

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION

SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS
MANAGEMENT BOARD

June 9, 2003

Double Tree Hotel Crystal City
Arlington, Virginia

ATTENDANCE

Board Members

David Pierce, Massachusetts DMF
Bill Alder, Massachusetts Gov. Apte.
Vito Calomo, proxy for Rep. Verga (MA)
David Borden, **Vice-Chair**, Rhode Island DEM
Gil Pope, Rhode Island Gov. Apte.
Jerry Carvalho, proxy for Rep. Naughton (RI)
Eric Smith, Connecticut DMR
George Gunther, Legislative Comm. (CT)
Lance Stewart, Connecticut Gov. Apte.
Fred Frillici, proxy for Sen. Gunther (CT)
Gordon Colvin, New York DEC
Pat Augustine, New York Gov. Apte.
Brian Culhane, proxy for Senator Johnson (NY)

Tom Fote, New Jersey Gov. Apte.
Bruce Freeman, **Chair**, New Jersey DFG&W
John Depersenaire, Proxy for Robert Smith (NJ)
Rick Cole, Delaware DFW
Pete Jensen, Maryland DNR
A.C. Carpenter, PRFC
Jack Travelstead, Virginia MRC
Chris Ludford, Proxy for Catherine Davenport, VA
Preston Pate, North Carolina, DMF
Damon Tatem, North Carolina, Gov. Apte.
Harold Mears, NMFS
Bill Cole, USFWS

Ex-Officio Members

Steve Doctor, Maryland DNR, Tech. Comm. Chair
Mike Howard, Proxy for Rob Winkle (LEC)

ASMFC Staff

Megan Gamble
Bob Beal
Tina Berger
Vince O'Shea
Mike Howard

Mike Lewis
Lydia Munger
Brad Spear
Nancy Wallace

Guests

Dennis Damon, Maine Legislative Comm.
Ronald Smith, MAFMC
Anne Lange, NMFS
Bob Ross, NMFS
Tom Gilmore, United Boatmen
Robert Bogan, United Boatmen
Jack Ferrera, NYFTTA
Ray Bogan, United Boatmen
Bud Brown, CCA
Gene Kray, RFA
Kathy Zoch
Don Zoch
Paul Forsbery, Viking Fishing Fleet

Paul Perra, NMFS
Tony Bogan, United Boatmen
Will Egerter, United Boatmen
Dennis Kanyuk, United Boatmen
Paul Perra, NMFS
Dick Brame, CCA
Bill Windley, MSSA/RFA
Mark Millikin, NMFS
Roy Miller, DE DFW
Peter Burns, NMFS
Jim Lovgren, GSSA
Robert Hawryluk, United Boatmen/RFA
John Hawryluk, United Boatmen

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**Summary of Motions
June 9, 2003**

Move that the Board adopt Addendum VIII with Issue 1, option 1, status quo.

Motion by Mr. Colvin, second by Dr. Pierce; Motion passes (8 in favor, 3 opposed, 1 abstention)

Move to table further action on Addendum VIII until the next meeting or until such time that the Technical Committee analysis is prepared.

Motion by Mr. Borden, second by Mr. Travelstead; Motion Carries.

Move to accept the proposals as presented for RI, CT, and NY

Motion by Mr. Augustine, second by Mr. Pope; Motion carries.

Move that the Board accept the MA proposal to extend the season from October 6 to October 14.

Motion by Dr. Pierce; second Mr. Pope; Motion fails.

Move to approve the AP nominations of Doug McPherson (RI) to the Summer Flounder AP as well as Doug MacPherson (RI) and Christopher Brown (RI) to the Scup AP

Motion by Mr. Augustine, second by Mr. Fote; Motion carries.

The meeting of 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 Crystal City, Arlington, Virginia, on Monday, June 9, 2003, and was called to order at 12:35 o'clock p.m. by Chairman Bruce Freeman.

-- Welcome; Introductions --

CHAIRMAN BRUCE FREEMAN: All right, if board members will take their seat, we'd like to begin this meeting. We have a full agenda and we have a time limit. We'd like to make certain we include all the necessary reviews and discussions before we render a decision.

I want to make sure everyone is given an opportunity to speak that so desires. This is the summer flounder, scup, black sea bass meeting.

My name is Bruce Freeman from New Jersey, for those who don't know me. To my right is Bob Beal who is the temporary staff or staff member who is temporarily assigned to this management board.

