

**PROCEEDINGS**  
**of the**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**

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

August 25, 2003  
**Double Tree Hotel Crystal City**  
**Arlington, Virginia**

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF	Bruce Freeman, <b>Chair</b> , New Jersey DFG&W
Bill Alder, Massachusetts Gov. Apte.	Ed Goldman, proxy for R. Smith (NJ)
Vito Calomo, proxy for Rep. Verga (MA)	Rick Cole, Delaware DFW
David Borden, <b>Vice-Chair</b> , Rhode Island DEM	Pete Jensen, proxy for H. King (MD)
Gil Pope, Rhode Island Gov. Apte.	A.C. Carpenter, PRFC
Jerry Carvalho, proxy for Rep. Naughton (RI)	Jack Travelstead, Virginia MRC
Eric Smith, Connecticut DMR	Catherine Davenport, Gov. Gov. Apte. VA
Lance Stewart, Gov. Apte. (CT)	Preston Pate, North Carolina, DMF
Byron Young, proxy for G.Colvin (NY)	Damon Tatem, North Carolina, Gov. Apte.
Pat Augustine, New York Gov. Apte.	Harold Mears, NMFS
Brian Culhane, proxy for Senator Johnson (NY)	Bill Cole, USFWS
Tom Fote, New Jersey Gov. Apte.	

### Ex-Officio Members

Steve Doctor, Maryland DNR, Tech. Comm. Chair  
Mike Howard, LEC Rep.

### ASMFC Staff

Megan Gamble  
Bob Beal  
Vince O'Shea  
Toni Kerns

### Guests

Charlie Ondosen, MA DMF	Tony Bogan, United Boatmen
Bill Winelly, MSSA/RFA	Roy Miller, DE DFW
Dick Brame, CCA	Mike Cannon, MLC Fishing
Dr. Gefe Kray, RFA-PA	Herb Moore, RFA
Dan Furlong MAFMC	Sean Bouchard, Olde Spye Marine

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## Summary of Motions

Page 35: Move to remain status quo on the three remaining issues of Addendum VIII.

Page 41: Substitute motion to adopt Issue 4, allocate the commercial quota based on a TAL calculated without the recreational overages.

Page 47: Motion to postpone further action on Addendum VIII until the December meeting. Motion carried on Page 64.

Page49: Motion to approve Addendum X for public comment.

ATLANTIC STATES MARINE  
FISHERIES COMMISSION

SUMMER FLOUNDER, SCUP, AND  
BLACK SEA BASS MANAGEMENT  
BOARD

Doubletree Hotel  
Arlington, Virginia

August 25, 2003

The Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Room of the Doubletree Hotel, Arlington, Virginia, August 25, 2003, and was called to order at 3:25 o'clock p.m. by Chairman Bruce Freeman.

**WELCOME/INTRODUCTIONS**

CHAIRMAN BRUCE FREEMAN:  
Board members, we are going to begin the Summer Flounder, Scup, Black Sea Bass Management Board. One announcement that I would make is that New Jersey has Ed Goldman here as a proxy for Assemblyman Smith.

Most of you don't know Ed. He is also a member of our state fisheries management council, an active fisherman, and right now he is talking with Tom Fote and not paying attention. We would like to welcome Ed.

You should have a copy of the agenda. It's coming around now. It's modified slightly from the one you received for the meeting. If you look through this quickly, we have other business at the present time.

I have not been contacted by any board member for additional other business. If there is any, let me know now and we'll

make sure it's included. If not, we will work with the draft agenda. If there is no objection, again, we'll move forward with the agenda.

**APPROVAL OF MINUTES**

The minutes of the February 25<sup>th</sup> meeting you received. **A motion to approve by Pat Augustine and a second by Bill Adler.** Are there any additions, corrections to those minutes? If not, they will stand approved.

Is there anyone in the audience that would like to make a public comment at this time? Tony, please come forward. Tony, just identify yourself for the record, please.

**PUBLIC COMMENT**

MR. TONY BOGAN: I'm Tony Bogan from United Boatmen. Thank you, Mr. Chairman. My comment is in the context of Addendum VIII. Seeing as how it was one of the agenda items, I figured I would get this out of the way now, and then obviously there will be discussion as the individual agenda items are taken up.

At the meetings in February down here, in June here, and, of course, at the public hearings that took place on Addendum VIII and the time in between, there have been a number of comments both from the public and from commissioners, also in private with state directors, questioning some of the federal references that United Boatmen and RFA have presented in our arguments as far as it relates to Addendum VIII.

Some of the questions pertain to some of the relevancy of some of the comments, the federal references, rather, because they were in the context of other fisheries other than summer flounder.

Some questioned the timeliness because some of the references went back as far as the mid-90's to as recent as 2001. Even the regional director's comments made in August of last year were also questioned for some clarification.

Now while I would never obviously assume to speak for the National Marine Fisheries Service, I would like to read you just a brief excerpt from a document and let the Service speak for itself as it relates to paybacks and recreational overages.

This is from the 2003 Summer Flounder, Scup, and Black Sea Bass recreational specifications, the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis, which is prepared by both the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service, and it's dated March 26, 2003.

I won't read the whole thing, and everyone should have a copy. I hope I made enough copies for everybody. I won't read the whole page, just some of the specific excerpts:

"Recreational overages in a given year or period have two expected impacts. First, overages result in lower harvest levels in the following year or period for that portion of the fishery than would otherwise have been allowed.

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

"The second possible result of recreational overages is the potential that the annual F targets of the FMP will not be met and/or that the rebuilding schedule will be delayed. The significance of any such delays depends on the magnitude of the overages and the resulting impact on the stock size and age structure.

"While it is not possible to quantify those effects precisely, the fact that the FMP's management regime takes into account the overages and the current status of the stocks in setting the specifications for the next year mitigates any such impacts.

"For summer flounder, the actual F has been higher than the target for several years, thus the rate of rebuilding may have been slowed compared to the amount of rebuilding that might have occurred had F not exceeded the target.

"Nevertheless, the spawning stock biomass for summer flounder has increased substantially during the rebuilding period and the age structure of the summer flounder stock has expanded. Thus, the summer flounder stock is healthier and more robust than before rebuilding was initiated."

The last paragraph is: "The council and National Marine Fisheries Service recognize that overages in any of the fisheries in 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."

Then it goes on to mention about what could happen with 2003, which naturally we don't know yet. It was a very large document. The March version is 153 pages. I was obviously not going to hand out the whole document to everybody.

Just a quick comment on that quote. Taken at face value, the quote may seem to say one thing. I would rather take it in what we believe is its true context.

Both this reference from the federal government, the Mid-Atlantic Council, which was just a few months ago, has to be taken in concert with all of the other information that has been presented to date from all of the various sectors.

I am speaking obviously specifically to all of the references, both federal references and otherwise, that we have put forth at the last few meetings.

When you look at this quote, the quote from Bill Hogarth, after a lawsuit that was filed by North Carolina, when you look at the context of the quotes from the Federal Register about why the two fisheries are managed separately, meaning the commercial sector and the recreational sector of the summer flounder fishery, the federal references and our own examples of the variability of MRFSS, and that in context being why the two fisheries are managed differently, because of the difference in not only the reliability, but the availability of the data to the two sectors.

When you put all of these things into context, to me what this says is with the data that is available for the recreational sector, with taking all of those different factors in mind, not only the difference in the two sectors, the way they prosecute the fishery, the way their data allows them to prosecute

their fishery and subsequently adjust their behavior accordingly to compensate for overages, underages, et cetera, that what can be done has been done, is being done.

It also ties in with asking the question of addressing an issue that as far as we know at this point in time may no longer exist.

You have to also look in the context of what the fishery did last year, which was a significant underage. You also have to look at what the fishery perhaps will do this year. We'll obviously know a little more by the end of the year.

I won't speak about what all indications are because the fact of the people who catch the fish, we only give anecdotes. We don't have actual facts, and also you have to look at the current management scheme, which is one other point that we've tried to make.

Any reference to anything that has happened in the recreational summer flounder fishery prior to 2001 is not necessarily relevant in this case because the management scheme that existed prior to 2001 no longer exists.

To talk about overages that happened in '96, '98, '99, 2000, we don't manage -- I should say you don't manage the fishery that way anymore. In '99 and 2001, you changed the management scheme. There was actually what has been classified as a bastardization of the system where you had a mix of coastal and recreational options available.

Subsequently, '99 and 2000 were considered to be two of the worst years of supposed overages. In 2001, conservation equivalency in state by state was done for every state. That system has only existed since 2001, and in the first year of state-by-state management, the overages from the previous year were reduced by more than 50 percent.

In the second year of conservation equivalency, last year, the trend, the previous six-year trend was not only stopped, but completely reversed to I believe it was a 30 or 40 percent coastwide underage in summer flounder.

So you've got a management system that has only been in existence for two years, and Addendum VIII in our mind seeks to address a problem that the management system is supposed to address. How anyone can assume that it has or has not addressed it in only two years is beyond me.

Again, going back to when it was coastwide is not applicable. It's not coastwide anymore. You had years when you had over a decade of coastwide. That didn't work and you switched. Well, one of our points is we need to give this system time to work.

Despite certain commissioner's problems with state by state as opposed to coastal personal preferences, we just believe it would be premature to make such a significant change to the management scheme when there was just a significant change that on the surface appears to be doing the job it was intended to do. Like I said, in two years you completely reversed a six- year trend. That's the end of my comments. Thank you, Mr. Chairman.

#### **TECHNICAL COMMITTEE REPORT**

**CHAIRMAN FREEMAN:** Thank you, Tony. The next item on the agenda is the technical committee report and I will ask Steve Doctor to give that. Just before you do that, Steve, Bob needs to make a comment.

**MR. ROBERT E. BEAL:** Just real quickly. Each of you were handed two

memos, one from the Summer Flounder Technical Committee to the management board, dated August 21<sup>st</sup>, and this is a summary of a conference call that basically Steve is going to go over.

Then also there is a second memo from me to the Summer Flounder Board, dated August 24<sup>th</sup>, and I think when Steve is done I'll just quickly go through that one as well. I just wanted to make sure everyone has got the right documents in front of them.

**MR. STEVE DOCTOR:** The technical committee was charged with evaluating the methodologies for determining the size limits, bag limits, and seasonal closures and to look at them to see if there was a way to increase the likelihood of achieving the recreational harvest limit.

One of the specific tasks was to look at the current bag and size limit tables. A little background, the tables that we used are based on the current year's fishery intercept data.

And what goes on is that the harvest limit is determined by well, a suggestion is made from the monitoring committee and the board decides on the actual harvest limit, and then the actual annual state harvest limits are compared to the performance of the current year's fishery to establish the percentage to change for each state.

The tables' uncertainty develops when you apply the same measures to a larger stock size. The projections that we get from the National Marine Fisheries Service each year generally indicate that the stock will increase each year.

For instance, the estimated stock size in 2003 was 56 metric tons, and then the projection for 2004 is 63.6 metric tons. So



we used these tables and we see what the fishery did and then we used them again, but we're applying the same tables to a larger stock size. So, the potential exists for a larger harvest with the same regulations.

The technical committee talked this over and they suggested that the monitoring committee could provide guidance to the board each year on adjustments that could be made to account for the changes.

The way that they decided the best way to do it would be like a percentage, like, for instance, a state would need a 15 percent reduction; and if the change in growth in stock was 5 percent, then the state would actually need a 20 percent adjustment to realize their harvest limit.

This is a little bit of controversy. Does anybody have any questions? I would note that an estimated stock size change is an estimate, and sometimes it follows projections and sometimes it doesn't.

For instance, we were anticipating an increase in stock size between 2000 and 2003, and basically the stock size stayed the same, and, therefore, that's why our harvest limits stayed the same.

Also, the stock change, if you look at the projections between 2004 and 2005, they are supposed to go from 63 metric tons to 70. As the stock gets larger, the percentage change is going to decrease each year.

So in the future, this may or may not be a factor that we have to take into consideration. The bottom line is the technical committee is recommending that they can give guidance to the board on this issue as far as what they think the projected stock size is going to do in the next year, and the board, at their pleasure, could make

this part of the equation that they use in determining the state recreational harvest limits.

CHAIRMAN FREEMAN:  
Questions? David Pierce and then Jack Travelstead.

DR. DAVID PIERCE: I'm sorry, I don't understand the logic here. It's probably because I'm just not listening closely enough. But this last paragraph, under Effects of Population Growth, or next to last, if a state is required to have a 15 percent reduction based on the current conservation equivalency process, that state might need to have a 20 percent reduction to account for increased availability due to population growth.

I don't understand why. I'm obviously missing something that is relatively simple to understand, but I'm missing it.

MR. DOCTOR: Well, let me see if I can explain it again. When we apply those tables and we look at the result of what happened, we say -- let's take the simplest case where a state reached its harvest limit and they took the tables -- for instance, this year they took the 2003 harvest and the percentage of catch by harvest, and they created these tables. The intercept data created these tables.

Now we go ahead and say that there's no change needed by this state because they just reached their target limit. Well, then what we would really be doing is we would be moving forward with the same set of regulations that we had, but potentially the stock could have increased by a percentage.

The available fish could have increased by a percentage between the two years. Therefore, with the same set of regulations,

you have the potential for a slightly larger harvest by the amount that the stock increased or the availability of harvestable fish increased. Does that make it any clearer?

DR. PIERCE: Well, not really, because I'm thinking population growth means the resource is moving upwards. Therefore, why do I now have to go back home and tell my recreational fishing community for fluke that, sorry, guys, the population has grown.

We were told initially that we have to take a 15 percent reduction, but now it's got to be 20 percent or whatever because the stock has grown. I am missing some logic here, and I'm not going to be able to convey this to my constituents.

MR. DOCTOR: Well, the increased harvest should be reflected in a larger harvest limit for the next year, so the increases on the large -- let me say it again. The increase in stock size should be reflected in increased harvest limit for the next year.

For instance, in this year we have almost a 20 percent increase in allowable harvest. So, if you harvested right on target for the last year, like this year you were right on target, you would be allowed a 20 percent increase this year.

So the deduction would be the increase in the stock size, which would be a set percentage, but you would probably have a larger harvest. Because of the amount of harvest that is allowed to be increased, the state share is going to be larger by a larger amount than the stock is going to increase.

There is an assumption being made here that the amount of harvest that you would need

to reduce is proportional or is the same as the increase in the stock, and it needs to be looked at a little bit as far as the availability of fish with increasing stock size, too. I mean, there's some things that maybe need to be worked out with this.

DR. PIERCE: I still don't understand, but I'm not going to make you repeat it again. Thank you.

CHAIRMAN FREEMAN: I had Jack Travelstead and then Tom Fote.

MR. JACK TRAVELSTEAD: Steve, you're requesting or recommending changes based on population growth. How reliable are our estimates of population growth? Do we have estimates for the coming year or is it based on a previous year's population growth, and has there been any retrospective analysis to see how reliable we've been with those estimates?

MR. DOCTOR: That's a very good point. Every year that I have been involved with this, for, what, ten years now, there has been an estimate of an increase in population size made by the Fishery Center.

We have not done a retrospective analysis and that may be one of the criteria that you would use for the percentage reduction, go back and look at what the stock has increased the last couple of years -- if you go back to the June 9 assessment done by the Fishery Center and you look at the biomass, it's almost a straight line up. So, we have had growth in the fishery every year that I can remember except for last year. The biomass has increased.

CHAIRMAN FREEMAN: Does that answer your question, Jack? Okay, Tom.

MR. THOMAS FOTE: Like Dave, I am trying to understand this a little better. And let me understand if we basically stayed status quo next year, say, the quota did not go up, but if the growth of the stocks did go up, then we would have to change tables.

If the quota remained the same, but we said we expect the biomass to basically increase, so instead of having the same tables, you have to put in more stringent regulations even though the quota stayed the same?

