January.

CHAIRMAN FREEMAN: All right, Toni is going to quickly review, since staff prepared this, to make certain it includes what the board wants included in here, and we can make any changes. This will be the basis for those changes.

MS. KERNS: The purpose of this addendum is to establish recreational fishery specifications for the 2004 fishery. The issues for discussion in this addendum are should fishing effort be regulated on a regional or a state-specific basis; should the recreational fishery be divided by mode; and looking at the management process for establishing conservation equivalency.

This is the proposed timeline for adopting this amendment. You also have a document in front of you that has both the summer flounder and scup timeline. I'm sorry that this is a little bit small, so that paper is in front of you if you can't see the screen.

There are two options here for this, and both of those options have us approving this draft

comment. The first option would have the board approving the addendum in January at a meeting. We could join the Mid-Atlantic Council's meeting that's in Alexandria, Virginia, January 20<sup>th</sup> and then going and having the state proposals due in February, have the technical committee review those, and then at the March meeting week the board could approve those proposals.

The second option that the board would have is to wait until the March meeting week to approve the Addendum XI after hearing the public's comments, and then put those state proposals and at the end of March have the technical committee review those proposals and then have a conference call or a fax poll to approve those proposals.

The first issue is regulation on a regional or a state-specific basis. There are several strategies in this section that can be chosen from, and you can choose more than one strategy to be used together.

The first would be selecting a regional management approach using size, possession limits and season limits. Possible options are included but not limited to the use of landings information from all states to form a single dataset from which state-specific or region-wide regulations would be generated.

Next we have Strategy 2, which is state-specific management programs with landings adjustments through size, possession and seasons. Each state would have to achieve a percent reduction that is based on the performance of the regulations in the previous year.

The total reduction does not equal the sum of the size or possession limit reduction and the seasonal closure reduction. In order to account for this, you'd have to use the

equation that's in the addendum draft document to determine the total reduction.

This is the approach that the commission utilized in Addendum VII and Addendum IX. Some states have expressed an interest in implementing slot limits or a combination of bag and size limits that vary throughout the year.

The technical committee didn't have time to develop a methodology to analyze these reductions; and if a state would like to propose this, then we ask that you do a technical analysis and bring that back to us.

This chart right here goes through the current percent share that states have used -- we used last year and their current percent decrease that they would need if we followed the same suit.

And we also have right now the New York adjusted numbers and the regional approach adjusted numbers for the percent decrease. Until we get the report from NMFS, we're pending that information.

Next we have Strategy 3, which is the landings adjustments through seasonal modifications. Currently the coast-wide federal quota is a 10-inch minimum size and a 50-fish bag limit. Landings would be adjusted through seasonal changes.

If states agreed to change the size and possession limits as a group, everyone agreed on that same size and possession, then that would also be possible, and then have seasonal adjustments based on that agreed-upon size and possession limit.

Last is Strategy 4, state allocation using alternate base years. The board could choose from a base period from which the individual state allocation is derived. States



would be required to decrease their landings by the percent included in the tables.

Under this option, I've provided a bunch of different sample base periods. You're not limited to these samples but they're just a small portion. This is the first table. It's based on landings from 1981 to 2000. You can see the change in the percent of the shares and a change in the percent decrease that each state would have.

This is an option using landings from the year 2000. Just take note to the percent shares again and the percent decrease. This is allocation based on the years from 1995 to 2000 landings. Again, take note of the percent shares and the percent decrease.

This would be allocation based on the years 1991 to 2000 landings in numbers of fish. This is based on each state's best five years from the years between 1981 to 2000 so their percent share and percent decrease through that.

And, lastly, here again, we have 1998 to 2000 which is what the current addendum or process is for the percent share and percent decrease.

Issue 2 deals with the separate recreational fishery by mode. Some states contend that the main incentive for many participants in the party and charter boat fishery is the promise of large catches.

In the event of the possession limit for this sector to be set too low, the incentive to fish will be removed from many party and charter boat captains. Crew may experience economic consequences due to this reduction. So, this proposes that we can separate out the party and charter boat sectors from the remainder of the recreational fishery.

Option 1 would have the mode split not be permitted at all. Option 2 would allow the mode split with a 30 percent maximum PSE. Note that Option 2 was in place in the year 2002 and 2003 under the provisions of Addendum VII and Addendum IX. And, lastly, would be to have a mode split with a 20 percent maximum PSE.

And the last issue would be looking at the management process of establishing conservation equivalency. Adoption of this option would provide the tools to the management board with the authority to develop scup recreational conservation equivalency through board action.

This authority would be similar to the process that is currently in place for the summer flounder recreational fishery management program.

Currently, status quo qualifies that the board has to go through an addendum process to set up conservation equivalency measures and Option 2 would allow the management board to just have a motion to set these up. And that's all.