-- Approval of Agenda --

We have an agenda that each of you should have received. I want to make certain that you have received that. Are there any comments on the items?

There is one item at the very end I'd like to add just to bring us up to date under other business, and that is an update on the black sea bass landings that are presently being made in Pennsylvania.

We'd like to get an update both from Bob and from enforcement. Are there any other items under other business any board member has? All right, we'll proceed with the agenda as we have outlined.

-- Approval of Proceedings --

We have minutes from the February 25 board

meeting. Is there a motion to accept those minutes? Moved by Pat Augustine; a second to that by Bill Adler. Any comments, corrections on those minutes? Seeing none, they will be accepted.

-- Public Comment --

We do have a period for public comment. There are some people I've met with earlier that would like to speak on some issues as they arise, and I think we can accommodate that. Are there any comments, general comments from the public at this point? Okay, seeing none, we'll proceed with the agenda.

-- Public Comment on Addendum VIII --

The next item is the review of public comments on Addendum VIII and Bob Beal will take care of that.

MR. ROBERT E. BEAL: All right, thank you, Mr. Chairman. You should have each just been handed two packets with tables on top. One is a little bit thicker packet that begins with Table 1 on the front, and then there's a thinner package that begins with Table 3, and that was handed out just now.

Table 1 is a two-part table followed by Table 2, of course, which, again, is a two-part table. Table 1 summarizes the comments and letters that we received from organizations, commercial and recreational organizations, as well as one NGO environmental group.

Table 2 summarizes the comments that the commission received in letters from individuals up and down the coast that address each of the four issues contained in Addendum VIII. Table 3 that is the cover page of the smaller packet summarizes the comments that we received at the public hearings up and down the East Coast.

So, what I'm going to do is quickly go through Tables 1 and 2 and 3, just give you the birds eye view of what happened at each of these venues.

So, in Table 1, as you can see, a majority of the

groups that commented, commented that status quo for Issues 1 and 2 were favored.

There are some organizations that favored Option 2 under Issue 2, which is a recreational quota. As a very blunt generalization of all the public comments that we received, the recreational community was not in favor of the overall payback system.

The rationale that was contained in most of their letters was that the MRFSS program and data collection system was not designed to monitor quotas and require paybacks the following year.

Again as a generalization, the letters and comments that we received from the commercial community were in favor of a payback, and the rationale that was contained in most of those letters was an equity issue.

The commercial community has to pay back each pound that it goes over, and they felt that in fairness the recreational community should be held to the same standard.

And, also, those letters contained the fact that the commercial quotas over the years have been impacted by the recreational overages that have occurred. So that's a generalization.

A couple things of note in Table 2 is if you look at the public comments that were received from New York, we received 207 letters from mostly folks out on Long Island that were in favor of a recreational quota, pound-for-pound overage repayment.

And that letter, if you look at the very last page of this packet of information, that letter is contained on the back there. We received 207 of these same letters signed by different individuals, and all those individuals were from New York.

The letter that precedes the New York letter -- there's a little number in the box up at the top -- we received 18 of those letters and those letters were from individual recreational fishermen that were strongly opposed to any repayment system.

And then as you go, you will see another letter, we received two of those letters. And all the other letters that are contained in this packet are summarized in the table and they're all individual -- they're letters from individuals or the letters that we received from the organizations.

Another thing of note is that we received comment from the North Carolina Marine Fisheries Commission, and their comments are summarized on the first line of Table 1, and also the Delaware Division of Fish and Wildlife supplied comments at their public hearing, and they're on the second line of Table 1.

So those are the written comments that we received either from organizations or from individuals. I can answer some questions on those if you'd like. And just a real quick summary, the public hearings that we had, there were 13 public hearings held up and down the coast.

In Table 3 you can see that a couple lines are blank, and I think in the transition from Mike Lewis to myself we missed the summary of a few hearings.

The three North Carolina hearings that were held, no public was in attendance at any of those, so those would be left blank either if I did or did not receive a public hearing summary so it's kind of the same answer.

The Massachusetts hearing, David Pierce said that he would comment on that; and the Newport News, Virginia, hearing, Jack Travelstead said that he could make some quick comments on that.

But, the majority of the comments that we received at public hearing were from recreational fishermen and they were definitely in favor of status quo.

A few folks commented that we should base the states' shares on something other than the 1998 base period, and we should take an average of years to dampen out the highs and lows of the landings that occur in one individual year.

Some states are affected by weather and availability and those sorts of things. So, there were some comments received that we should not just base it on one year for the state share allocation.