DR. DOCTOR: You would use the same tables, but you would use the tables to make a downward adjustment. I completely agree with you that it does have a downward bias. The net effect of this, using the projections that we have had in the last couple of years, is this is going to reduce your harvest in each individual state.

And is that correct; I mean, is that going to get you closer? I mean, every year that we have an overage, you'll be closer and every year that we have an underage it would be wrong. So, it is a downward bias to your estimates.

MR. FOTE: And it doesn't into consideration, especially when you're dealing with the recreational sector, what the preceding year was, because a lot of what has to do with what we catch is the availability of going out fishing.

And depending on that, we've seen the weather has an affect on that over the last two or three years, so that is not going to be figured out in the population dynamics either and left out of the whole entire equation.

MR. DOCTOR: The effect of effort is a huge variable that we have no control

over and is probably a large reason that we don't reach our target in certain years.

The tables have an affect, but also the availability of fish, weather, and the effort factors are something that we have no control over, and in this situation we're basically looking at what we can do to make the tables better. But as far as an effort aspect, I really don't see where we can.

MR. FOTE: I understand that.

CHAIRMAN FREEMAN: Eric.

MR. ERIC SMITH: This is a perplexing one. I am perplexed the same way David Pierce was, and I'm trying to understand it this way.

Are you saying that because the stock is higher and the fish are more available, you anticipate that recreational fishermen are going to take a greater proportion, they're going to take fish more easily, so they're going to fill their creels more quickly and max out more, and, therefore, you're anticipating and that's why you have to change the percent.

That's the only logical way I can see that you would want to do that. Otherwise, if your regulations meant that you came in right on the button in a given year and the stock size goes up 15 percent next year, then the same regulations should give map one to one to the same increase in your catch, again, everything being equal. So, only if my first question is true can I follow this logic. Otherwise, I guess I don't support it.

MR. DOCTOR: I think you summed it up much better than I can.

MR. SMITH: You are anticipating that because the fish are more abundant,

people are going to catch them more easily and you're trying to compensate for that as you go into the year.

MR. DOCTOR: Exactly.

CHAIRMAN FREEMAN: I think, Eric, just to add to this, what essentially we've been saying is hypothetically as the stock increased 10 percent, we would simply increase the catch 10 percent.

But, what the technical committee is saying is it should be something less than 10 percent, because now the fish will be more available. The ease of catching the fish is greater as the stock increases.

Now, there is another variable the technical committee talked about, which is even more important and it's virtually impossible. It's the effort. Regardless of whether fish are available, it's the effort.

If you have unfavorable weather, lots of wind and lots of cold, chances are you won't have as many fishermen as under ideal conditions, no wind, ideal weather conditions. The other factor coming in is what is the availability of other fish?

If there is a lot of scup, a lot of sea bass, will as many people fish for summer flounder? That is an unknown. But at the end of the year, the information the technical committee is talking about, in some instances you'll see an increase or decrease in effort from 20 to 50 percent in a state in one year.

Well, that's very difficult to predict, and what the technical committee is saying is, look, we can give the board advice so far as the increase in the resource and advise you what would be an appropriate level.

However, you're going to have to consider these other variables which are really unknown, and quite frankly can be extremely important when you look at your final catch, and effort seems to be the most paramount of those issues.

But what they're saying, at least my original impression was if we would could come up with a formula, we could simply plug these variables in and come up with an answer, and they're saying, no, it's not that easy.

The variables are such that you can't do that. There's no simple formula, add three or four variables and come up with a final product and that product will be our final catch. That really isn't going to work at the present time. Rick.

MR. RICK COLE: This concept that the technical committee said that the monitoring committee could help us with, it's not that hard a concept to try to understand if you think about it from the perspective of how it's going to operate this year.

When we meet in December, each state will have an idea what percent reduction they're going to have to achieve in 2004 based on the way their fishery performed in 2003.

For example, if your fishery went 25 percent over your harvest cap in 2003, you're going to be required to make a 25 percent reduction in your 2004 harvest.

Now, if in fact the stock is going to increase, as it's projected to increase, 10 percent in 2004, what the monitoring committee could recommend to that individual state is that they reduce their harvest by 35 percent.

So that's how the concept works. It's not that difficult to understand. And, again, that's something that we could ask the

monitoring committee to do if we felt that is how we want to go or we could just continue to go the same way we've operated in the past. Based on the past year's performance is the percent reduction you have to achieve in the next year. That's the concept.

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: Using Rick's example, he said a state was over by 25 percent, but the stock increased by 10 percent, so a state might have to take a higher percent reduction. What procedure do you use to determine what the percentage is?

MR. DOCTOR: That has not been established.

MR. TRAVELSTEAD: You just don't add 10 percent.

MR. DOCTOR: It's open for debate. I mean, the way that it was initially.

MR. TRAVELSTEAD: So you're just pulling a number out of the air?

MR. DOCTOR: Well, I would think that in my mind there would be a process whereby you see what percentage increase that NMFS projects for the following year, and then I would think that you would at some point have to step back and see what percentage increase means to the availability of fish.

Does that 10 percent increase in total biomass mean 10 percent more available fish? So, then when you did figure out the amount of available fish, I would think that we would need the Northeast Fisheries Center to help with that.

Then that would be the percentage that you would reduce, by the amount of available fish that are present in the stock the next year. Like I said, this idea is pretty much -- it's still rough and it hasn't been refined yet.

CHAIRMAN FREEMAN: The other thing, Jack, that the committee talked about is looking back the last three or four years and applying this. Now we know what occurred. If in fact we applied some of these factors, show perhaps what would be if we used different determinations.

I think the other thing, too, is in my opinion the target is a target. Some years you're going to go over a little bit and some years you're going to go under a little bit. We would hope that the plus and minuses would even out.

Bear in mind that last year on a coastwide basis we're under harvest by about 40 percent of that, and it's going to be that because of this variable about effort. You can never project or predict what that effort is going to be; and, again, under certain conditions it may go up.

But, the desire that I think we should strive for is that we should try to get as close to target as possible, realizing that you're not going to hit that number right on the head.

It's not going to happen because we don't know what the catch is after the fact and we'll get in also -- there was a question raised as to how quickly we can get the MRFSS information. Can we adjust during season, for example, and Maury Osborn will address that, and that's later in the agenda.

But we're looking at possibilities, and what the technical committee has said is, look, this isn't the end all and be all. We looked a first cut at this, we discussed it, we're

looking at what we have and what the techniques are, can you come up with an absolute formula and they're saying, no, you really can't.

But, there are certain things that can be done. There's also certain factors that should be and can be considered in your decisionmaking when you do make that; and I think as long as we are aware of those factors, that we could be much better at projecting what our targets could be. David.

DR. PIERCE: Thank you, Eric. Thank you, Bruce. That clarifies it for me. Thanks, Steve. Essentially what this is, well, it's a reiteration of the advice that has been given to us by Chris Moore for the last eight years or so where every year Chris says — I'm exaggerating; perhaps not eight years. It might be seven years.

But Chris always says abundance is increasing. You know you're going to go over. Catch is a function of availability. Therefore, be cautious. I think consistently the board has not been cautious.

We've taken the maximum. We've haven't said, okay, yes, that's a good concept and it makes a lot of sense; therefore, we will cut more than we otherwise would. We'll anticipate this excessive harvest because of availability.

So now Steve and the technical committee are getting right back to that particular issue, which is important, and, frankly, it may be the way in which we can deal with the overages and minimize the prospect for overages in the future as biomass continues to increase, and it might ease our concern about quota overage repayments.

That is Issue 2 in the addendum. There would be less quota overage to repay

because a state would be obliged to take more of a cut because of the increased abundance. There is a tie in there. It's not a direct tie in, but there is a relationship there. So, okay, thank you, that clarifies that point for me.

CHAIRMAN FREEMAN: I have David Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman, a couple of points. One of the points would be it is a new concept; and just thinking through it as it was being described, there are a number of ways you could apply it.

In other words, you could say that essentially you live under status quo regulations unless the overage is more than X percent. I'll just pick a number; I'm not advocating this.

If the imbalance is more than 5 percent on either an individual state basis or a coastwide basis, then that would trigger this type of methodology the following year.

So, in other words, it would force either the states or a region to be more conservative than they have been when they have an overage, and it also would provide, to me, a significant inducement for states to try to really be realistic to try to hit their targets.

Once again, it doesn't have to be an absolute. In other words, if you're trying to get to ten and you're at eleven, you might not have any pay back. But if you hit fifteen, it might trigger this, and, therefore, your regulations have to become much more conservative.

I mean, all of us around the table know the liabilities associated with MRFSS, and I think almost anybody around the table could

argue that they shouldn't be used on an individual basis or an individual state basis unless there is some type of long-term averaging or unless we do regional smoothing or some other strategy.

It seems to me what they have come up with is an alternative way to interject in the system a mechanism that would force us over time to stay within the bounds of what the allocations are, and I think most people around the table want to achieve that. I think there is some usefulness in what they have suggested.

CHAIRMAN FREEMAN: All right, Tom Fote.

MR. FOTE: Then how do you deal with underages? Like in New Jersey's case, we were under a large portion in 2001. Do we basically, when the fishermen tell me, well, you took off the 10 percent because the stock was increasing but we're still under, so would you get an extra 10 percent?

I watched the deliberation of -- Ed Goldman is sitting next to me and Ed serves on the New Jersey Marine Fisheries Council. When they looked at the tables that were presented from the council and from the commission last year for the conservation equivalency, there was a real heavy discussion that went on.

They looked at what the weather was last year, what the catch rates were, and what they felt -- and they went very conservative on the tables. They didn't take the suggestions and they didn't take even the close suggestions of what was on those tables, and they handled it in a situation.

Now it's going to be interesting to see what happens in 2003 and how far we're either under or over. I'm assuming looking at

catch figures -- and it's my feeling that we're going to be under again this year dramatically.

And after you do that for three or four years in a row, then the fishermen are saying, well, you're not letting me have the availability of catching the fish, and we get caught in that catch-22.

We try to micromanage to that point there. I think if you leave it up to the fishermen to decide to be more conservative, like they did on the New Jersey Marine Fisheries Council where they take all the factors into consideration because they know what is going to happen if they're over the following year.

They know they're going to have to take closed seasons. They know that the season is going to be stricter. But when we start doing percentages and we start dictating and we're going to end up with three or four years of underages, I'm going to hear some screaming on the other side of the table.

CHAIRMAN FREEMAN: Further comment? One point that I would like to reemphasize is the fact that the technical committee has discussed this. There's things that they need to continue to discuss.

As I indicated, they talked about the possibility of going back the last three years and putting some of these conditions into place and then projecting what in fact the catch would have been, and it's an estimation, to give everybody a feeling of comfort of how close or how far away we would be from the target.

They have not done that yet, and I'm not sure they can, but they're certainly willing to try. The committee still has some things to think about and to try and this is not the end

of their report. Let's move forward and I'll ask Bob to take this part.

MR. BEAL: Just real quickly, at the last meeting in June, there was a discussion on how conservation equivalency has kind of evolved over the last five or six years. What I did is at that meeting I committed to going back and looking at the process and just summarizing quickly what has changed in the process since 1999.

I think, as everyone here is aware, '99 was the first year we had conservational equivalency for summer flounder recreational fishery.

In '99 the states were allowed to either implement a 40 percent reduction in landings or implement a coastwide management measure. The states were allowed to select which approach they wanted to take, and in the memo there is a description of what the coastwide management option was.

In that year the bag limit and size limit tables that were developed were developed based on the intercept surveys from MRFSS, and all the data in that data set was used. I will explain later how those tables were modified.

This system where the states were allowed to choose either state-specific or coastwide measures resulted in the states picking the options that afforded their fishermen the most opportunities to go summer flounder fishing is really the way it was implemented.

So, you know, some of these years -- in '99 we had an overage. In 2000 the conservation equivalency program worked pretty much the same way as it did in '99. The states had to take a 41 percent reduction, or, again, implement the

coastwide management measures which are described here in the document.

However, the bag limit/size limit tables were adjusted a little bit to account for fish that were landed either below the minimum size or fish that were landed above the maximum bag limit that was in place that year.

So, for example, if a state had a 15-inch minimum size, but a number of fish came in in the 13-, 14-inch size range, the tables were adjusted to account for the effectiveness of the state regulations.

So, basically, if 10 percent of the state's landings came in under the minimum size limit or above the maximum bag limit, all the cells within the bag limit/size limit table were adjusted by 10 percent.

In 2001 the overall conservation equivalency program changed quite a bit. The coastwide option versus the state option was no longer available. The states had to implement state-specific reductions and the size limit/bag limit tables were again adjusted a little bit differently to account for the fish under the minimum size that were over the maximum bag limit.

And the way it worked now is that if a state had -- basically what happened is the Mid-Atlantic Council staff went back into the database and removed all those fish from the dataset, so any fish that were under, whatever, the 15-inch minimum size or whatever a state had, it was actually taken out and now the tables were developed just on the fish that were within the legal landing components of the state. This ultimately resulted in the tables being more restrictive than the previous approach.

In 2002 there was again another modification and that was the



implementation of what is called the total reduction formula. The way this formula works is what is realized is that the effects of bag limits, size limits, and the effects of season are not additive.

In other words, if you had a 10 percent reduction from season and a 5 percent reduction from a bag limit/size limit combination, the total reduction isn't 15 percent. This equation is used to account for the fact that you are only realizing part of your size limit and bag limit reduction because your fishery isn't open the entire year.

You can see in Table 1 at the bottom of this document that the overages and underages have changed quite a bit. In the last couple of years it has been getting closer.

This memo isn't to push either way. It's just a summary of what has gone on and just to make sure that everyone is clear on how the system has evolved over the last five years.

What we had in place for this year, 2003, is essentially identical to what took place in 2002. The tables are zeroed out, the states used the total reduction formula, and all states are required to take a state-specific reduction or this year some states were allowed to have increase due to underages in 2002.

So this is just a quick summary of what went on, just to make sure everybody is on the same page on how conservation equivalency has worked. If there's any questions, I can answer those.

CHAIRMAN                      FREEMAN:  
Questions from anyone? Gil.

MR. GIL POPE: Thank you, Mr. Chairman. My only question would be

knowing the uncertainties that we know there is with the MRFSS data, why would we pick one year instead of, say, multi-years or going back say three or five or whatever to try and even out some of the inaccuracies that eventually showed up with one state having to decrease by 40 percent and the next year they could increase by 40 percent.

In other words, there are these huge swings and these size limits that went upwards of 17 and a half or 18 inches in some states where they rarely see a fish that size. In your summary here, you didn't mention that and maybe you could clarify as to why just that one year was chosen. Thank you.

MR. BEAL: In other words, base the adjustments on multiple years instead of one year; is that what you're going at, Gil? The way it's set up right now is the fishery for the following year is adjusted for how the current year fishery has performed, and that's just the system the management board has set up.

Some of the concepts in Addendum VIII, which I think we're getting to next, if the board were to choose a pay-back approach, some of the options there average two or three years to determine how much of a payback, if any, a state should have.

But the way the system is set up right now, it's just based on a single year. It's the current year's performance and then you adjust based on the next year's -- you adjust the fishery for next year's recreational harvest limit. The reason it exists on a single-year basis is that is how the board has set it up.

It's difficult to take in averages since it is a changing kind of -- the targets change each year, in other words. The population

changes and each state's recreational harvest limit changes, so it's difficult to take into account what happened under a different set of management measures as the fishery changes from year to year.

In other words, if in 1999 a state had a one million pound quota or a 500,000 fish quota and they went over that by 10 percent, if they went over a 750,000 pound quota the following year by 10 percent, you can't really average those two numbers to be 10 percent since the total overage based on a percent is different for each of those years. The one-year system the tech committee felt is the most appropriate way to go.