MR. COLVIN: Thank you, Mr. Chairman. I had an opportunity to read the addendum when I got in here this morning and I want to congratulate the staff. Toni, you did a heck of a job pulling this together in the very short time you had since the council meeting. Mr. Chairman, **I believe our action today is to approve this document for purposes of public review and comment?**

CHAIRMAN FREEMAN: That's correct.

MR. COLVIN: **I so move.**

CHAIRMAN FREEMAN: All right, it's

moved by Mr. Gordon to move this to public comment. Is there a second to that motion? **Mr. Pate seconds the motion.** Discussion on the motion. Mr. Pierce.

DR. PIERCE: I'm sure the staff did a great job on this, but I just received it this morning when I came through the door and I haven't read it yet. I tried to skim it, but I haven't read the whole thing so I can't vote up or down on this. I'm going to have to abstain only because I haven't read it.

CHAIRMAN FREEMAN: Other comments. David, understand it is a difficult thing, but relative to the fact that the last meeting we had we asked staff to prepare a document, and it's not a reflection on the staff. It's just we're trying to do so much in a very compressed time that it has taken staff this long to produce it.

We would have certainly liked to have this out for review prior to the meeting but, as Gordon indicates, we're asking staff to move very quickly on this at our insistence. So if it's a criticism it's on ourselves, not on the staff. Tom, you had a comment.

MR. FOTE: Well, I just want to go out to public hearings. Hopefully, we open it. If we're going to look at separate modes for the party and charter boat, we should also look at separate modes for the shore-based anglers because basically the size limit basically puts them out of the fishery from the bays, the piers and the jetties. I'll also call the question.

MS. KERNS: Tom, I can add that into the addendum.

CHAIRMAN FREEMAN: All right, other comments. All right, is there need for a caucus on this? There is need for a caucus. All right, two-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Okay, is there a need for a roll call vote on this? All right, seeing no request, we'll do it by hand vote. We're going to take the motion to move to approve the draft Addendum XI for public comment.

**All right, all those in favor of the motion, please raise your right hand; those opposed, same sign; abstentions; null votes. The motion carries with two abstentions.**

MS. KERNS: What I need to know from the board right now, though, is the timeline and whether you would like to have -- we'll have public comment through January, but do we want to vote?

We could have a joint meeting with the Mid-Atlantic Council at the end of January or we can hold off until the March meeting. That would allow public comment to go a little bit longer. I just need to know when you would like to vote on this addendum.

So you would either be voting on it in January versus March. And the reasoning behind the timeline is to ensure that we get these recreational measures out for the public before the season starts.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Mr. Chairman, I had operated under the assumption, and I believe this is really the only way we can do this, is that we were going to adopt the addendum in January which then gave the states a period of time to, based on the addendum, develop their proposals for action, review by the technical committee and action by the board at the March meeting week.

From the beginning of March to the beginning of the season is little enough time. If we haven't adopted the addendum by March, we're not going to be able to get regs in place.

CHAIRMAN FREEMAN: David Pierce.

DR. PIERCE: I agree with Gordon, we need to get this done as soon as possible, January preferably; however, I would like to have some assurance that the MRFSS staff will provide us with their evaluation of the database, New York, Massachusetts,

Whatever they're looking at, we need to have that. Otherwise, we go into the meeting in January with a very uncomfortable situation, probably a situation that would result in our having to postpone a decision because we need the numbers.

MS. KERNS: I have been told that the whole report should be done very soon, within the next week or two, so I anticipate having that report January 1<sup>st</sup>.

CHAIRMAN FREEMAN: Mr. Adler.

MR. ADLER: Thank you, Mr. Chairman. Could you run over this agenda again? In other words, we're going to go to public hearing with this. What's going on in January, next month?

MS. KERNS: We would be able to either have a meeting before or after the Mid-Atlantic Council's meeting in January in Virginia to be able to hear what the public comment said, and then vote on this addendum so that we can get those regulations out fast.

MR. ADLER: So you have to have a public hearing with the announcements for public

hearing. You have to have that public hearing before you have that meeting in January of the board.

MS. KERNS: Yes. I mean, we need to have public comment on the document before the board makes a decision on what to do with this addendum.

MR. ADLER: Okay, I just think this is a little bit pressed here, and whether physically it can be done with the requirements needed to have public meetings and then other meetings and then other meetings.

CHAIRMAN FREEMAN: The issue, Bill, is yes it's compressed and that we need to move quickly. As indicated, in order to do that, we need to make a decision prior to the beginning of the fishery; otherwise, no one is going to do anything. So, it is compressed. The next scheduled board meeting is in March.

What we're suggesting or at least what we've talked about is having a special meeting of the board either the day before or the day after the Mid-Atlantic Council meeting, and this would be January 20, 21 or 22 is the a council meeting.

It's going to be in Alexandria, your favorite place. But, I mean, that's the option we have. We need to have a meeting. That's probably when we'd have it because many people would be -- or at least half the people would be at that location. And then we'd have to take action at the March meeting.