And that's the quick and dirty of the public comments that we did receive. The tables, I think, are hopefully pretty self-explanatory and summarize what we heard.

Obviously, the letters and the public hearings have a lot more detail and rationale on why they selected these options, but just as a general rule the tables give you an idea of where people are falling out on the issues contained in Addendum VIII.

I can answer any questions or go into more detail if the board pleases, but all the information is here that we received at our office.

CHAIRMAN FREEMAN: Okay, are there any comments or questions to Bob relative to the summary table? Jack Travelstead.

MR. JACK TRAVELSTEAD: Just since the Virginia public hearing is not summarized there, I'd provide to the board that there were about a dozen people in attendance at our hearing. I think all of them identified themselves as recreational fishermen.

In general, there was near unanimous support for the status quo options under each of the issues. Most of the discussion centered around the fact that no one in the room had ever been surveyed by MRFSS and a general lack of confidence in the survey, and the belief that it shouldn't be used to calculate paybacks on a state-by-state basis.

And there was concern expressed that once the regulations were set, that within a year a state has little ability to adjust its regulations because there are no data available within a year to do so.

So it's pretty much at the mercy of whether the stock is in your waters or not as to whether

you're going to go over quota, and there is nothing that you can do about it mid-stream.

CHAIRMAN FREEMAN: Okay. Dave Pierce, go ahead, Dave.

DR. DAVID PIERCE: Well, I guess the nature of the public comments were similar at the extreme north and the extreme south ends of the range of the fluke fish range. Like North Carolina, we had no one in attendance, but that's somewhat of a mis-statement.

We had one person in attendance, the owner of a bait and tackle shop who expressed similar concerns to what Jack just mentioned; concern about the MRFSS data not necessarily being accurate. And, his perspective was that the status quo should be adopted for all of the options that are in the addendum.

CHAIRMAN FREEMAN: Okay, anyone else? Any questions directed towards Bob?

MR. BEAL: Okay, one additional comment on the public hearing summaries or the public comment summaries that I handed out. If written letters were handed in from organizations at public hearings, those letters are summarized in the public hearing summary in Table 3.

They're not summarized in the comments from organizations that are included in Table 1. Table 1 includes things that were mailed in and that were faxed in to our office. Table 3 is summarizing the comments that were made at public hearing.

Some of the comments in Table 3 are from organizations representing a number of fishermen, not necessarily individuals. So just kind of keep that in mind as you're looking through the document.

I think United Boatmen and the Freeport folks in New Jersey and Long Island, you know, those comments are included in Table 3, not in Table 1. I just wanted to make that clear to everyone, that some of those comments are from groups of people and not individuals.

CHAIRMAN FREEMAN: All right, at this point I would ask for public comment. Those of you who would like to speak relative to your position on Addendum VIII, I had a request from Tony Bogan at this point. And then I'll select other people.

MR. TONY BOGAN: Yes, my name is Tony Bogan from United Boatmen of New York and New Jersey. Thank you, Mr. Chairman. United Boatmen's position on Addendum VIII, everyone should have a copy of it sitting in front of you.

I don't obviously expect you to all read through it right at this moment, but everyone's got a copy of our position. What I'm going to do to try and for the sake of brevity, which I know is not common for me, I'm going to just try and give you a quick synopsis of what you've got in your hands and then just pick on two specific points that I'd like to point out.

I'm not going to get into detail of the quote from the National Marine Fisheries Service in 1996 when they said why you can't do recreational paybacks based on MRFSS in the scup fishery. That's Attachment Number 1 in the handout that you have.

As comments were just made a couple minutes ago that some of the commercial sector was saying as an equity issue that they'd like to see, you know, they have to payback so recreational fishermen should have to pay back, and those discussions have been around the table previously, like in the February meeting.

Attachment Number 2 in your handout is National Marine Fisheries Service reasoning from the Federal Register of why the two fisheries are managed separately and you cannot manage them the same. Again, that's Attachment Number 2.

In addition to that, in Attachment Number 2 is a quote from the North Carolina Fisheries Service in the state agreeing with one of our positions, which is the question of the lag in time with the stock assessment where the stock assessment is

typically two years behind and is one of the causes of some of these supposed overages.

Attachment 3 is Pat Kurkul's comments from the meeting last year where she gave her concerns about using the MRFSS system directly. That's Attachment 3 in your handout.