CHAIRMAN FREEMAN: I think, just to add also, Gil, that one of the factors we have not been taking into consideration is year class strength. For a particular year there may be good recruitment; and when they finally reach the state's legal size, you may find that this year the fish are much more abundant of legal size than they were last year, simply because of the growth.

That's presently not taken into consideration, so that can account for these fluctuations where one year you are over and the next year you're under. But, that's another factor. Go ahead.

MR. POPE: Just to follow up. I guess I didn't ask the question correctly. The history was when this was done back in 2000 or 2001, wasn't there a single year picked by which the states would use? Was it two years or one year?

MR. BEAL: Gil, are you talking about 1998 being the base year that the states.

MR. POPE: Correct.

MR. BEAL: Yes, okay. The state shares or the share that each state gets is based on the performance of the 1998 fishery. That was selected by the technical committee because 1998 was the last year that all the states had consistent regulations up and down the coast.

So, following 1998 the regulations have been modified by conservation equivalency, so you really can't compare each state's fishery performance. In '98 the population is — that's obviously the closest year to now. That is the last year that we have with the population estimates that's similar to what we have right now.

So the tech committee has reviewed this a number of times and come back to 1998 as the best option rather than a few years. Actually, this board passed a motion at its last meeting saying that upon approval of Addendum VIII, Option 1, which is the 1998 base year for the state shares, would be the way that Addendum VIII was going to work. This board passed a motion kind of making that a permanent fixture in conservation equivalency.

CHAIRMAN FREEMAN: Gerry.

MR. GERALD CARVALHO: At the last meeting there were a number of issues raised about the accuracy of MRFSS data and how appropriate it was to attempt to determine overages and underage for the following year.

Have we done anything to clarify those questions, to answer those questions that were raised on its appropriateness of using that data? What are the limits in using that MRFSS data for management?

CHAIRMAN FREEMAN: Well, let me just say from the very beginning the

people that did the MRFSS data, the Fisheries Service, indicated that, look, if you use it on a coastwide basis, it's good.

If you use it on a regional basis, it's not as good, but you may be able to get by. If you use it on a statewide basis, it's not very good at all only because as you break it down to smaller units your variance increases tremendously.

So just because of the way sampling occurs, you will get variation from year to year, and it can be quite large. If you look at it over a period of years, probably on the average, it will be all right.

But from year to year, particularly in those states that have a relatively small sample size, you will get these ups and downs. That is just the mechanism of sampling. That's one of the problems we're getting into because, as Gil raised the issue, one year you're way under. You were under by 40 percent and the next year you're over by 50 percent. That's one of the problems.

Now on a coastwide basis, go back and look, your variation is --and also, the term "standard error" is used. It's probably pretty good. It's around 5 percent or so. On an individual basis, it may be up to 25 or 30 or perhaps more depending on the state.

So the further you get away from the coastwide, the more you're going to get these ups and downs. It's almost guaranteed. It's just the way sampling works, unless you greatly increase your sample size, which everybody is agreeable to do. It's just that there's no money to do it.

MR. CARVALHO: If I can follow through, Mr. Chairman, if that is true, then what takes place in a state based on that -- or

the lack of accuracy in that data where the following year, like what happened with Connecticut I guess it was last year, what the recreational community was complaining about is justified.

We're justifying these great big swings because of the quality of our data; and unless we change and go to either regional management or some other form -- coastwide management, but certainly at least bring it up to regional management -- these inequities are going to exist from one year to the next.

CHAIRMAN FREEMAN: Again, it's a function of your sample. And, again, if you look at it on a coastwide basis, one state on one end may have a very high catch and another state at the other end a low catch.

Over the course of time they tend to equal out, but that's one of the difficulties in using the MRFSS information at the present time.

If we quadrupled the sample size, you tend to dampen these swings. We saw it in summer flounder, Gerry. In Connecticut that occurred with scup, and it could occur with sea bass in any state at any time.

Those states that tend to have smaller -- I characterize it a smaller sized fishery in that it's not the major catch -- will also have these big swings. A state that tends to be the epicenter of the species when they occur inshore and your catch is large, you don't tend to see those swings.

MR. CARVALHO: Is it more appropriate, Mr. Chairman, that we change the management system rather than try to demand that we change or improve our data collection?

I mean, I don't know as we can do more or some of these states can afford to do any more from a data collection standpoint. So, we have relegated ourselves to a management system that I'm not comfortable with.

CHAIRMAN FREEMAN: Well, I think again -- I certainly don't want to enter any debate here, but the issue, as I see it, is that there is a considerable amount of judgment that has to be used when we start the season, and that really is predicated on the individuals in the state as projecting is the effort going to increase, do we think it's going to remain the same, are there fish coming into the minimum size that we're going to see more of, is the resource going to expand?

Those factors need to be taken into consideration. In the past, we've tended not to take that advice from the monitoring committee. It's been given, but we've tended not to do it. As the resource becomes more abundant, I think you're going to see the sample size somewhat increase.

I mean, sample size is really a function of how abundant a particular species is. The MRFSS information is a system we have. It's a sample as opposed to a commercial, which is a complete census.

Technically, commercially every fish you catch you're supposed to report, and by and large that is done. That report is taken by either the state or NMFS and it's just simply added on to every other state. So when you reach the quota, you reach the quota.

On the recreational side, there's no way we can sample every catch or count or census every catch and, therefore, we have the system we have, and that's the best we can

do. I know there's other people and I don't want to prolong this. Rick.

MR. COLE: Mr. Chairman, do you think it would be necessary to bring forth a motion in order to have the chairman of the monitoring committee provide us with that additional information in December that would detail to each state what their percent reduction would be given the increase in stock size as projected in the 2003 SARC document?

CHAIRMAN FREEMAN: Well, my feeling on that, Rick, would be to have the technical committee go back and look at, let's say, the last three years, and they can say, well, you know, if you reduce your estimate by 10 percent or 5 percent or whatever they recommended, you could go back and actually determine fairly closely what the catch would have been, and then bring that back to the board and we can look at it.

In other words, if we took their advice, here is where we would be. Here is where we were and here is where we could be. Then based upon that, we would have a feel for how good a job we could do with this additional advice or how poor a job and then make that determination.

If we felt that, look, this system works. If we simply use the advice, we'll be much closer than we have been. There's going to be times we'll be under a little bit and over a little bit, but they should even out so that everybody is treated the same.

Recreational harvest and the commercial harvest is attaining what we want it to attain and no one is slighted in this process.

I think the good news is that we're seeing an increase in the resource, and we can expect

to probably see a continued increase. We're not at MSY at the present time and we still can go up, so there is certainly room in this.

I would think that based upon retrospectively seeing what we could have done, I think the next meeting we should be able to come to an agreement of how well we could do and what the board wants to do in the future, and then pass a motion to take consideration as we deem necessary.

MR. COLE: What I had in mind and what I thought would be helpful, again in December is that as you know, we always get a table that shows each state with a percent reduction, if they need a reduction, that they're required to achieve in 2004 given the way their fishery performed in 2003.

MR. BEAL: Right.

MR. COLE: What I was thinking if there would be an additional column added to that table that just showed, given the increase in stock size that is being estimated for 2004, what the percent reduction would be to account for that.

CHAIRMAN FREEMAN: Or percent increase; we always talk about the reduction.

MR. COLE: Or percent increase, whatever it would be. I know that would help me, when I go before our recreational fishermen and try to formulate our management measures for 2004, telling them that you have to keep in consideration as the stock is growing, there is going to be more fish available, and this is the target that the monitoring committee is telling us that we probably should be actually shooting for.

CHAIRMAN FREEMAN: I think personally that could be done, Rick. I think

it would be advisable to do if that's how the board --

MR. COLE: Can you as chairman request that from the chairman of the monitoring committee?

CHAIRMAN FREEMAN: Yes.

MR. COLE: Without a motion?

CHAIRMAN FREEMAN: Yes, I would certainly do so. I would also indicate that in looking over what each of the states could have put in place for 2003, I don't think any state went the full amount, again, I think on a coastwide basis, except for we won't mention over here who -- but I think that was an unusual circumstance, and to be fair to Jack.

But every state has the opportunity to increase because of the increase in stock. No one took full advantage of that. Everybody held back and I think what Steve is saying is that if in fact we see a 15 percent increase in the stock, it doesn't necessarily mean a 15 percent increase on the recreational side.

It may be 10 percent or 9 percent, something less than that. Because of the fact that fish are more available, easier to catch, or at least more abundant, we have to take that into consideration.

We haven't been doing that. But again, looking at the most recent information, we're getting much closer to target than we have if you go back seven years, and I think we're just getting much better at predicting what the catch will be. Comments? Tom.

MR. FOTE: Bruce, but you would have to look at not what the tables we were given for that year, but what was actually

put in place and how do you rectify -- I mean, that's a real serious situation because what has happened then if a state is more conservative and actually rectifies, which table do you use for the following year?

Is it the table that he put in place or the measures that he put in place or she put in place that year? I mean, it winds up into a real difficult situation because you get penalized then if you were more conservative, and it goes to the following year and then we're looking at, well, we've got to take a 15 percent across, and you were already more conservative than the tables required the year before.

So, that's why I'm saying this is more complicated here because if you're going to go back and do a retro, you've got to put in not what was recommended under the tables, because I don't think New Jersey has put what is recommended on the tables for the last two years or maybe in three.

We've been more conservative by what was actually put in place by that state. So how do you rectify that? That needs to be done by the technical because they're only going to look at the tables they recommended for those years, not what was put in place and how it basically was more conservative.

Was it 10 percent, was it 15 percent more -- I would love to know how much we were more conservative last year than we could in 2003.

CHAIRMAN FREEMAN: I think, Tom, that can be done. Bear in mind this is not an absolute. There's no secret formula for this is the number and you put that in place and you're going to end up with that.

Again, the issue the technical committee talked about and the one they had the most

difficulty with was the effort and we're seeing shifts in effort.

The amount of time people spend fishing for that species has a great impact on what the eventual catch will be and that's difficult. It's weather dependent, it's availability.

If all other fisheries, recreational fisheries, for some reason are closed and summer flounder is the only thing available, chances are there would be a lot of people fishing for it.

If there's an abundance of scup or porgies or there's an abundance of sea bass and there is abundance of striped bass or bluefish, there probably won't be that many people, but that's going to be very difficult to project.

It almost is absolutely knowing the desires of the individual fishermen, and that's going to be hard. But, we've been through this now for a number of years, and in my opinion we're getting very good at coming very close to that number and a good example, again, was last year.

MR. FOTE: But if you put a number in a table and that number is there and you don't use that number in the table because it was maybe just a recommendation, somebody is going to wind up suing because you haven't been precautionary approach enough.

Basically that is what I look at down the road and I'll hear that coming back, that number, and they'll say, well, why didn't you use this because you went over the following year.

CHAIRMAN FREEMAN: Well, the only thing I could say is to look at those tables and see what you did and see where

you are; and then if there is a problem, let's address that.

You know, you can't project at this point what that is going to be until we look as to what we did. Each state knows how close or how far they were, and we can discuss that at the next meeting. Gil.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman, a couple of different points. One is I would just note that one of the reasons I think we've had recent improvements is because both the Mid-Atlantic Council and the commission started talking about a recreational payback.

We made it very clear to each other at the last board meeting that if you were over this year, you were going to have to pay it back next year. That's what we all said.

We haven't figured out how to do it, but we said -- so people went back -- at least I know we did -- and had very candid discussions with our constituents and said we don't want to go over because we don't want to penalize you guys a great deal, and I think most of the states did the same thing.

The second point is that I would agree with Rick Cole that I think it would be handy to have that analysis done, but to me there is still this technical issue of do you do it on a year-by-year basis and try to make that work on a year-by-year basis or you develop some kind of longer-term strategies, recognizing that some years people are going to be over and other years they are going to be under, and what we're trying to achieve is kind of a long-term average.

Personally, I am less concerned with a state being slightly over as I am that that state meets their target over some longer period

of time, because we all know the vagaries with all of this.

And the last question would be if we followed Rick's request, my request would be I would ask for that retrospective analysis to be done prior to December since it's all going to be based on old data, do it and send it out so that we can all look at it.

I guess my question to you, Mr. Chairman, is would that be an available methodology for us to use when we do the recreational specifications this year or is that going to require some kind of plan amendment, framework, addendum?

CHAIRMAN FREEMAN: Well, let me just answer the first part of that. I would anticipate that information being available prior to the meeting so that it would be -- it's not going to be handed at the meeting and you have to make a decision, but you would be able to look at it beforehand.

That information would be with you so a decision could be made and it could be an intelligent decision. I'll let Bob answer the other part about an addendum.

MR. BEAL: On the process question, the way that conservation equivalency is set up right now, the commission has the ability to take into account all of the available data. You know, if there is a new approach and we've modified the tables a series of times and different equations, and this is really an extension of that.

It's another way of looking at the available data, looking at the past performance and determining if there is a way to modify the approach, and it does not take an addendum. It just needs to be a clear process established

by the management board and agreed upon at the December meeting.

CHAIRMAN FREEMAN: Let me get Steve and then I'll go back to you, Dave.

MR. DOCTOR: The analysis is really in front of us already. In ten of the twenty-three years since 1980, the recreational percentage exceeded the requirement of the plan. So, in thirteen of the years, the commercial percentage exceeded the plan. So for a long-term basis, we're in pretty good shape.

When you get to seven of the last ten years, the recreational quota was over the percentage; and then you get to the last five years, the recreational was over the percentage for four of the last five years. So in the case where the recreational quota was exceeded, it will be closer.

In the case where the commercial percentage was higher, it will be less close. So in four of the five years, you're going to be closer to your target, and one of the last five years you're not going to be closer to your target. You're going to be farther to your target. So, in summary, the analysis is pretty easy to do.

MR. BORDEN: Mr. Chairman, given the fact that I can see Gil gyrating in his chair in anticipating of speaking.

CHAIRMAN FREEMAN: He does that quite a bit though.

MR. BORDEN: I will forego my opportunity.

CHAIRMAN FREEMAN: Go ahead, Gil.

MR. POPE: I'm just curious as to why you would go back to 1980 and call it

because there wasn't a plan then. The data from 1980, I guess there was some MRFSS data, but it wasn't that good.

But, I'm curious as to why you would go back to 1980 to then, and yet at the same time you said that 1998 was the last year that we had coastwide regulations so that's the reason that you chose that year.

I understand that. But prior to that, '95, '96, '97, and so on back, did the way that the MRFSS data was taken or was done, did that change at all?

In other words, what I am trying to do is I am wondering why you would pick one year knowing -- like in the case of striped bass in Massachusetts one year it was here and then it was down and it was up and down -- why you would want to even pick one year, why you wouldn't include, say, four or five years when the regulations were all the same back to maybe '92 when the first year came in.

I didn't understand the logic, and that's part of what I was hoping that I could get from Bob Beal as to not only what happened and what got us here, but what the logic behind picking that one year was other than just saying that it was the last year.

In everything that we do, we try not to pick one single year, like it got us into trouble when we did the eight-plus in the striped bass. We found out the next year that we really didn't go over.

And, Number 2, we're always saying sometimes, well, we can always go back and fix it later. Well, this is one of those times when I really think we do need to go back and fix something that really should not have been done in the beginning. Some of the logic that was used there, in my mind, is flawed. Thank you.



CHAIRMAN FREEMAN: Let me kind of just change the flavor of this a little bit. Maury, if you would come forward, we probably should have asked you these questions. She has some other commitments and I want to make sure she addresses the issue.

Two things. One, you may want to comment a little bit about the MRFSS, if you so desire, but the question that was presented to the board was can MRFSS information be obtained earlier than December.