So this leaves a minimum time for the public to comment, about a four-week period, although we don't have specifications such as the federal system, but we would certainly want to give adequate time for the

public to read and comment. But it is a compressed schedule. Harry.

MR. MEARS: Mr. Chairman, what should also be considered, one of the options proposes conservation equivalency for scup as there is currently in place for summer flounder.

The council itself will likely have timing requirements in terms of the process it will need to go through in terms of including scup under its framework, too, as well as summer flounder. So, on top of what's ever need to implement it on the state side, maybe an additional time factor what's needed on the federal side through the FMP process.

CHAIRMAN FREEMAN: Okay, additional comments. Tom then David.

MR. FOTE: I just think of the holidays coming up and trying to get all the work done and setting up schedules for public hearings that we're probably going to need for the first or for the second week in January, third week in January.

CHAIRMAN FREEMAN: It's scheduled for the third week in January, Tom.

MR. FOTE: So we're going to have to have -- I know we don't have to follow what states do with public notices, 30 days or even 45 days some states, but we really need -- if we're going to set up the public hearing process, we need to have dates before Christmas established of when you're going to have the public hearings to give people a reasonable time.

I mean, it's a difficult situation because, you know, there are some things in here that are very controversial and people like to make comments on it, and we're trying to move

really fast. I understand we should be doing that but, you know, we're trying to have public hearings in January. This fast, we won't even get the notice out?

CHAIRMAN FREEMAN: All right, I understand what you're saying. Let me just indicate if we want to move in this accelerated manner staff, as I understand it, has contacted the hotel and that we could have the meeting the day before or the day after -- is that correct, Bob? We have that option?

MR. BEAL: We did ten days ago. You know, we didn't put a reserve on those rooms so we'll have to check back.

CHAIRMAN FREEMAN: The only comment I would make, Tom, is that we're looking at the 19<sup>th</sup> of January, the day before. That is when Martin Luther King's Day is celebrated, and that's a Monday. The 23<sup>rd</sup> would be a Friday, so we're looking at that Monday or the Friday. And if you can make that determination at this meeting, we can have staff check again to see if we can get available space at the hotel. Yes.

MR. FOTE: I can make either one of those dates, but some of the other governors' appointees or legislative appointees, since it is a holiday, might have made plans to be away or something like that.

We should do at least a survey of how many people can be there. Again, the last two meetings that we've had on summer flounder, there has been a very poor attendance by governors' appointees and legislative appointees just because of timing.

And then we come here and we have to have a full discussion. At least we get some of that discussion at the council meeting with

the council members. It will make it a lot easier process.

CHAIRMAN FREEMAN: Okay, further comments. Any other comments? Do we need a motion; or Gordon's observations, do we need to move quickly on this? We'll try to arrange that meeting for January. Is that the opinion of the board?

I see heads being shaken yes. All right, seeing no opposition, we'll move in that direction and then, Bob or Toni, determine which one of those days we could schedule to meet.

MS. KERNS: I would also just want a show of hands or let me know if any states need public hearings for this. Can you keep those hands up for just a second.

CHAIRMAN FREEMAN: All right, Rhode Island, New Jersey -- Gordon, do you need a public hearing -- New York and Connecticut and Massachusetts.

MS. KERNS: I might try to get you guys this week to try to set up some of those states or if you can give me someone that I can call this week, so that I can get those going.

CHAIRMAN FREEMAN: Okay, Tom.

MR. FOTE: Could you survey some of us whether we would like the 19<sup>th</sup> or the 23<sup>rd</sup>, so we'll get an idea when the commission is better available?

CHAIRMAN FREEMAN: All right, since the 23<sup>rd</sup> is not a holiday, let's pick the 23<sup>rd</sup>. That's a Friday, the 23<sup>rd</sup> of January for the special board meeting. Anyone have conflicts with that? All right, if there are problems, please contact staff or myself and see if we can change it, but right now

tentatively the 23<sup>rd</sup>.

Also, staff has to determine if in fact the hotel can still accommodate us. Okay, we've gone through the agenda. Any other business? Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, before you adjourn, we were scheduled to finish at noontime here and you chose to use 15 minutes or so on the Herring Board and then chose to use 45 minutes additional in this meeting. So as a result, we have Dr. Bill Hogarth who was scheduled to be here at 1:00.

He has graciously agreed to delay his presentation until 1:30 upstairs in the Plaza Suite on the Mezzanine level. That will start at 1:30 so there is about 30 minutes for lunch. Thank you, Mr. Chairman.

#### **Adjournment**

**CHAIRMAN FREEMAN: All right, thank you. Seeing no other business, the meeting is adjourned.**

(Whereupon, the meeting adjourned at 12:55 o'clock p.m. December 15, 2003.)

- - -