Attachment 4 is Bill Hogarth's comments from just last year in relation to a lawsuit that was filed about recreational overages where he states his reasons why the fisheries are managed differently between commercial and recreational and how MRFSS was only designed to denote trends on a large-scale basis, so that's Attachment Number 4.

Attachment Number 5 is a list of quotes from our February meeting that you folks had right here where, just to give a quick synopsis, basically different directors around the table described MRFSS as "squishy," "inaccurate," and "a crap shoot." Yet, it is being sought to be used as an exact tool to try and deduct fish from the recreational quota.

Also, there is comment about how a small number of samples with large numbers of fish can adversely affect the landings data, and that's a quote that's directly from a former ASMFC staffer, Mike Lewis, who is no longer with the commission.

Attachment Number 6 that you have in your handout is the New England Fishery Management Council from just last year having a motion that was defeated on a voice vote for not doing paybacks in Amendment 13 Groundfish because of the uncertainty of MRFSS.

That's a quick synopsis. These are the few things I am going to discuss. Obviously, the MRFSS is the basis for the paybacks. It is the only tool that would be used for paybacks. Basically one of the problems we have with MRFSS — and I know it's been brought up specifically in reference to Pat Kurkul's comments that she felt that you could not use the MRFSS directly.

It has been suggested and mentioned on the record here that some of the options in Addendum VIII that account for the PSE, the percent standard error, address those concerns, and I would beg to differ.

If you look at Attachment Number 7 in your handout, for the last year Wave 3, 2002 – again, most of the attachments are historical reference. These are just last year. In Wave 3 MRFSS has absolutely no effort data for the entire recreational sector in the entire Northeast Region for any fishery; not just summery flounder, any fishery.

Because of a screw-up in the random phone survey, they had to completely throw out all of the Wave 3 effort numbers, so instead they made a number up. Sure, it's an educated guess. They took an average of '99, 2000, and 2001 and plugged that in for effort numbers.

But an educated guess is still a guess, and paybacks are being sought to be based on educated guesses at best. I would argue that effort number is not necessarily even remotely close to what the effort was in 2002; that if you go back and look at the MRFSS data for 2001, they claim that New Jersey had an effort level of 1.3 million anglers.

And in the year 2002 they claim we had 600,000 fewer anglers, almost 700,000 few anglers; almost a 50 percent drop in effort supposedly in the state of New Jersey from one year to the next so that in a three-year average, it wouldn't even come close to being representative of something like that.

So that's one example of where MRFSS is just physically incapable of doing what you're trying to do with it and no accounting for PSE could possibly compensate for something like that.

The next several attachments, 8, 9, 10 and 11, all relate to the New York tautog fishery from last year. Attachment 8 shows New York taug numbers by year, and it shows that the 2002 landings for the state of New York in tautog were greater than the state of New York's landings from '96, '97, '98, '99, 2000, and 2001

combined.

So, they had a hell of a year in tautog fishing in New York last year according to MRFSS; better than the six previous years combined which is, as any rational person would know, a physical impossibility.

It's a 1400 percent increase in the state of New York from 2001 to 2002, so no accounting for any percent standard error, which is 30 percent in New York, by the way, for tautog; so if you deduct that 30 percent PSE, then it's only a 1,000 percent increase in the landings from one year to the next. So that's much better now.

It also shows that the 2002 landings – excuse me, that was it, that it's only 30 percent. So if you take off the PSE, then in 2002 they only landed more fish in that one year than they did from '98 through 2001 combined, and almost all of '97, as well.

Attachment Number 9 is New York's taug numbers by wave, and this is where it gets even better. It shows that Wave 5's numbers, just the months – excuse me, Wave 6 is actually I believe what it is.

Wave 6 numbers from November and December in the state of New York, they caught more fish in two months than they did in the years '97, '98, '99, 2000 and 2001 combined, all of those years combined, more fish in two months than in five years.

Attachments Number 10 and 11 show the breakdown by mode because of those – let's see, it was 636,000 fish for the year; 520,000 fish in the months of November and December, and we all know what wonderful weather we had this past November-December, so obviously everyone was out fishing for taug.

Attachments 10 and 11 show that of those 520,000 fish caught in Wave 6, 432,000 of them came in the private sector, so the private boats were able to go out when the party boats were not because they can go out in much rougher weather than we can and were able to catch more fish in the months of November and

December than the private sector caught in the years '99, '98, 2000 and 2001 combined; a 3,900 percent increase in the private sector's catch from one year to the next.