The framing of the question was, well, can a state make some in-season adjustments, for example, if by mid-August -- no, let's say end of July -- its catch rate has gone through the roof, is there a way of determining that, and, therefore, the August and September catches could be modified.

That was the reason we're asking. How quickly can that information that is collected be available? Can we do it faster than what we're doing it?

MS. MAURY OSBORN: Thanks, Bruce. I think it's going to be very difficult to use the MRFSS to do in season adjustments within a year.

For summer flounder, the May/June estimates for Wave 3, about the earliest you can reasonably get them, if the MRFSS team drops everything and focuses on getting those, is basically about mid-August, early to mid-August.

By then you're well past most of your season, I think. I mean, I'm not a summer flounder expert, but the name summer flounder does imply something there. For July/August, the catch for that period, you're not going to really know anything until mid-

October at the earliest. I think it's very difficult.

Then you also run into the increased proportional standard error. I've heard a lot about the variance of the survey and the precision. The survey for private rental boats and shore-mode fishing is accurate, but then you do have to worry about the precision levels, which are proportional standard errors.

Now, the fishery also is quite variable because of all the things that have been mentioned today, and for one particular state that harvest can go up and down because of effort, and effort then depends on the weather, it depends on social economic conditions.

I mean, after 9/11 we saw a big drop in fishing like you would expect. There's a lot of things that go into effort and it's something that -- the technical committee is correct. It's real hard to project what is going to happen, so you kind of have to go on the previous year.

Now, I will say that since 2002 the ACCSP has added on to the MRFSS sample size in the Northeast states from Maine down through Virginia, and that has brought about an improved level of precision and proportional standard error for the MRFSS estimates.

I think I gave some stuff to Bob and to Harry the other day where we kind of looked at the MRFSS estimates on a state basis by year.

For most of the Mid-Atlantic states and the other states where there is significant landings of summer flounder, the proportional standard errors are under 20 percent. However, that's on an annual basis.

If you start trying to use the MRFSS in season, then those PSE's do go up. I'm not sure how dramatically, but they do definitely go up.

So, hopefully, that answers your question, Bruce. I think it is perfectly appropriate to use it to adjust from year to year looking at an annual year's basis of data. I think you start getting much more iffier trying to use it in-season quota.

For in-season quota monitoring, you really need some kind of specialized survey that relies on permits and immediate reporting and things like that. To do that, you also need hundreds of thousands if not millions of dollars. So it's not really a question.

I think a couple of things are going to come into play though in the next year or so that will help the situation. That's no comfort today, but this year the for-hire methodology is being changed, and I think you will see much more accurate and precise data for that fishery, and that started in June.

I don't think those estimates are going to be available as the formal estimates -- I'm not sure when that is going to occur for the 2003 data. There's only a half of year that that has been in effect, and you kind of need some time to work out the bugs.

But certainly for 2004 for the charter and headboat fisheries, those estimates are going to be much more accurate, and I believe much more precise, and for headboats we'll have a really good estimate of bycatch because they're using at-sea observers.

Another thing that's going to come into play that may be of use to the technical committee and eventually this board is we've got a contract this year to use the

MRFSS data and to develop some bag limit analyses.

I think a lot of people are familiar with the MRFSS page where you can get a lot of information. You can get estimates and PSE's and you can get length distributions, but the bag distributions are catch per person and then the ability to apply a bag to that has not been available.

We're paying for contract work this year. It's in progress and it's been slowed down because of some variance issues, but this program will allow you for any state, for the coastwide or whatever you want to use, for any year's worth of data to say, okay, what is the current catch per person and then what happens if you apply a bag limit of nine, eight, seven, whatever.

You can do multiple simulations. You can also plug into that analysis, if you reduce the bag limit by one fish per person, how many of those fish are then available to be caught by other people that didn't get their full bag limit, and you can insert a percent of zero to one hundred.

That may be useful in trying to simulate some of these things on stock availability and things like that. That may be very useful for the committee. I'm certainly willing to try and push that effort along.

I'm not sure when you'll be doing these analyses for setting the season for 2004, but we can try and see how far we can get to make that available to you.

CHAIRMAN FREEMAN: Thank you, Maury. Would that apply to both sea bass and scup as well as summer flounder? Are we talking just on a species-by-species basis or would it simply be the sampling they would do within a state?

MS. OSBORN: It applies to all species.

CHAIRMAN FREEMAN: Because I see, you know, summer flounder is the one we've been concentrating on, but quite frankly it's really no different than sea bass or scup, which are three of the principal species in the middle Atlantic. We have the same problems with those. It's just that we've concentrating on summer flounder.

MS. OSBORN: Sure. No, the increase in sample size, the new methodology, and the new bag analyses would apply to all of the more common species.

CHAIRMAN FREEMAN: All right, are there any questions, Harry, would you like to ask.

MR. HARRY MEARS: Thank you, Mr. Chairman. I have a question for Maury. The increased sampling you referred to that allowed the lowering of the errors associated with the annual estimates, is that a permanent enhancement to the survey or is that time driven for a number of years?

MS. OSBORN: It was first made available I believe in 2001. It's somewhat dependent upon the level of funding that ACCSP gets. It's dependent upon how many proposals come in from all of the partners for ACCSP implementation and what priority the operations committee and coordinating council place on those proposals.

Since 2001 we have gone with the recommendation of 50 percent increase across the board. For 2003 it was a 50 percent increase for private rental boat and shore, and it was a 60 percent,

approximately, for the charter boat and headboat to try and help implement the new methodology.

I think the proposals that are on the table this year are for a hundred percent increase on the private rental boat and a hundred percent on the charter head boat. I am not a soothsayer, so I can't tell you what the operations committee -- you can ask that guy sitting next to you and Charlie maybe have a better idea on what will get funded.

But, I would think that we would probably at least continue the current levels. This year we also have something like thirty proposals totaling over \$7 million.

In the past, we've barely had enough proposals to eat the money up after we've thrown out some that didn't look so good and stuff. So, there is going to be a lot of fighting for that money this year. I can't tell you how that is going to come out.

CHAIRMAN FREEMAN: Other questions? Tom and then Gerry.

MR. FOTE: Maury, one of the things that I have always wondered about is because I always think -- unlike some people, I always think we underestimate what the recreational sector catches on a lot of these species.

If we ever got a true reflection of actually what is caught, how do we handle that because it's been going on for years? It means that we've either totally underestimated the stock assessment for those years because we've been catching more fish out and we haven't been recording them.

Are we basically going to run into a panic situation and say, oh, the catch has jumped

from this year by 50 percent because we have better data or are we going to just go back and look at what has gone on for the last ten years and say we were underestimating the catch because of these reasons.

Maybe we underestimated the stock size and we don't need to do all these paybacks. That is my concern because sooner or later we're going to wind up in that situation.

MS. OSBORN: Let me address that separately for the recreational shore and private boat and then I'll address the charter and headboats.

One of the benefits of a program like the MRFSS, where you have a long time series, is that time series is feeding into the stock assessment.

If you don't have major changes in the methodology, then what you're going to see from year to year are really changes in the fishery based on weather and socio-economic events and all kinds of things like that.

The MRFSS has been reviewed numerous times. It is accurate. It's designed to be accurate for the private rental and shore fishing mode. So, adding sample for that, all that really does -- and I'm speaking for the more common fish.

If you have very rare species that don't occur very often, the MRFSS doesn't do a very good job of that and everybody kind of knows that. But for more common fish like striped bass, summer flounder, if they're in reasonable catches by the recreational fishery, increases in the sample size will increase the precision of the estimates.

It will not change the point figure or the accuracy of that estimate. Now, the more sample size that you have, even lesser species that aren't caught as commonly will improve and you may start seeing -- one example is for striped bass, when they had the ratcheting down of the regulations through time and ending in an eventual moratorium, the precision on those estimates got really, really wide.

Then you started seeing some of this up and down fluctuation because you either hit them or missed them and that was a function of the fish just not being that common in the catch because of all the regulations and the real short seasons and things like that.

So for the MRFSS, the time series, there has really been no extreme changes in the time series or the way the survey has been conducted since the beginning days.

There was a change in the estimation procedures back in the early '90's, but they have gone back and redone all of the historic estimates, and I believe they have all fed into the stock assessments at this point.

Now for the charter and headboat fishery, the MRFSS has not been accurate for most of the history of the survey, and that is simply a function of the random digit dialing survey. You just don't hit fishermen that are using charter boats and headboats.

They are coming from out of state and they're coming from other areas and they're not local. They're tourists. So, the estimates for the MRFSS for that fishery have been even more variable and very fluctuating and very variable and have a very wide precision for the most part.

This new methodology that is taking place in 2003 will probably change whether the

estimates are down here or up there. The accuracy is going to change and the point estimate is probably going to shift.

One of the standards of ACCSP is to provide benchmarking. So for at least the foreseeable period of probably three years, we will continue to produce MRFSS estimates made the old way, plus the new methodology.

We'll also be doing some benchmarking against the vessel trip reports in the Northeast and the Beaufort Headboat Survey in the Southeast to be able to feed into the stock assessments what is this going to cause to the use of the time series and things like that. Does that help?

MR. FOTE: Since you opened that question, when you basically look at like, say, a state like New Jersey where there is a lot of boats, that if you look at the boats where they're registered, they come from Pennsylvania.

They basically are not -- they fish out of New Jersey. They come down to the shore, they go fishing, and they leave their boats there, but they live in Philadelphia and they don't get really -- how much so?

MS. OSBORN: Okay, are you talking about like private boats?

MR. FOTE: Yes, and charter boats, also.

MS. OSBORN: Okay. Well, charter boats, if they're fishing down there, they should be included in the new methodology and be part of the telephone survey and included.

For the private rental and shore fishermen, out-of-state people are adjusted for using a

ratio from the intercept survey. As long as you still have a good amount of people that are fishing that are from the coastal area, like you do in private rental and shore fishing, those estimates and those ratio adjustments that are made for out-of-state people work quite well. So, it's not really a problem for the private boat and shore fishing, it really isn't.

MR. FOTE: Just one more follow up. When the private boats are docked at marinas, but a lot of the private boats in New Jersey are at private homes. They don't get intercepted because when they basically catch their fish, they bring it back to the house and there is nobody going in private houses because, first of all, the ways the laws are written.

MS. OSBORN: And that is one of the areas that we have identified as needing research for the MRFSS because right now their effort is adjusted based on the intercept survey, and we have to make assumptions that people that are coming from private residences in their boats, docking there and stuff, have the same catch rates and they're having the same target species and the same effort.

That assumption has to be made. It is a very difficult problem because you can't trespass on private property. It's very expensive to try and put people out on boats to intercept them. It's a very difficult, expensive problem to address, but it definitely is a problem.

I know, from looking at the data, that Pennsylvania people do make up I think about 10 percent of the angling effort on the Mid-Atlantic; and for out-of-state people, they make up 50 percent of the out of state folks, but they do make up about 10 percent

of the effort. That's coming from the intercept survey, however.

CHAIRMAN FREEMAN: I have Gerry and then Pete Jensen.

MR. CARVALHO: Thank you, Mr. Chairman. It's my understanding that these numbers get reformed over time as we gather more information. If we used a year like '98, has that number been reformed before we use it?

MS. OSBORN: Well, the MRFSS goes through quality control checks within each year. They have wave meetings, they have all kinds of automated programs. There's a whole lot of scrutiny for each of the estimates.

Occasionally something will pop up that nobody caught from years back and they'll go back and re-estimate the data, but that is pretty rare. Whatever '98 is now I think is probably -- I can't answer you if '98 was adjusted. Usually those kinds of corrections are based on one or two single datapoints and they don't make a big change in the estimates.

The change that was done in 1995 was to the estimation procedures, and all of the data were adjusted at that point in time, and then they're using the new method as they move forward from 1995.

I don't think that would play a big part in all of this. I think there's a whole lot more uncertainty associated with year- to-year fluctuations in the fishery on a state-by-state basis.

CHAIRMAN FREEMAN: Okay, Peter.

MR. W. PETER JENSEN: I have a question about the environmental assessment, whenever it's appropriate. I don't have any questions for this.

CHAIRMAN FREEMAN: Any other questions of Maury? One quick one, Gil.

MR. POPE: One quick one. I noticed that we're using 1980 to '89 as the base years for winter flounder. Yet, when you go into the MRFSS query, you only go back to 1981. Where did the information from 1980 come from, or '79 with this fluke information? I can't find it anywhere.

MS. OSBORN: It's probably coming from historical documents. What happened was that in 1995, when we went to the new estimation procedure, it requires more detailed data from the telephone survey in terms of how many households in each county were surveyed and how many of them fished.

Those data don't exist for 1979 and '80. They weren't part of the deliverables for the contractor. So using the new methodology, you can't go back and redo the estimates. That's why on the MRFSS page, the web page and stuff, it's 1981 forward.

When the estimation procedure was adjusted, basically there were some assumptions involved that rural counties fished at the same rate that urban counties fished at, and we looked at the data and it wasn't correct, so the new method takes that into account.

What we did find, in looking at the data, was that there was not a one-way bias either way. It varied from state to state depending on what the makeup of their metropolitan areas were and where the coastal populations were and things like that.

In most cases it was less than a 10 percent shift, but that's why -- I'm sure that any data that is there is based on the old estimates and some of the old documents that exist.

CHAIRMAN FREEMAN: Thank you very much. We've got to move on. Peter, you had a question.

MR. JENSEN: This is really just an attempt to put something into perspective. The environmental assessment concludes that even with the history of overages in the recreational fishery, the stock has shown continued improvement.

Then it concludes that the impacts cannot be considered significant, and any overages that might occur in 2003 are also not considered to be significant.

Now, we've all struggled with the idea that the science hasn't really kept up with how fast this fishery stock is growing. I mean, every meeting we hear anecdotal information that says it's really growing faster than the science indicates, and so here we're having a discussion on some very fine points.

Steve, if I understand it, the current biomass is 56,000 metric tons, projected to grow to 65,000 metric tons next year. Is that right?

MR. DOCTOR: That's correct.

MR. JENSEN: A 16 percent increase, I believe.

MR. DOCTOR: Let me check the numbers, 63.6 as best.

MR. JENSON: Okay, so just to keep this in perspective, in the case of a 4 million

pound overage by the recreational fishery in 2001 and overages before that, we're still projecting that stock is growing at about a 15 percent annual rate, and I think it keeps growing at that rate, right, for the next year based on the projections?

MR. DOCTOR: The following year they have a 10 percent projection. As the bulk of the stock gets larger and larger, the percent increase will go down slightly. But, you're correct in your numbers.

MR. JENSON: So we've already established we're not very good in projecting when in fact it went over a hundred percent one year and 50 percent another year, so we've already established we're not very good at that.

I question why we're having this very detailed discussion about all of this information when it really isn't leading us anywhere. This board has made a number of decisions in the past that didn't follow the monitoring committee or follow the science directly, but they turned out to be the right decisions.

So I'm just making an argument let's not tie this down too tight. Let's give the states the ability to make the kind of right decisions they've been making all along.

CHAIRMAN FREEMAN: That leads us into moving forward. The question I would ask the board, is there any action that the board wants to take on this Addendum VIII or do we continue as we had indicated?

The technical committee will complete a little bit more work, bring this information back to us prior to the December meeting. Any feelings on that? Eric.

MR. SMITH: If the technical committee thinks they can be productive in giving us more information on this whole raging debate, fine, but I would rather not waste their time. I haven't yet seen a reason that the remainder of Addendum VIII is worth passing.

I don't want to be presumptuous in offering a motion to not pass something. At worst it appears punitive, which is unfortunate, and at best the science isn't sufficient to underlay what we want to do with it.

I think we should put it to bed and not proceed with it. If that saves the technical staff some time and further analysis, then that's good, because they've got other things to do as well.