So the private sector had a hell of a two months. And, of course, that ignores the fact that in New York between November 1st and December 1st most all of the marinas in the state of New York require your boats to be removed from your slip, so these guys actually did all that fishing in only 20 or 30 days of that 60-day period.

Yet, these are the same MRFSS numbers that you're going to use to base paybacks on. Another thing to keep in mind, too, as far as the tautog numbers, before it comes out that, well, this is summer flounder not tautog, and we have much more confidence in the summer flounder numbers than tautog, the coast-wide PSE for summer flounder from '92 to 2002 is between 4 and 5 percent.

The coast-wide PSE for tautog for the same eleven-year period is only a little over 10 percent, so we're not talking about a huge difference here in percent standard error. And no 10 percent standard error could accommodate a 1,400 percent increase in a fishery had that been a quota that would result in overages. So, again, these are numbers that you're trying to use for paybacks.

The last comment I have is Attachment 12 is a comment from the stock assessment, the most recent summer flounder stock assessment, in describing what in the commercial catch has been referred to and characterized as "hard numbers," that the commercial catch should be considered a "minimal estimate" because there is no accounting for discards or unreported or underreported catch, yet it's not used as a minimal estimate. It's used as a hard number.

So even the numbers that are supposedly the best in the business are anything but; one more example of why you cannot compare commercial and recreational fisheries.

I've heard commercial fishermen up and down the coast complain for years, "oh, you can't treat

us like them" and we've said the same thing, "you can't treat us like them."

We're different; we're not the same. Yet, in the context of Addendum VIII suddenly it's convenient for us to be treated the same.

Now if I had real-time data, if I had data collected in two-week blocks, if I knew what I was doing a month into my season, could do what New Jersey did with commercial sea bass; close the season 16-18 days into the season because they thought they were going to reach their quota, it would make my life simple.

That's not possible with MRFSS which means, in my opinion, paybacks are not possible with MRFSS. Thank you very much for your time. I'm sorry to take up so much of it.

CHAIRMAN FREEMAN: Thank you, Tony. Are there other people who would like to speak on this issue? I see Bobby Bogan. If you would come forward, please, we'll make sure we get hold of everyone.

MR. ROBERT BOGAN: My name is Robert Bogan. I'm a member of United Boatmen. I have a party fishing boat. I consider myself a conservationist, a recreational fisherman, and a commercial fisherman.

If the fluke stocks crash, I'm out of business. I want to see the fluke stocks healthy. I definitely have a problem with MRFSS data. I believe it is severely flawed, and I think the payback should be shelved forever. That's all I wanted to say. Thank you.

CHAIRMAN FREEMAN: All right, thank you. Anyone else? Come forward please and identify yourself.

MR. TOM GILMORE: Yes, sir, thank you. My name is Tom Gilmore. I support the United Boatmen's stance against the payback issue. Basically I work as a deckhand. And, the difference of a regular customer and a person that comes once in a while to enjoy recreational fishing, the decline of the regular fisherman, I've seen it go down in the last 8-10 years since we've had constant restrictions. And, basically I

just want to support the United Boatmen's opinion. Thank you.

CHAIRMAN FREEMAN: All right, thank you. Other members? Yes.

MR. DENNIS KANYUK: My name is Dennis Kanyuk. I have two party boats in Point Lookout, Long Island. I'm also a member of United Boatmen. Like Tony said, I agree with everything he said 100 percent.

The biggest problem -- one of the biggest problems is the lag in the MRFSS data. You talk about commercial fishermen, you know what they're catching. You adjust their catch all year. If they go over, it's only by a little bit. A little bit is deducted. We don't have that luxury on the recreational side.

Our data is not even complete a lot of times in December and we're taking estimates from the year before whether it's fluke, sea bass, and porgies. How can you do that now that you're going to do paybacks when you can't even have the data done sometimes within a year of when the fishery closes?

Nowhere around the table do I hear anything about the underreporting by the commercial fishery that MRFSS says could be as high as 30 percent. I keep hearing the recreational fishermen are the ones that are causing this slow recovery.

It's the alleged overages by MRFSS data which -- when Tony presented it, it is very funny. I mean, how could you rely on information that we know that a lot of times may be wrong, estimates because wave data is missing.

The state of Connecticut caught more fish, twice as many fish, in a three-week period on porgies than they did the whole season they had open, and this is the "accurate" MRFSS data that we're going to use for fluke.

This is kind of ridiculous that you would even consider taking information that every one of you have gone on public record as saying is terrible, but now all of a sudden it's more

accurate than it was two years ago? I haven't seen any changes.