CHAIRMAN FREEMAN: I'll just ask for comment from Bob and then David has a.

MR. BEAL: Just quick as a reminder as kind of where we are on Addendum VIII, there's four issues in the document. The board took action on the first issue at its last meeting.

There is going to be a document called Addendum VIII and we were trying to decide on what the three remaining issues are going to look like.

At the bare minimum, Addendum VIII is going to be that the 1998 base year is used as the base year to allocate the recreational shares. You know, there's questions on -- the remaining three issues are on the repayment issue, and those are the ones that the board needs to either address today or I think clearly spell out what they expect from the technical committee and do that as quickly as possible. Addendum VIII has been out there for a while and it needs to be

resolved prior to the end of this year definitely.

CHAIRMAN FREEMAN: David and then Jack.

MR. BORDEN: I would just like to speak to the point that Eric raised, and it seems to me that the bulk of the discussion the last time we had a board discussion of this was that -- and this was the reason we started Addendum VIII was we had a history of the recreational fishery being under and over.

But on average, I think, if my memory is correct, over four or five years they had been 26 million pounds over. We have a split in the plan that calls for a recreational and commercial split, and the recreational fishery had been exceeding that split.

I think the bulk of the discussion was either you have to do something to address that imbalance or you really ought to go back and amend the plan and say we're not going to adhere to that split.

I myself advocated a strategy of a long-term payback, recognizing some of the points that I made before, that some years the recreational fishery is going to be under and some years it is going to be over.

I think what you have got to do is take a long-term perspective on them reaching their target because of all the vagaries that are associated with the data collection methodology.

But I, for one, am not terribly interested in having the recreational fishermen or the commercial fishermen over their sharing amount. Otherwise, it becomes a meaningless part of the plan.



If it's a part of the plan, it ought to mean something and we've got to hold the constituency to it; and if it doesn't mean anything, then why are we holding the commercial people to it?

It should go both ways. If we were talking about commercial fishermen exceeding their TAC, I would argue strenuously against that, and I have the same position on the recreational fishermen.

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: My concern is that at the last meeting we held the public meeting and took comments on Addendum VIII and then chose not to make any final decision on those three remaining issues.

I think a lot of members of the public were upset with us for not having done that, and now I'm hearing we're not going to make a final decision. It was put off until this meeting and now we're not going to make a final decision here today.

I would expect those people to still be quite upset. If we're not going to make a decision today, when can we tell the public they will or should expect a final decision on this?

CHAIRMAN FREEMAN: Well, that's a decision that the board is going to have to make that I would have to leave to you. I'm not going to answer that.

MR. TRAVELSTEAD: Can the final decision be made today?

CHAIRMAN FREEMAN: The board can take whatever action it deems necessary.

MR. TRAVELSTEAD: Well, I, for one, think we ought to let the rest of

Addendum VIII go by the wayside. You know, we heard a lot of comments at the last meeting about the inaccuracy of the MRFSS and why it shouldn't be used for all the reasons we're trying to use it for.

I think the instructions you gave the technical committee earlier to pursue other measures that are not found in here is probably a better way to go than to try to wrangle with all of these options here. I don't know if there is any interest on the part of the board to do away with this or not, but I am certainly interested in doing that.

CHAIRMAN FREEMAN: Eric.

MR. SMITH: Thank you. I agree with David Borden if there was a solution to this problem, but we have wrestled with it from April to now and there doesn't seem to be a solution to it.

That's why I said if the technical committee feels that there is something productive they can continue to explore that is going to be useful, then we should table this and let that continue, but I haven't even heard that, really, other than the one approach about the adjustment of the percentages.

I believe the way to deal with this problem is to be more aggressive in the annual specification process and setting measures that we actually think are going to come close to the target each year.

We're still going to go over and under because of all the things we've talked about before like weather and people's behavior fishing for different things that we can't predict at all, and therefore it's never going to be a — we'll be lucky if we hit close to the target each year.

But if we're consistently having overages, that may be because we're consistently not setting aggressive enough measures in December or whenever we do it. My preference is to do it at that point.

We'll fight the same battle with the same people, but at least we won't be arguing it based on a payback strategy that doesn't seem to be defended by the kind of data we have, and I would rather argue the measures at the time we need to set the measures.

I tend to agree with Jack, but I'm not tending to offer a formal motion to not do something because I guess I haven't got still a clear signal whether the technical committee feels that there's something else they could be productive with.

CHAIRMAN FREEMAN: Pat and then I have Dave Pierce and Dave Borden.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'll take the bull by the horns. Sometimes you've got to have the guts to stand up and do it. I've been a proponent of accountability and I think Gordon has and Dave has. A lot of us have been a proponent of accountability.

If the recreational folks go over, somehow it has got to be adjusted. If the commercial guys go over, it's got to be adjusted.

However, in having some conversations with Gordon recently before I came down, and talking with Byron and also with Brian, I think there are several major issues that have been brought to the table in the discussion we've had so far.

Basically, we have a lack of the inability to make an in-season adjustment, a major problem. We've talked about a possible three-year payback scheme and that's

questionable. We talked about the possibility of a 10 percent delta forgiveness of some form.

We questioned MRFSS, yet it's all we have. At the state level, on a state-by-state basis, it's a problem, very problematic. The catch data is suspect. We didn't go over last year.

We don't know if we're going to go over this year, and I think the probability of not going over this year is probably pretty good. The technical committee really hasn't come forth with anything new.

Lacking their proposals and really formal guidelines, I think we really have to table this. And if you're ready, I would like to table Addendum VIII, the portions that remain, until such time that Amendment 14 is on the table and we're able to address the remaining issues.

I would hope someone would help me formalize that. If you have any ideas or suggestions to that motion, they would be welcome. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: We're just trying to analyze where we are in this. At the last board meeting, we made a motion to table to this meeting or until the committee has completed its report. The committee has given us a partial report. There's some additional work they could do, but that's a determination of whether you want to accept that as a completed report or not.

It would seem to me, Pat, if you want to make a motion, rather than essentially table this to Amendment 14, is simply a motion to remain status quo on the other three issues, which would just keep us where we are now.

I would indicate that at the October board meeting with the Mid-Atlantic Council, we intend to discuss a number of issues that have been raised over the last several years and to ask the board and the council, look, these are the issues and we want to make sure these are going to continue.

Obviously, Rick is going to be involved in this. We've been discussing this. We need to then set the priorities because we're not going to get them all done in one amendment. Then that will set the tone for how we're going to proceed and we'll have a timetable for doing that. This could be included in that.

I mean, you could essentially just vote on status quo and then under 14 readdress the issue, if that's something you want to do. Again, you heard the technical committee report. That advice could be given at the same time so far as how we're going to deal with the future recreational catches. But that's up to you, how you want to do that.

MR. AUGUSTINE: Thank you for that clarification, Mr. Chairman. It sounds like the right approach. I just want to make sure that the accountability factor doesn't get lost in the dust.

CHAIRMAN FREEMAN: No.

MR. AUGUSTINE: And I do agree with what Rick said; and as a part of the Mid-Atlantic, I am going to be a party to whatever they do in that part of it, too. So if you think just by making a motion to remain status quo, do we need a date certain in there or not?

CHAIRMAN FREEMAN: In my opinion, no; I mean, unless you want to put one in. You don't need one.

MR. AUGUSTINE: **Okay, just to make it a clear motion to do that, then I move that we remain status quo.**

CHAIRMAN FREEMAN: On the three remaining issues of Addendum VIII.

MR. AUGUSTINE: **On the three remaining issues of Addendum VIII.**

CHAIRMAN FREEMAN: All right, that motion is made and **seconded by Jack Travelstead.** Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. This issue has been on the table for going on two years now, and you all developed a problem statement about it. You tasked the plan development team as well as the staff to come back and give you some options to address the problem.

Sitting here today, I'm trying to sort through in my mind what has happened. Has the problem gone away or have you all now decided that you don't want to address the problem? I would suggest that your answer to that question may guide you in what action that you take.

I suspect that you should give yourselves the option to get back to this problem in a fairly easy and quick way. What we heard today was that prior advice from the technical committee hadn't been followed, which contributed to the symptom that you see; and in Table 1 that Bob Beal provided, '96, '97, '98, '99, 2000, and 2001 there were overages, which in 2002 there were not overages.

So, the notion of turning back to the technical committee and say give us new advice without having a discussion of what the binding nature of that advice is going to be to the states seems to me to put you right

back in the situation that you were two years ago where some states were following advice and other states weren't.

So my concern, Mr. Chairman, or my suggestion to you all would be to proceed in a way that gives you flexibility to pick this problem up, unless you conclude that the problem has gone away. Thank you.

CHAIRMAN FREEMAN: Jack, since you seconded, I'll just go to you.

MR. TRAVELSTEAD: In response to Vince's questions, in my own opinion the problem has not gone away, I mean, perhaps temporarily, but it's probably going to resurface at some time down the road.

But, the problem I have is that the solutions that are offered in Addendum VIII I have decided aren't appropriate. I don't think they're the right solutions.

Perhaps the information that the technical committee has looked at to take into account the increase in population size and things of that nature is something that we should pursue and that might ultimately be the solution by adding yet another level of conservatism in what we do each year when we set our regulations.

But, what I see in Addendum VIII doesn't appear to work for me at this point, and that's why I seconded the motion to table this or to go with status quo until we can hear what the technical committee has to say, and then we come up perhaps with a different version of Addendum VIII or Amendment 14 or whatever vehicle is necessary to do it.

CHAIRMAN FREEMAN: I have Dave Pierce and then Pat and then Gerry.

DR. PIERCE: I would like to be consistent with my position on this part of Addendum VIII, and that consistency would entail my not supporting the repayment strategies as described in the document.

Clearly, there needs to be accountability. These overages, significant overages cannot be allowed to continue. But, you know, what we have in this addendum now just doesn't do the trick. I've given this quite a bit of thought and my position on this really hasn't changed.

Reliance on PSE's, to me, that's not a wise way to go. I'm going to be consistent relative to that position. I would rather not repay. I would rather, as Eric said, prevent the need to repay. That's the best strategy. It's the simplest strategy.

It makes the most sense; and, frankly, after hearing what Steve said, after the clarifications, it seems that is the way in which we must go. Granted, more work is needed by the technical committee.

This was a conference call. I mean, they haven't had a chance to sit down and really chew on this. But, with increased abundance, increased availability, the likelihood for increased catches, so that should be accounted for by there being a more conservative approach up front instead of our taking a risky approach and then ending up with some sort of a repayment that compromises everything we're attempting to do. The commercial fishery pays a price and we don't rebuild as fast as we should.

So to my way of thinking, let's not focus on repayment. Let's focus on not allowing the overages to continue. Therefore, the motion is attractive. I don't want anyone to think that by my supporting status quo I am not

wanting to hold the recreational fishery accountable. That's not the case at all.

I would support this status quo motion, but with an understanding that we need to be aggressive relative to our preventing the overages and not letting them happen by our giving as much as we can to the recreational fishery and hoping that things don't go wrong, even though we know they will if abundance is high.

Notwithstanding your earlier points, Mr. Chairman, about weather and what have you, that's always a legitimate concern and we could end up making a mistake, being more conservative that is, because of weather, but that's unpredictable. That's my position on this aspect of the addendum.

CHAIRMAN FREEMAN: Okay, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. In regard to what Mr. Travelstead said and Dr. Pierce, I think they eloquently described my concern that we don't want to forget accountability.

And, Mr. O'Shea, I am absolutely convinced that we're concerned about it and that the management plan, if it is working, and indeed it appears to be working, that we stay the course and continue to be as conservative as we can and at the same time try to come up with an additional or different solution. I'm ready to call the question.

CHAIRMAN FREEMAN: Okay, I have a couple of people on the list yet. Gerry, Tom, and then Gil.

MR. CARVALHO: Thank you, Mr. Chairman. I'm not convinced that the problem is solved. We had five years of

overages at 26 million pounds. The commercial fishery was negatively affected by this and the consumer was negatively affected by this. They didn't get their fair share of the fish.

There has been a lot of talk about changing this and looking at these things differently, and this one year past shows that we're improving, but I'm not convinced that the problem is solved.

I came here today with the idea of supporting Issue 4, allocation of the commercial quota based on total allowable landings calculated without recreational overages, something, because this is inequity.

It's not the recreational people's -- they didn't cause the problem. They followed the rules. It's the management that has caused the problem.

We've caused the problem as managers and we've done an injustice to the other user group, the consumer and the commercial people, and I'm not convinced that the problem has gone away. I don't think this should go away until we're all convinced that the problem has been solved.

CHAIRMAN FREEMAN: I have Tom.

MR. FOTE: In 2001 we addressed I think a large part of this problem. We did put a payback scheme in place. The payback, if you went over in one year, you were going to have to have a reduced season and pay the overages in the next year because we went by state-by-state conservation equivalency.

So when fishermen look at what they're going to do for a season, they realize if they go over, the next season is going to be a lot

shorter and a lot worse than it was, and that's whether you pay back or not because you're paying back what the tables say.

We have that by state-by-state conservation equivalency. So there is a payback scheme in place right now. It's having consequences in the following year if you go over in a certain year, and that's only on that state that goes over.

That is what played into the decision-making process of a lot of people and I think a lot of states did that. The fishermen looked and said we would rather not go over and be close to where we're supposed to be because we don't want to suffer the following year and have to go with different tables and reduce our percentages.

That's when the states started looking carefully. That's why we didn't go over in 2002 and I think that's why we won't go over in 2003 and 2004.

I might be proven wrong if some other factors come into place, but I think the recreational angler knows out there now that if he goes over, it is going to cost him next year because it's going to cost him.

If he's over next year, that table, that reduction, as some states found out, is going to be dramatic the following year, averaging 15 to 20 percent over, so they're looking at being conservative.

They're also looking and it's nicer for them to be more conservative on themselves than us directing it. I think that's what they've done for the last two years, and I want to see that continue because when they go under by 30 percent and 40 percent for two or three years in a row, they can't blame me. They blame themselves because that's what

they wanted to do, and I would sooner be in that position.

CHAIRMAN FREEMAN: Okay, Gil.

MR. POPE: Actually, now we really do have nothing in place, nothing formally in place. We do have a situation where we have, as Tom suggested, if the state goes over, then they are given another set of rules, but there is nothing to say that they can't go over again.

I have to totally agree with Vince here. We've had two years to try and figure out some kind of strategy here of how to deal with the problem.

Next year let's say Rhode Island's commercial fishery goes over by 500,000 pounds. Who around this table is going to ask them to repay that if they don't go along with some kind of accountability on the other side?

So if we go over by 500,000 pounds, who here is going to ask us to repay that? I just would like to know the answer to that question. Thank you.

CHAIRMAN FREEMAN: Other comments? Pres.

MR. PRESTON PATE, JR.: Bruce, is the record clear on which three issues are remaining?

CHAIRMAN FREEMAN: They're clear in my mind.

MR. PATE: Okay.

CHAIRMAN FREEMAN: I'll have Bob just review those.

MR. BEAL: Just as a matter of record, Issue 2 is the issue of quota overage repayment, which is what we have been discussing here which the recreational community would be required to pay back overages in some fashion on an annual basis.

Issue 3 is quota/harvest limit underage rollover. In other words, if a state or jurisdiction did not land their entire quota, would they be allowed to land a portion of that or all of that in a subsequent year.

The fourth issue is a change of allocation of quota based on recreational overages. This issue explores allocating the recreational and commercial shares a little bit differently.

The commercial quota would be based on what the stock size would have been if the recreational overage did not occur in any given year. Status quo on that is just the 60/40 split as we have it now in the plan. Those are the three issues.

CHAIRMAN FREEMAN: Go ahead, Pres.

MR. PATE: Thank you, Bruce, and thank you, Bob. I just wanted to make sure everybody understood what issues were remaining. I can't support the motion. I don't think this problem has gone away, like several others have commented on so far.