There has been no new way of collecting it. How did it get more accurate? And nowhere do I hear anybody talking about these ridiculously high size limits that the recreational fishermen already have; as high as 18 inches I believe in the state of Rhode Island, 17.5 inches in other states, 17 in New York, which is totally absurd.

Catch seven-eight keepers on a full-day trip with 25-30 people. That did a lot of damage to the stock. We let these fish spawn two-three some of them four times, meanwhile the commercial sector -- and this shouldn't be bashing the commercial sector by any means, but the commercial sector has a 14-inch size limit, one-year-old fish.

Up to 1996 they had a 13-inch size limit. They didn't even let the fish spawn once. Where is the contribution that we're making into the biomass taken into consideration? All I keep hearing is it's our fault that these fish are collapsing.

They're not collapsing; they're not rebuilding as fast as everybody would like. Well, I have a feeling that after 20 years and you average everything out, we're right on target. Where is the 30 percent underreporting that MRFSS says -- not MRFSS, the National Marine Fisheries says is happening by the commercial fleet? Thank you.

CHAIRMAN FREEMAN: All right, thank you. Anyone else? Jim Lovgren and then Willie.

MR. JIM LOVGREN: Thanks, Bruce. Now for the other side of the story. We're here because of a problem. MRFSS data, everybody agrees is not accurate data. And the argument definitely can be made that it shouldn't be used to set quotas or to figure out quotas and for paybacks or so forth.

But the fact of the matter is when it gets to MRFSS data is that it's considered accurate enough to reduce our quota the next year when recreational fishermen overfish.

So we are seeing decreases in summer flounder landings and we are not seeing the increases that we should be doing if the quota wasn't overrun to the extent of 26 million pounds over the last six years.

Now let me tell you, 26 million pounds, 60 percent of that is over 16 million pounds of summer flounder the commercial industry has not caught, and that's about \$100 million that the commercial industry has lost because of that.

That's a lot of money. This is not fair and equitable. It's not abiding by National Standards. I don't consider this payback. I consider it accountability, putting us on the same page.

I think in Addendum VIII the provisions are here to make this work without causing economic harm to the recreational industry by using a three-year averaging system where over the course of three years underages would also be given credit with overages.

I understand the problems here of setting a separate recreational quota from commercial. It would require a plan amendment on the council level and so forth. So whether that's doable or not, I'd like to see it, but I don't think it's doable.

The thing is if something isn't set up here, then basically there is nothing here to stop the recreational industry from continuing to exceed quotas; then, consequently, the commercial guys pay back more of it.

There has been a petition for rulemaking filed that is related to this incident. As a matter of fact, as far as I can see, I think this was filed just because you guys had the nerve to suggest that there should be a recreational payback.

So, you know, if you're going to make us pay this back, then we want 50 percent of the quota because we're going to get it one way or the other. We can't get it through a payback, then we're going to get it through a petition for rulemaking.

And I don't think that's right. Right now the recreational fishermen are enjoying unprecedented success fishing for just about every species in the ocean there. Bag limits are common. Every day in the newspaper I'm reading that guys are limited out on sea bass.

They're limited out on striped bass. They're limited out on bluefish. They're limited out -- they have a cornucopia of fisheries out there that they can take advantage of and they are taking advantage of but they're not happy yet.

They want to take commercial fisheries basically and shut them down because right now, as of today, New Jersey is shut down for the next month. We can't go summer flounder fishing. We were open all summer last year.

And in August we'll be shut down again for another month, and that's because of lack of quota. That's what it gets down to. We had three boats couldn't go menhaden fishing this summer because basically they shut the Sandy Hook Bay down.

Those boats ended up catching 30,000 pounds. They caught a little less than a sixth of our quota in this past season. That's a week off of the season for everybody else. So we're being attacked left and right and it costs people jobs. It costs them income.

Commercial discards are increasing. You have states such as New York, Connecticut, Rhode Island that don't have enough quota to cover what is being caught. As these stocks increase, they're coming into more occurrence with summer flounder, and basically they've got to throw them over the side.

They don't want to throw them over the side, but their state doesn't have enough quota to say, hey, we don't even have enough bycatch quota to give you quota. And we need to address that problem, and we're not doing it.

I have suggested and you all know where that stands there, that's in limbo, the idea of increasing certain states' quota through an

amendment, but we're not doing anything there. But we have problems here. These are workable problems.

You can't bury your head in the sand on this issue. We need accountability. It's not payback; it's accountability. Commercial guys have got to pay it back or we're accountable. But we need that for both sides.

So I would appreciate there -- and I want to point out, Bob, at the advisors meeting there, you said you got 300 letters and comments on this and 230 of them were from commercial fishermen in support of Addendum VIII and the payback provision.

I think that needs to be pointed out to everybody because I don't know when the last time I've ever seen 230 letters come from the commercial industry, and that's significant. Thanks.

CHAIRMAN FREEMAN: All right, thanks, Jim. Willie.

MR. WILLIE EGERTER: Willie Egarter, United Boatmen. I also have a party boat in Point Pleasant. Every year, when we come to these every year, the regulations are changed. Every year the recreational is either getting changed in size limit, bag limit, seasons.

And every year, when you change it, that is a give-back. We give back something every year because we have to change our type of fishery, the way we fish and all that, and we lose our business and income every year we have to change it.

Try to get it back, it's a little more difficult. So, our size limits are two and a half inches larger, like one of the fellows had just said. Those fish have a chance to spawn three or four times. There is already a benefit to your fishery.

Some states have different seasons. The state of New Jersey is closed when the season gets to be the best, and we've already saved there. Fish that aren't taken away from the population have another chance to spawn.

And the recreational overages are not deducted pound for pound. 26 million pounds supposedly of a recreational overage does not mean that the commercial fishermen had that 60 percent deducted from their total allowable catch, so I can't see how the commercial sector had all of a sudden been put out by \$100 million where the recreational gets put out more and more every year from state to state when every state has to change due to change of regulations, which is our major give-back. That's all I'd like to say. Thank you.

CHAIRMAN FREEMAN: All right, thank you, Willie. Anyone else? Yes.

MR. HERB MOORE: Good afternoon. My name is Herb Moore from the Recreational Fishing Alliance. As stated in our written comments that have previously been submitted, the RFA supports Option 1, status quo across the board, to keep the recreational repayment strategy out of summer flounder management. It's our position that the foundation of the summer flounder management system is flawed as we did outline recently in a petition for rulemaking submitted by the RFA, United Boatmen and a broad coalition of recreational fishing groups and industry groups.

It's our position that the 60-40 split of the TAL violates a number of National Standards. I'd like to echo some of what Tony Bogan mentioned.

I think he hit all the points earlier, that until some of the inherent inequities in the summer flounder management plan are fixed, there is no way that a payback plan can be put into place.

Tony hit most of the main points, most of the main problems with MRFSS that I could see. One thing that I'd like to add is that NMFS is on record consistently saying that a recreational overage repayment strategy based on MRFSS just is not consistent with the National Standards of Magnuson.

On June 3, 1996, in the Federal Register, NMFS is on record saying that a recreational overage repayment strategy based on MRFSS would be

in violation of National Standard 1, National Standard 2, National Standard 4, 6 and 7.

So it's our position, as outlined in detail in our written comments, that until these fundamental flaws with this management system are straightened out, the recreational overage repayment strategy has to stay out of the summer flounder management. Thank you.

CHAIRMAN FREEMAN: Okay, thank you. Any other comments? Raymond.

MR. RAYMOND BOGAN: Thank you, Bruce. It's Ray Bogan. Bruce, first of all, with regard to the public comments, with the comments that were submitted to this board, there were a significant amount that are referenced in summary in the third attachment.

I just want to point out that the organizations represented by those written comments, which were substantive and lengthy, which would have made this package significant, but I think would have been far more substantive, those organizations represent vessels, businesses, tackle dealers, et cetera, that service a few million people per year.

So, when considering these written comments that are there, please consider the fact that substantive comments from organizations that take an awful lot of anglers and address an awful lot of anglers are excluded from the package.

And I understand why, by the way, because they were submitted during the public comment period through oral testimony, also. I just don't want there to be an impression that somehow the package that you received in any way represents the written comments that were received as a result of this proposal. They are not. They are far, far fewer than were received.

With regard to the 230 form letters that were submitted by the commercial fishermen in New York, a difference of opinion, we opted -- and I'm speaking now for our organization only -- we opted not to do a postcard campaign, none of those things.

We thought about that. We thought maybe we'd

submit 6,000 or 8,000, get them together in the course of several weeks from our organization and folks who fish on our boats and submit them to you. We opted not to do it because we felt that we should come here with substantive comments.