Status quo is not going to give us the tool to deal with the problem again when it occurs again, and it will. There has been a lot of comments about the uncertainty of MRFSS and the lack of reliability of the data that is collected from that and other sources.

But, the options that we have for us to consider today on the paybacks are certainly an improvement over status quo. I just feel like we need to take some action to put

something in place better than we have just as a matter, if nothing else, as a matter of fairness.

We have been talking about the inequity in treatment of the recreational and commercial sectors for a number of years, and we've spent a lot of time over the last two years trying to develop some way to correct that problem. The solutions are flawed and I think everybody admits that, but they're not nearly as flawed as our current system.

CHAIRMAN FREEMAN: Board comments? Rick.

MR. COLE: Since I'm going to vote against the motion, Mr. Chairman, I just wanted to make it clear that my position is that I think the states need a direct pay-back program in order to be able to formulate the management strategies that we require to meet the harvest caps.

Without it, I think we're going to continue to do business as we've done business in the past, and I don't think that's acceptable. We've got a long way to go to rebuild the stock. We're only at half BMSY right now, so we've got a long road to follow. States need all the help they can get, so I think we need a direct repayment program. I can't support the motion.

CHAIRMAN FREEMAN: All right, other commenters? David.

MR. BORDEN: Just to be brief, Mr. Chairman, I agree with Preston. If I had any reasonable expectation that we would fix this problem during the annual specification process, I might consider voting for the motion.

But, history doesn't lend itself to that conclusion, unfortunately. I mean, there has been a consistent history of going over.

I find it ironic that a couple of the states that are speaking in favor of this motion have been the most vocal and articulate complainers about a lack of commercial quota in their states, and yet not addressing this problem lends itself precisely to the commercial allocations being less than what they should be.

You know, I go back and just reiterate that I think that either the plan means something and you can try to live with it within the specifications and make it work or we ought to go back and fundamentally change the plan.

I would argue that what we should do is keep this alive, defeat this motion and keep this alive; and if we have to have the technical committee come back to us with a different analysis and develop a different strategy, as Mr. Travelstead had indicated, that's fine with me.

I'm open to that type of scenario, but the bottom line with me is we've got to address the problem and just saying we're not going to address it will perpetuate the problem.

CHAIRMAN FREEMAN: David, and then I'll go to the audience and back to the board.

DR. PIERCE: Pres made a very important point. He highlighted the distinctiveness of the different issues and in particular Issue 4, allocation of the commercial quota based on the TAL calculated without recreational overages.

So, if, indeed, the concern is not to penalize the commercial fishery for recreational

overages, then perhaps it would make sense for us to keep Issue 4 separate and adopt that and then go status quo with the other two issues.

I would make a motion to amend in such a way that Issue 4 would be treated separately, so this motion would be to remain status quo on Issues 2 and 3.

Bob.

MR. BEAL: Not a comment on the motion to amend, but just a note on Issue 4. The last sentence in there comments that under this scenario, the 60/40 allocation that is included in the federal and interstate fishery management plan would need to be adjusted.

So in order for this approach to work and the federal and state permitted commercial fishermen to benefit from this approach there would have to be a complementary action in the federal FMP. That's just to keep in mind as you're looking into this Issue 4.

DR. PIERCE: Mr. Chairman, it might make more sense, on the advice of my esteemed colleague, that instead of a motion to amend, that I could just make a motion to table; and if that passes, then we could address Issue 4 by itself.

That way we won't get bogged down in a lot of debate, and we would very quickly know the thinking of the board, because if the motion to table was to pass, then we could, again, focus right on that other issue, which is extremely important relative to preserving commercial fisheries -- in order to prevent the commercial fishery from being penalized by recreational fisheries overages.



**If you don't object, Mr. Chairman, and if the seconder doesn't object, I would withdraw that motion and just make a motion to table.**

CHAIRMAN FREEMAN: Your action, David, would be to table this motion.

**DR. PIERCE: Right, and then to make a motion to allocate the commercial quota based on a TAL calculated without the recreational overages; that is Issue 4.** That way people will know what I'm thinking and hopefully that again will speed the debate.

CHAIRMAN FREEMAN: We could ask the maker and the seconder what their desire is.

MR. POPE: Does he have a second to his motion to table this motion?

CHAIRMAN FREEMAN: Well, you're asking to do it as a friendly motion?

DR. PIERCE: Well, I could do it as a friendly motion if the seconder doesn't object. It would be just a motion to --

CHAIRMAN FREEMAN: Well, I'm just trying to procedurally --

DR. PIERCE: I know. I look to you for guidance, Mr. Chairman. Well, let's see, so it would be, instead of a motion to table, it would be a motion to -- I guess I can't do it.

For my friendly motion, it would be to -- well, I can't do a friendly motion, can is, because right now it has to be a motion to amend because there is a motion already on the floor.

CHAIRMAN FREEMAN: Well, the maker --

DR. PIERCE: So that's why I'm saying I would rather not make the motion to table. I would rather make a motion to substitute with the substitute being that we -- a substitute motion that Issue 4 be adopted; that is, allocation of commercial quota based on a TAL calculated without recreational overages.

CHAIRMAN FREEMAN: So you're asking the maker of the motion to amend his motion, and so it would be a friendly amendment.

DR. PIERCE: Well, it's a motion to substitute, so we can discuss both motions and then vote on the motion to substitute; and if this passes, then we would be with Issue 4 and the --

CHAIRMAN FREEMAN: It seems like it is getting too complicated.

MR. AUGUSTINE: Mr. Chairman?

CHAIRMAN FREEMAN: Pat.

MR. AUGUSTINE: Mr. Chairman, I would suggest, if there is that much doubt about this motion the way it's worded, rather than being as complex as it sounds it is going to be by substituting or amending it, why not just, if we want to, vote on this either up and down and then go ahead with another motion and clear it. I would prefer not to table unless you want to table it.

I think we've got to stick on the subject. Broaden it if you would like, but if it would be clearer just to go ahead and vote it up or down; and if it's voted down, then go ahead and come up with a new motion and then the slate is clear.

I guess I could withdraw it. I think around the table there are more people in favor of it than have said. There have only been three or four people who spoke out against it. I would be inclined to call a vote.

CHAIRMAN FREEMAN: All right, as I understand it, the maker of the motion would not accept this as a friendly amendment.

DR. PIERCE: Right, so we have a motion on the floor which I can't see because —

CHAIRMAN FREEMAN: That's correct.

DR. PIERCE: All right, so we have a motion on the floor to remain status quo in the remaining three issues in Addendum VIII, and I'm making a motion to substitute, and that substitute motion would be to adopt Issue 4, allocate the commercial quota based on a TAL calculated without the recreational overages.

CHAIRMAN FREEMAN: But you understand also, to bring this to fruition, the council plan would have to be amended. Bob.

MR. BEAL: If Issue 4, Option 2 were implemented, which is allocation of commercial quota based on the TAL calculated without recreational overages, in order for this new commercial quota, calculated based on what the population would have looked like if there were no recreational overages, in order for this new quota to be harvested equally by federally permitted fishermen and state permitted fishermen, the council's plan would have to be amended as well.

If the council plan is not amended, we're going to end up with a situation where the states have a higher commercial quota than the federal government, and the state fisheries will be closed

-- or the federal fisheries will be closed earlier and the difference in the two quotas could be harvested by state permitted fishermen only. But in order for it to be allocated in state waters, in the EEZ the federal plan would have to be amended.

DR. PIERCE: Well, I'm confused, Mr. Chairman, because why did we bring this out to public hearing as an addendum action. It was a proposal. It's in there.

I assumed that this was a viable option that we could adopt if we found it to be attractive, and it certainly does seem to be very attractive.

Unless I've missed the boat here, it does enable us to prevent the commercial fishery from being penalized by recreational fisheries overages.

MR. BEAL: The very last sentence of Issue 4, Option 2 is that should this option be implemented, it would change the 60/40 allocation of the annual quota and thus require a change to the federal FMP. So, you know, what we took out, it was noted that it would take a change in both the state and federal management to make this happen.

DR. PIERCE: Well, then, the Mid-Atlantic Council might take heed and move in that direction by amending the plan. Obviously, it takes a while to do that, but at least we could address the recreational fishery, which -- well, obviously it's an EEZ fishery primarily, isn't it?

So it gets complicated and I acknowledge that. Nevertheless, I think it's a sensible strategy and it's in the addendum. We need to act on it or just disregard it. I mean, it was in there.

CHAIRMAN FREEMAN: My desire is to point out there's implications. I just want everyone to understand those before they vote. I had David Borden and then Eric Smith.

MR. BORDEN: Very quickly, Mr. Chairman. To David's point, there's nothing that would commit us to implement this this year. We could in fact submit this as a request to the Mid-Atlantic Council and request them to amend their plan and try to tie the implementation dates together so that we don't in fact have the problem that Bob characterized.

CHAIRMAN FREEMAN: All right, let me interject my thoughts in this as it's getting quite complicated. We heard a lot of discussion over the last several months on this issue at public hearings. The state directors, this board -- I don't mean the state directors. I apologize to Tom and the other commissioners.

But the various representatives on this board can essentially, with the information we have at hand, adjust the recreational quota so that it would be very close to target. You don't have to go through the motions, you can do it. But if the will is here to do it, we can do a much better job than we have. I just make that statement.

MR. PATE: Mr. Chairman, I'll second the motion.

CHAIRMAN FREEMAN: All right, Pres Pate seconded the motion. Eric.

MR. SMITH: I was about to be strongly opposed to the motion to substitute, and I'll tell you my reasons why and then why I'm buoyed a little bit about what just went on.

This motion still bases the numbers of the recreational overage reconciliation on MRFSS data that is insufficient for the task. We haven't solved that problem yet. I agree with the statement of the problem entirely.

I think in 2002 and 2003 we're beginning to see that problem is being minimized and it may have even been solved, but this solution is not a real solution to it. It's going to fan the flames of trying to find a solution that isn't satisfactory to address the problem.

I think we need more time to try and develop it further, which is why, if this motion transforms itself into an action by the commission, that becomes a statement of intent that we like this approach and we're not putting into effect unless the Mid-Atlantic Council adopts it in Amendment 14.

That makes a lot of sense because that shows our intent, but it doesn't change the rules and we wait until we get consistency; and at the end of the day if we haven't been able to persuade the Mid-Atlantic Council to change their plan, we still have the opportunity to come back and change ours to something different.

That does a couple of things, in my view. As much as I would be comfortable doing it, it indicates to the recreational fishing community that we are serious about trying to solve the problem, but we're not serious about doing it in isolation or an immediate sense.

We need to wait and see if we can get the whole management program to be consistent, so that makes a little more sense to me. The motion does not say that yet and it would have to be before I would support it.

So that's kind of a shot over to David Pierce to see if he is comfortable amending his motion to say that it is a recommendation to the Mid-Atlantic Council to adopt this strategy in Amendment 14 or to consider the strategy in Amendment 14. Thank you.

CHAIRMAN FREEMAN: Okay, I have Rick Cole and then Gil Pope.

MR. COLE: I would ask everyone to remember the process that we follow. We just went through it, what, two weeks ago. We have to make a recommendation. The council has to make a recommendation to the National Marine Fisheries Service in August on what the commercial quota recommendation from the council was going to be.

The Service needs time, from August until the first of the year, in order to go through the review and then to go through all of the advertising and through the Register process in order to have that commercial quota in place on January 1 of next year.

If you had a process like this, you wouldn't know when the recreational overage was going to occur until late in the recreational fishing season. You wouldn't know until October or November, so there is no way that the Service could review any kind of adjusted recommendation on a TAL and have it in place for the next fishing season.

This recommendation is not practical. It just won't work given the way the National Marine Fisheries Service reviews the recommendations that come from the

council regarding the next year's TAL, and we don't want two TAL's out there confusing the public more than they're already confused. So to me, this process is just not workable and I don't know why it ever got into the review document here myself.

CHAIRMAN FREEMAN: All right, let me just deviate from the board a minute. I had Gil next, but Dan Furlong has had his hand up, and I would ask him are you going to comment on this, Dan? Just come forward please to the mike.

MR. DAN FURLONG: I would just like to reinforce what Rick just said. The federal rule-making process from August through the end of December is necessary because of court orders out of North Carolina where the judge ruled that we have to have regulations in place.

We, the National Marine Fisheries Service, we the federal government, we the councils have to have regulations in place for fisheries by January 1 because that's when the fishing year starts.

The MRFSS data, as Maury said earlier, in terms of the recreational allocation process, when we get to the December meeting, the balls are still being juggled in terms of the data. You know, you've got maybe Wave 5. You're through Wave 5, the October data, but it's very preliminary and we're doing our best to come up with an answer for that.

As it relates to this particular substitute motion, since I have the floor, I am sure you're aware that United Boatmen, CCA, RFA, a number of recreational entities have filed with the agency a petition to change this 60/40 split, and the agency has kicked that issue back to the council and the

commission and said, hey, go look at this 60/40. That's on our agenda in October.

At our August meeting, we put a two-page memo together from the executive committee to the chair of our Demersal Committee that laid out a number of issues, and this is included, the idea of addressing how TAL should be addressed from the recreational and the commercial sector.

This is a tough problem. I don't have an answer. When you have one tool in your tool box and it's a hammer, then everything looks like a freaking nail. So, boom, you're going to stick something down somebody's throat to put a restriction in place.

I don't know if that's the right answer, but all these issues are on our agenda for October, and it's not as though there aren't strong opinions about this.

I appreciate the fact that the commercial sector has a view that recreational overages reduce the overall stock; therefore, the share that they're getting of that annual process is reduced by those overages; and you have groups that are willing to sue, take this to federal court, and say, hey, this is not fair. This is an inequity.

By the same token, you have recreational people, as Tom Fote pointed out, that say, hey, we've done everything right, management is the problem, you know, and you're going to penalize us for something where we did no wrong.

I don't know the answer. I don't have an answer. All I have is a forum where all of these issues will be addressed in our next council meeting, and maybe we'll get some priorities established and we'll get that pecking order of six year's worth of motions, pages upon pages of ideas and

issues addressed, and maybe something will come out of it.

But whatever comes out of it, it's at least a two-year process to fix it in terms of a fix. And the specification process, as I said, you've got to have it in by January 1 to meet that schedule. We've got to have our recommendations in in August out of our council/commission meeting and the clock just runs. I don't know what more I can say about this. It's a tough job.

CHAIRMAN FREEMAN: Thanks, Dan. I had Gil.

MR. POPE: Thank you, Bruce. I totally disagree. I do not think that this changes the regulations that have to be in place at all. I don't think that it's necessary because it doesn't affect both. It doesn't affect the TAL. TAL will still be the same.

You take your 60/40, or whatever is decided, and split it. The 60 remains the same. The 40 is the part that you then either raise or lower; or, in the case of a commercial overage, you could do that after the fact, too.

But, the split doesn't have to be done after - - you don't have to calculate two TAL's. You calculate the one and then the 60/40 is done, and then the adjustments are made after the 60/40 split is done.

In my mind there is no reason to change any of the plans, no reason to change any of the regulations. It's just a matter of when the 60/40 is done. Thank you.

CHAIRMAN FREEMAN: Eric.

MR. SMITH: Thank you. Understanding that both of the bodies, the Mid-Atlantic Council and our management

board here, are going to meet in October to talk about priorities and the way to do things on fluke in the future; and now that we actually have a motion on the floor, I would move to table. My intent is to table this action, in other words, any action on Addendum VIII.

We need to have that debate in October about priorities and management approaches. The problem is you end up with successive motions to table. If one passes, the other one should.

CHAIRMAN FREEMAN: Okay, you're just indicating what your desire is, is that correct?

MR. SMITH: Well, I'll take the guidance of the chair. If you think that's a good way to reconcile this, I'll offer one motion to table; and if it passes, I will offer another motion to table. That seems to me the parliamentary way to get out of this.

CHAIRMAN FREEMAN: Well, this, in my opinion, is an extremely important issue and we need to give thought to it. We don't need to complicate it more than it's complicated. I'm not certain we've all thought out where this is going to lead us and how we're going to get there.

If we're simply going to make a motion to ask the Mid-Atlantic Council to consider it, then I suspect they will, but don't forget they've already voted twice on this issue relative to the position they would take and indicated they would take no position.

I do like your idea, Eric, of deferring this to October because we need to talk about a number of issues, this being one, but there's other issues and we need to set priorities.

Personally, I believe that we really need to see what the 2003 comes out. I suspect if it's under, people feel very comfortable. If it's over by a hundred percent, then to aggressively push for some action, but I suspect we may end up doing a lot of work, a lot of staff work, that may not need to be done. Quite frankly, both on the council and the commission, we have a lot of things to do.

If we're going to make work, we're not going to get anything done. We have to work in such a productive way that we solve problems, and I'm not certain in this instance this motion is going to solve our problem.

It's simply going to go up in some nebulous -- I'm not sure where it's going to end up. I would personally favor some action to delay this conversation until October.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman, two observations. One is I think this piecemeal approach, what I'm hearing around the table, is making you all uncomfortable and I think you need to reflect on that a little bit.

The second issue is you have a full agenda in October of what at that meeting needs to be discussed. We talked also about the results of the performance of the fishery. If you were going to postpone this whole issue, it may make a lot more sense to do it until December from the commission standpoint.

As I understood, Mr. Chairman, the original motion that started was that the problem still remains but we're just not comfortable with the solutions that are available.

I think it's important to kind of leave your options open to get at that problem. I think the observations that are made come December, you'll know the sense of what the council is going to be thinking.

You'll have some performance on how the '03 fishery has gone, and I think you would be in a lot better position than trying to bring this up again in October. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Let me just indicate what we have discussed -- and when I say we, it's the staff of both the commission and the council as well as the chairman of the council's demersal committee, Rick Cole -- is that we will get together, probably later in September, to outline a number of these issues so the joint meeting in October will hopefully set a priority.

We'll simply identify the issues and then ask both the board and the council the priority. As Vince indicated, we may have more time in December to determine what we want to do as a commission.

I would not like to see us move hastily and then find out we did exactly the wrong thing and just add a tremendous amount of confusion to the process.

There's certainly things that need to be done and there are things that can be done, but I want to make sure they're done in such a way that we overcome these obstacles and everyone feels that they're being treated fairly. Eric.

MR. SMITH: Thank you, Mr. Chairman. Hearing Vince and hearing you, **I would move to table further action on Addendum VIII until our December meeting.**

CHAIRMAN FREEMAN: All right.

MR. SMITH: I believe, having thought through and listened to this, it's appropriate to table further action. We don't have to take it piecemeal.

CHAIRMAN FREEMAN: All right, the motion has been made.

MR. BORDEN: Second.

CHAIRMAN FREEMAN: **Second by Mr. Borden. Eric, if we change the word "table" to "postpone", would that concern you?**

MR. SMITH: **Postpone is fine.**

CHAIRMAN FREEMAN: Indicate that this will be raised again. On the motion to postpone, is there -- let's take a caucus on that. A two-minute caucus, is that sufficient? A.C.?

MR. A. C. CARPENTER: An affirmative vote on Mr. Smith's motion would not need any action on the prior two motions that you have; is that correct?

CHAIRMAN FREEMAN: That's correct. All right, a two-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: The caucus is hopefully concluded and we'll vote on the motion to postpone to December. This motion would mean we wouldn't have to then vote on the other two motions, if this passes.

We'll do this by count of hands, one vote per state or jurisdiction. All those in favor of the motion, please raise your right hand;

all those opposed, same sign. Okay, the motion carries.

All right, we'll zip right along here. Bob, let's do Addendum X and we'll zip right through.

MR. BEAL: Oh, good, another addendum.

MR. PATE: Bruce, real quick before I forget. At the October meeting, if anybody tries to find Kill Double Hills, they're going to be --

CHAIRMAN FREEMAN: No, no, we did it to December now. We'll talk about it at the October meeting.

MR. PATE: But the October meeting is still in Kill Double Hills, wherever the hell that is.

CHAIRMAN FREEMAN: Well, we'll look for it on the map.

MR. SMITH: Could you clarify that for us northern folks because I'm quite sure it's Kill Devil Hills.

MR. PATE: It is Kill Devil Hills.

CHAIRMAN FREEMAN: Okay, Bob.

### **ADDENDUM X**

MR. BEAL: All right, thank you. Addendum X, today the consideration by the board is should this be approved for a public comment period, and what this addendum does is there's two issues addressed in this addendum.

The first one is the quota rollover. Both of these issues are scup related. The first one is

the quota rollover from Winter I to Winter II for the commercial fishery.

In Winter I of this year, the entire quota was not landed, so the options in here would allow the remainder of the Winter I quota to be rolled over into the second winter period.

The second issue that is addressed in this document is allowing states to start their summer period fishery on April 15th rather than May 1st, which is the current timeframe in the plan. The Mid-Atlantic Council took action on a document that is essentially identical to this and has approved it and recommended it to the Regional Administrator for approval.

The commission is taking this action in order to stay consistent with what the Mid-Atlantic Council is up to on these two issues. If this document is approved today, the states would have the option of holding public hearings.

The commission does not have a requirement to hold public hearings, but if a state wants to have a hearing, we will make staff available to do that, but what we are required to do is have a public comment period where the public can provide input to the commission and we can bring this back to the board.

The intent is to, since these hopefully are pretty straightforward issues, revisit this in October when we meet with the Mid-Atlantic Council briefly and we can finalize the action on this document.

The timing of October is required because the Winter II fishery for 2003 begins before the commission's December meeting. If we put this off until the December, the commission technically doesn't have the ability to roll over Winter I to Winter II for



this year. I can go into more detail on it, but I think most people have seen this document as the council's framework action.

CHAIRMAN FREEMAN: Dan, do you want to make any comments relative to the council's position on that?

MR. FURLONG: We have already forwarded this framework to the National Marine Fisheries Service.

CHAIRMAN FREEMAN: Okay, you didn't hear what Dan -- or at least Joe didn't hear. The council is working on this as a framework. They've had the public hearings and they have forwarded to the Service essentially I believe the same document or practically the same document. Are there any comments on this? Let me take Pat and then Bill.

MR. AUGUSTINE: Thank you, Mr. Chairman. Being a member of the council, I did participate in this assessment and from what I can understand of this document, it's identical.

The only thing on it is draft and that it has our letterhead and our face cover. So at the appropriate time, I would like to make a motion that we move this forward as appropriate, but I think there are other comments. If not, I would like to move that we --

CHAIRMAN FREEMAN: All right, why don't you make a motion and let's just get this on the table.

MR. AUGUSTINE: Okay, **I move that this draft be approved.**

CHAIRMAN FREEMAN: Addendum X, just to make sure that Addendum X is the draft.

MR. AUGUSTINE: **Addendum X.**

CHAIRMAN FREEMAN: Okay, Bill Adler.

MR. ADLER: **I will second that motion to get it on the table to take to public hearing; is that what you're saying?**

CHAIRMAN FREEMAN: Yes.

MR. ADLER: My only comment on this is that -- in other words, we're following the council on this again, still?

CHAIRMAN FREEMAN: Well, I think it's not so much following. This is an issue the commercial industry raised. You know, we talked about paybacks and this was a situation where the scup quota during -- and this is a coastwide quota -- was not taken during Winter I.

If it wasn't taken, it was lost. They couldn't transfer it in that year, so it was a request by the commercial industry to roll over any underage on Winter I, which is January through April, I believe, to the fall so that it had the opportunity to be taken.

The other issue is the April 15 issue was an issue raised by Rhode Island, that they could start working on their state summer quota. So, it was a request by industry to make this more flexible for the taking of scup, and it was made jointly to the commission and the council. The council has taken formal action and the commission has not.

MR. ADLER: All right, thank you very much for that. I'm not against this. As a matter of a fact, I seconded this simply because all this motion does is vote to take it out to public hearing; is that correct?

CHAIRMAN FREEMAN: Yes.

MR. ADLER: Thank you, and may I move the issue.

CHAIRMAN FREEMAN: All right, we'll get one comment from Dave Borden.

MR. BORDEN: I support the motion, Mr. Chairman, but I just would note that I think one of the issues that is really outstanding is how do the states track under the April 15th opening, if there's going to be a requirement, or there should be a requirement for states to track their landings so that in fact they are counted and they won't be mixed into the existing federal system.

In other words, we want to make sure that those landings get deducted from the state's summer quota, and I'm not sure that the existing data collection system will allow that, so that may be an issue that the staff can weave into this.

The other point that I would make is I can't see states -- there should be a mechanism in this whereby a state announces some months prior to April 15th whether or not it wants to avail itself of this option so we don't go right up to the deadline and then have states doing it.

In other words, it has to be an organized activity so that in fact it is professionally run and we do it to meet our management objectives. Those are the only two comments.

CHAIRMAN FREEMAN: Okay, staff is aware of your comments and we'll incorporate those. Any other comments? Harry.

MR. MEARS: I endorse this document to go out for public comment. I had similar observations to Dave. I believe that the time factor is important, to incorporate a timeframe by which a requesting state should make that request.

And the only other comment I have, just for clarification, which I think is important, is this intended to be coordinated through ASMFC or individually by state going to the National Marine Fisheries Service? In other words, is there any clearinghouse or coordinating role for the commission in such occasions when this should arise?

MR. BEAL: I think part of it -- I think notification to the commission that the state intends to do this, and I think this is -- the way I understand this is partly where David was going in his saying that we need a date certain that the states must notify the commission that they intend to avail themselves of this April 15th start date. I think the commission will be the organization that compiles what states intend to take advantage of the April 15th start date.

MR. MEARS: So then it would be the commission that would go to the National Marine Fisheries Service to make the national request; am I correct?

MR. BEAL: Yes.

CHAIRMAN FREEMAN: Okay, any other comments? Seeing none, we'll take the motion. All those in favor, signify by saying aye; opposed no. The motion carries.

All right, the next issue is the trip limit for Winter 1 and 2 in the commercial scup fishery and do we have a handout for that?

MR. BEAL: Yes, it just came around. Each of you was just handed a memo from Dan Furlong to Bruce Freeman. Actually, this board should remember that at the meeting in Baltimore with the Mid-Atlantic Council, there was no decision made on Winter I and Winter II trip limits for 2004 for the commercial scup fishery.

The Mid-Atlantic Council passed a motion, which is included in this memo, and the idea behind this motion is that the commission would set up a trip limit for the Winter I period, and then also set a trigger that if a certain portion of the Winter I quota is landed prior to March 1<sup>st</sup>, that the trip limit would drop to — a thousand level is the recommendation in this motion.

Then after March 1<sup>st</sup>, the fishery would be reopened back at the 15,000 pound trip limit level, and then that would go until 80 percent of the quota is landed and then it would go back down to a thousand pounds.

So, the idea is to spread out the fishery across the Winter I period to ensure that a whole lot of the landings don't occur in the first half or first two-thirds of the winter period.

I think it's aimed mostly at — it was aimed at two things. One is supplying fish to the market, a continual stream of fish to the market, and the other is ensuring that the catches are distributed up and down the coast. So with that, I can answer any questions.

Also, the second page of the handout that was just given to you is the performance of the commercial scup fisheries for the two winter periods and the summer period. There's the quotas, the trip limits, the landings, and if those periods were closed,

there is the closure date that is included in one of the columns as well.

So you can kind of gauge how the fishery has performed this year. Only 61 percent, or almost 61 percent of the quota was landed, and that's the reason that Addendum VIII is just being considered, so that the remaining 40 percent can be rolled into the Winter II period.

This year we had a 15,000 pound trip limit, a weekly trip limit of 15,000 pounds at the state level. We did have a trigger in place that it would drop to a thousand pounds, but obviously we didn't meet that, so we stayed at 15,000 pounds per week per vessel throughout the period.

CHAIRMAN FREEMAN: Okay, let me just indicate that I spoke to the maker of the motion, Jimmy Ruhle, and understand his concerns and why he made the motion.

Although it's not the council's desire, it's at least the maker of the motion's desire that he wants this to be given a fair hearing, and he also wants to see if there's any concerns.

I have spoken to five or six industry representatives along the coast, up to Southern New England, and there are some concerns. I don't think they're serious, but there are some concerns.

In fairness to the public, not being aware that this commission would take action at this time, I will hold this issue until the October joint meeting.

There needs to be more discussion, there needs to be a resolution of some of the concerns that the industry does have before I think this needs to be voted upon. I just wanted to bring this to your attention.

We're not going to drop the issue, but we simply will notify the public that this will be discussed and action could be taken at the October meeting. If there is anything I can answer other than that. Jack.

MR. TRAVELSTEAD: Could you just briefly describe the concerns that you've heard because I have not heard any?

CHAIRMAN FREEMAN: Okay. Several processors, first of all, are concerned that what this does is break the four-month Winter I into two halves and divide the quota accordingly.

Now, the maker of the motion was concerned as the resource starts to increase, we'll get back to a normal condition where scup were historically found in the southern part of the range and now are starting to filter back into that area.

The concern was it could well be that the entire quota is taken in the first few months of the season prior to when the fish are distributed in the south; therefore, the south gets shortchanged. Now that has not happened.

In fact, the quota hasn't been taken. That's the reason for Addendum X, was to roll over any unused portions. So, so far this is not affecting the southern end of the fishery, but it was a safeguard to make sure they wouldn't get shortchanged.

Now, the concerns were if in fact for some reason the quota during the first two months of the season is taken and it reverts to a bycatch at 1,000 pounds, that essentially does away with a directed fishery. A thousand pounds will not support a directed fishery.

The concern is if that scup market is lost in February for two weeks, it will not be regained. The commercial markets, when the scup is available later on, they're not going to be able to sell it. Now, I don't know how legitimate it is, but it was indicated by two dealers that that is of concern. That issue needs to be thought about and maybe it's a problem.

Others in the commercial fishery are saying, look, we just got into a system, what we put in place last year is working. So long as we get the rollover from Winter I, any underage to Winter II, that's good, the system will work.

If we're now about to make a change in Winter I, they just feel we're moving too quickly and are not sure if they can feel the change.

So they're just thinking it may be a great idea, but let's give it time and maybe we could implement this the following year. And the other concern is, look, it hasn't been a problem to date and let's just hold off, give it some thought, and then perhaps we need to do this.

No one was objecting of trying to distribute the fish so much, but it was just that too quick, let's see how it works to date, and then the disruption of the market, so I think those ought to be discussed within the industry.

This is a request from industry, and it's strictly a commercial aspect, to make sure all of the industry is comfortable and then take appropriate action. So it's just simply more discussion, that's all, more thought and more discussion. David.

MR. BORDEN: Thank you, Mr. Chairman. I would recommend and opt for

the second strategy. In other words, I myself haven't had any opportunity to discuss this with the winter scup fishermen. I think Jim is trying to raise some legitimate concerns.

As this stock continues to spread down the coast, they're going to be available to fishermen that haven't seen them in twenty years, so the question is how you preserve some access to the resource.

I am just not comfortable at this point endorsing basically like a 50 percent split of the quota without some public discussion of it, so I would opt for that strategy.

Then I have a couple of comments on the weekly trip limits. I think we need some additional discussion of what we do in 2004, what we do November 1st in 2004, and if we --

CHAIRMAN FREEMAN: 2004 or 2003?

MR. BORDEN: 2003 and 2004. What I would suggest is we just try to deal with this issue and then, if you would, come back to me and I will highlight the problem.

CHAIRMAN FREEMAN: Well, again, my desire is that -- I feel confident that the industry, who is requesting this, needs more time to give thought to it, whether it's 50 percent or 60 percent and what the trip limits would be. Maybe that's not the right -- I think it has happened very quickly and I don't want us to react to the point where we would make a mistake.

As everyone realizes that the scup is coming back, the fishery used to be very important, and the scup markets have been taken by other species so now you can catch them and

you're not getting the money, and also we're catching them in volume.

So some of the industry feels it needs time to develop these markets so they can get back to where they were. It's a matter of time. I mean, it's all positive. It's just that people are a little uncomfortable.

So, my desire is to give time and everybody give thought to this and then when we meet jointly with the council in October we can take action or we can take action in December, whatever the board feels -- I just want to give the public, and particular the commercial side of it, time to think about it and then come back with their position. So we'll just hold that.

The last item, Number 9, was just to give you an idea what we're going to do. I already did that. Rick Cole and I have already discussed this about getting together with staff, going over the priorities.

This is a letter that Dan had indicated was sent by the executive committee, and the commission and the council committees will go over this and then try to get these resolved, at least prioritize them at the October meeting. That is our desire.

We ought to be able to identify them and then ask the board to indicate which are the important ones and the timeframe in which we're going to address these. We don't want to waste a lot of time and so we need to give thought, conscience thought, to how we're going to proceed. Any other items? Eric.

MR. SMITH: Is that meeting really in Kill Double Hills or is it Kill Devil Hills?

MR. PATE: Kill Devil Hills.

MR. SMITH: Otherwise, I'm going somewhere near Raleigh to a place that doesn't exist on the map.

CHAIRMAN FREEMAN: Okay, Pres is going to have a big flag out, just look for the big flag. David.

MR. BORDEN: Let me just go back and raise a concern. The Mid-Atlantic Council has -- much to their credit, I would quickly add -- has approved this rollover provision, and Dan is free to correct this if I mischaracterize it.

We collectively had an underage in Winter I period of 2 million pounds, or some large amount of scup, and I think it's the intent of the council to roll that into the November 1, 2003, period, if the National Marine Fisheries Service approves it in time.

Now, if that all takes place, then the issue is do we want a 4,000 pound per day trip limit in place on November 1st or do we want some other set of regulations in place?

Then I think there is a second question that we ought to have a very brief discussion about is are we going to do the weekly trip limit again starting January 1, 2004; and if we are, the sooner we know it the easier it's going to be for all the states to try and implement it.

I think we need some discussion of both of those issues; and if we could just get Dan to comment on what their intent is in terms of the rollover. If my interpretation is correct, I think we ought to look at a different trip limit.

CHAIRMAN FREEMAN: Dan, would you care to comment?

MR. FURLONG: Thank you. The framework action for this issue was

approved at the last council meeting and it's already submitted into NMFS.

In other words, we've tried to really expedite this thing, and the expediting is to try to do, as you say, take the Winter I underage in calendar year '03 and make it available 1 November 2003 so that fishery has the opportunity to pick up those fish that are still out there.

CHAIRMAN FREEMAN: David, go ahead.

MR. BORDEN: Just so that everything is on the table, so just on that issue, if I understand it correctly, the trip limit is 4,000 pounds; is that correct, Bob, in that period?

MR. BEAL: If the rollover happens, it's 4,000 pounds on November 1st per day.

MR. BORDEN: Okay, so everyone understands this, that's 28,000 pounds a week. The scup at that time of year are twenty miles off the coast. If you allow that high of a daily trip limit, you're going to have boats racing in and out, and what you're going to have is you're going to have ten cent scup, which is entirely predictable.

What I would argue is that we should -- and I don't know what the number is. I think that's something to discuss, but I think we should adopt the same type of regulation we had before, which is a weekly trip limit for that same period of time, and a daily trip limit that equates to that.

You know, whatever the numbers are, I think that if people share that concern, now is the time to try to address it as opposed to getting to the October meeting and trying to scramble around and try to address it.

MR. FURLONG: Mr. Chairman, to Dave's point.

CHAIRMAN FREEMAN: Okay, go ahead.

MR. FURLONG: The table that is attached to that letter indicates that the trip limit is 1,500 pounds a day for the current year.

MR. BEAL: Yes, it's 1,500 pounds per day unless the rollover occurs; and if the rollover occurs, it goes up to 4,000 pounds per day.

CHAIRMAN FREEMAN: Let me just back up so we're all on the same page here. So far as Addendum X that we just voted to go to public comment, as Bob indicates -- I was just speaking with him briefly -- that public comment period, we could have that in place certainly prior to November 1. We could have it in place in a matter of a month for that case.

So if the Service approves that rollover occur and the commission approves, we could move on that. Now the issue is the catch rate, so we could definitely put the place and definitely notify the public. The issue is what do we want as a trip limit and that's, David, where your discussion is. All right, Gil.

MR. POPE: I have just a very quick question for you, Dan. At 15,000 pounds, an 80 percent trigger, do you think that is a little bit high of a trigger? Why did you choose 80 instead of, say, 60 or something to be a little more safe? Thank you.

MR. FURLONG: That's what the committee decided. I mean, there were a suite of options that were looked at, and I

think we've used 80 in other fisheries, so it seemed like a good thing for that fishery.

CHAIRMAN FREEMAN: David, are you advocating you think that is too high and you want to have a lower amount?

MR. BORDEN: I think it's too high. I think we should start out with a lower number. There's all kinds of advantages of doing that. I would prefer a number of, say, a thousand pounds a day, 7,000 pounds a week, and that would significantly reduce the amount of fish that's going to come in and spread them out, which makes them available to the states to the south just as much as it does the states to the north.

CHAIRMAN FREEMAN: So what you would be advocating is you could take 15,000 pounds a trip; and if the state were more restrictive, you could have the fish on board, but you would have to have the states enforce a lower trip limit, which would then spread them out?

MR. BORDEN: Well, I think what I'm proposing is what we did last year, which was federal regulations read 15,000 pound trip limit, so that's a possession limit.

But, we did this intentionally and said that the states would have the right to be more restrictive, and what we agreed to was 15,000 pounds per week. I am suggesting that number get halved and only because of the proximity of the fish to the major ports up there.

They're going to be -- as Gerry Carvalho can attest, they're going to be within five or ten miles of Rhode Island ports and Montauk ports, and all those ports are going to have ready access to the resource.

I just don't think it's in the best interest of anyone to sell ten cent scup. It's just not going to do any good and then turn around and close the fishery later on. I would be happy to make that as a motion if you thought it would expedite it.

CHAIRMAN FREEMAN: Well, the only thing that concerns me, as it did on the motion that the council asked us to consider, is industry -- you know, we could make a decision and then after we make that decision, industry says, well, that's the stupidest thing we've ever heard of, we should have a 2,000 pound or whatever.

I'm just concerned that we act -- I mean, essentially this ends up being a marketing issue. We don't want to flood the markets. We want to stabilize the price. But in so doing, there needs to be the right number. I'm willing to carry out the will of the board. Bob has a comment.

MR. BEAL: Well, I think one thing to keep in mind is that the federal possession limit, assuming Framework 2 goes into place, will be 4,000 pounds. So even if we have 7,000 pounds a week at the state level, if you're in federal waters, you'll only be able to have 4,000 pounds of scup on your boat.

The federal process is moving forward and I don't think that 4,000 pounds can be changed. That's part of Framework 3 and that's kind of -- I think it's kind of hardwired into the process right now, and we can't change that one.

I'm not saying that -- the states could slow the fishery down, but what I'm saying is that the 7,000 pound per week trip limit, you don't get the full benefit of a weekly trip limit if you have to make multiple trips to get that trip limit.

CHAIRMAN FREEMAN: Jim Lovgren, you have some interest in that fishery, do you have any comments? I am willing to move on this, but I just want to make sure we're doing to right thing at this point.

MR. JAMES LOVGREN: Well, I think the industry is concerned about being able to catch the quota, okay? For this year, we set more restrictive measures actually than we did.

We increased the trip limit, but made it once a week and so forth, and the end result of that was that the Science Center used it against us to argue for a lower quota because we didn't catch the quota.

Now, if we do go ahead here and we do, for November and December, and say we are going to lower the quota because we want to stop the amount of fish coming in, the Science Center is going to say, see, you just proved us right and you're not catching the quota. The fish aren't there.

Now, nobody wants to harvest the fish cheap. It's a fine line that you try to work to keep a steady supply without over flooding the market. I don't know -- I think Dave is on the right track, but I think in the one sense there's a lot of variables involved. We've had very cold water all summer. Jimmy Ruhle is going to be the first one to tell you, and he's going to say those fish are going to migrate out of there real fast this year. They're going to head south real fast and they're going to go south farther than they have in a number of years this coming winter.

Now, that being the case, that's going to put those fish out of range of Rhode Island and Connecticut. I mean, there's variables we



really can't account for. I, myself, I mean, I like the idea of trying to slow down the fishery.

I don't want to see something where the guys were doing with squid of four landings in one day of 2,500 pounds and so forth, but I don't want to slow it down that much that we don't catch that quota.

So where that number is, I don't know. A thousand pounds or a thousand pounds a day, that's not going to cut it in December. I mean, those fish will be gone. I mean, they'll be 40, 50, 60 miles offshore, and it's not worth a guy's trouble to run for a thousand pounds of that.

CHAIRMAN FREEMAN: Jim, just stay there a minute. David, does it make any sense to have perhaps somewhat of a restrictive catch limit in November and then increase it in December? I mean, obviously, it's going to be weather dependent. We have no idea.

If you get a real cold fall and a very quick transition, then it's going to be very different than if it's a warm fall. It is hard to determine.

MR. BORDEN: I think everybody understands what my intent is. I mean, you could do it a lot of different ways. You could have, for instance, 4,000 pounds possession so it doesn't stop somebody from running out there and catching the federal limit, but let the states cap the maximum number of trips they can make or the maximum poundage that they could take during the week.

That would stretch it out a little bit. I think Jim raised a good point about December. You're getting into the lousy weather

months and the fish are going to start to move pretty aggressively at that point.

So, maybe this strategy just works for November. I just don't want to -- I mean, we intentionally ended up with this 15,000 pound per trip limit based on industry input. I can't help but think that if we put a whole bunch of industry people in a room, they wouldn't say, hey, you ought to do the same thing again. Who knows what the correct number is.

CHAIRMAN FREEMAN: Well, I mean, you look in the table that Bob presented, the quota was 5.6 million and we took, what, 3.4, so there's quite a carryover and it's going to be a lot of fish, plus what would be available in November and December. Go ahead, Jimmy.

MR. LOVGREN: Well, one thing that happened this past winter and will happen again in the fall, if it happens, okay, those prices get too cheap, the guys stop fishing because they won't harvest them for that price, plain and simple, unless they catch them by accident in another fishery.

When they get cheap, they stop fishing for them. It happened when the black back flounders got down really cheap, the guys said the hell with this, I'm not killing the fish for that, plain and simple.

It happens with scup, too. It was a very common occurrence in the whiting fishery years ago. When the price got low, people just stopped fishing and it brought the price back up. So, there's a lot of variables that play in this.

The one thing you've learned as a fisherman is you can't predict the market. You just don't know where it's going to go and

sometimes you can't predict fishermen's behavior.

But, I would say with the provisions that are being put in place, we're not going to make the quota for this year, and so be it. They'll be left out there. If it gets down to we just want to catch these fish because we should, because we have the quota available, and they're going to be a nickel, it's stupid, plain and simple, and David knows that and the fishermen know that.

But there aren't a whole lot of fishermen that have input here in the way of suggesting an appropriate trip limit or so forth. I would be wary, you know, of having other input and other expertise available here to --

CHAIRMAN FREEMAN: Well, of course, the other difficulty is if we wait until October, then I'm not sure everybody could put it in place that quickly to have an influence on November. Gerry had a comment and then David and then Jim.

MR. CARVALHO: Success is clearly measured when commercial fishermen can bring in enough fish to put the price down to ten cents and still have quota left over. No one is going to work for ten cents. It doesn't work. So, although this might appear to be a problem, the fact is that we're overwhelmed by success in our management.

CHAIRMAN FREEMAN: Jim, you had a comment and then Dave again.

MR. LOVGREN: Well, the comment would be I think we were giving the Regional Director leeway in setting the trip limit here I believe for this November and December, and it just went through there.

It might be something that we really want to think about something a little smaller in November; and then when December comes and those fish are definitely out of the range of the day boats and so forth, that at that point maybe we should go with 2,000 pounds in November and then see where we're at, pump it up to 5,000 in December.

You know, I think that might be a viable option that people could get behind. And then one other point to make about that, December becomes the time of the year, one, when fishermen are looking for a Christmas trip. They want to put some money under the Christmas tree.

But, two, a lot of other fisheries are shut down because their quotas have been caught, and that could force effort into that fishery. But, the thing is it's good to have something to be able to go for.

CHAIRMAN FREEMAN: Dave.

MR. BORDEN: A quick question, Mr. Chairman, in an effort to try to move this along. Do we need to take action on this today or, for instance, could we solicit input from the industry over, say, the next couple of weeks, and any states that want to submit proposals to the commission staff would do that and then we essentially would do like a mail ballot on the options. In other words, can we do it at another time?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Technically that is allowed. The board can vote on issues like this through fax ballot or mail ballot or some other avenue. It's up to the comfort level of the board if they feel that you guys can come to something that resembles a consensus via that process.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR

O'SHEA: I think the other thing would be is that the states get together to do something that is more restrictive than what is in the plan, you just want to coordinate doing that individually, that's always an option available to you. Thank you.

CHAIRMAN FREEMAN: Vince, in our instance, it would be a problem because we would have to get an action by the commission. In other words, our rulemaking is such -- we can do it by notice if the commission or the service requires it.

But for us to voluntarily say we agree, we couldn't implement it, and we would have to ask our fishermen to voluntarily agree; and if they didn't, you know, someone is going to get hurt. We could do a mail ballot, but there would have to be some official action taken by the commission in our instance. Dave.

MR. BORDEN: Is the official action then nothing more than a motion here to authorize the commission by mail ballot to --

CHAIRMAN FREEMAN: No, no, it could be done by mail ballot. All I'm saying is that the result of that mail ballot, Vince or Bob would have to send a letter to the states saying this is what we decided to do, and then we're compelled to do it.

MR. BORDEN: Right.

CHAIRMAN FREEMAN: I don't need a motion. If we feel this is the way to do it, that's fine.

MR. BORDEN: Let me just suggest -- rather than drag this out, let me suggest

that any states that want to propose a different scenario than what we know is going to be implemented have to submit that in writing to the commission by the end of the first work week in September; and that if there is a suggestion other than status quo, that the commission will circulate those suggestions, including status quo, as a mail ballot to the states, and then that gives everybody an opportunity to discuss this with their industry.

CHAIRMAN FREEMAN: If there's no objection, we'll operate in that manner. Again, I would ask each state, once we get this, to speak with your industry. Again, this is a request by industry and we'll try to certainly honor that request. All right, no opposition? All right, we'll move in that manner.

That concludes our agenda. Tom.

MR. FOTE: Do we have the date exactly when we are meeting in North Carolina, the commissioners have to be there?

CHAIRMAN FREEMAN: Yes, Bob.

MR. BEAL: The meeting is tentatively scheduled for the afternoon of Wednesday from 1 to 5:00 p.m., Wednesday, October 8.

MR. FOTE: So we don't have to be there until 1:00 on Wednesday?

MR. BEAL: Right.

CHAIRMAN FREEMAN: All right, the meeting is concluded.

(Whereupon, the meeting was adjourned at 6:45 o'clock p.m., August 25, 2003.)