We felt that just bombarding you folks with a ton may be impressive for us or for somebody else, but it doesn't really give you the information that you folks need from a decisional standpoint.

So whether we were right or wrong or whether the fact that we could have overwhelmed anybody in terms of written comments, we made that decision that we thought folks should come in substantively, which is not to say that all of our comments are going to be accepted, but that was a decision I'd like you folks to also consider that.

A couple of things that Jimmy Lovgren, who is a very good friend of mine, who I've worked with on any number of issues, but that I respectfully disagree with on this issue, and no one wanted to bring this up, but it must come up and that is with regard to the issue of unreported dead discards on the commercial side.

We do not want to raise that as an issue for punishment. We don't want to punish the commercial side in the same way some have proposed to punish the recreational community. Please recall where that information came from.

They were substantive comments of significant commercial dead discards given by commercial fishermen to, amongst other things, the Fluke Board of the ASMFC, much in the same way substantive comments were given about massive scup discards, but now we're only talking about fluke.

When we talk about fairness and equity, consider the fact that they have been excluded from this picture. NMFS has suggested 30 percent. We don't know what it is. We're not sure what it is. We know commercial fishermen have suggested it's significant.

And we know right now that's not even on the table as we speak about fair and equitable. I would leave it to you folks for just a couple minutes to think about whether the recreational community can in any way buy into the thought that it is fair and equitable when those have been, continue to be and will be excluded from this process.

We're not asking them to be brought back in. We are asking you to reject the payback proposal. Likewise, the issue of the size limit, as was raised by a person who has done a great amount of work on this thing, the size limit 16.5 and 17 and 17.5 inch size limits.

Now I know that there is debate with regard to size and length frequencies on summer flounder, but no one can debate, based on the best information available, the contribution made by returning the fish between 14 and 17 inches, that 3-inch accounts for, at a minimum, one spawning season; for many fish two spawning seasons.

That is a significant contribution towards the rebuilding of this. Will there be credit for that? No. Will there be punishment for it, however? There has been because we're counting weight. Those numbers of fish are considered by weight.

We're not talking about fairness and equity when we talk about that because if we do we take all of those things into consideration in a substantive way.

One of the big problems with this proposal also deals with the way different states are going to be treated because different states will be treated differently. It's going to happen, and we all know it's going to happen.

We know what happened with Connecticut. We know the absurdity, the utter absurdity, of the taug numbers with regard to New York. Now, again, for someone to say, "aha, that's taug; it's not fluke. And taug has a different PSE."

It is not that significant from a statistical standpoint, folks. And I know that nobody wants to say MRFSS has a significant problem.

So what we do is we only -- and I say "we" respectfully -- the managers only address it on a piecemeal way, in a piecemeal way.

For example, to address the debacle in Connecticut last year, what should have been addressed is the debacle of New York. That's a mess -- 3,700 percent. None of you believe that. None of you believe those numbers.

You can't, because you can't also ignore the fact that October-November had a certain weather pattern that is indisputable and what happens with these boats -- the boats weren't fishing. Our boats weren't fishing, let alone the small boats. That's not debatable.

But let's assume for argument's sake because of higher PSE in New York, that it was only 2,000 percent. Folks there was a 97 percent differentiation -- I'm sorry -- deviation over a two-year period in the state of New Jersey, which is supposed to have the best of all PSEs.

Now we can come here and tell you that's ludicrous. We can tell you that it's ridiculous for anybody; and, moreover, we have substantive information to show that it is not a realistic number because we can get data from headboat-charter boats but we can also get it from tackle and bait distributors.

We know that we tried that in the past, and to some extent you folks have considered that issue, and that is how much it's increased. Please consider that in the context of paybacks. But also consider what's going to happen the first time you take a state that is convinced that these numbers are severely wrong for that particular year?

What happens the first time Connecticut gets nailed and shouldn't have been? Perhaps you work on exception in which case you dilute the whole concept, anyway. But if you do it the way it has been proposed, whether it be a three-year running average -- remember, New Jersey, how do you assess a 97 percent differentiation; 57 percent down one year -- I'm sorry, 57 percent up one year, 40 percent down the next. How do you do that? You can't.

You say a three-year running average. What you're doing is you're taking three mistakes and putting them together and saying three mistakes makes up for the one mistake. It doesn't. It doesn't make any sense. And we know inherently and intuitively that's not sensible. We know that's not something that can be sustained.

So respectfully we would ask you folks to consider the implications not just of what you want to do to punish the recreational community, but what happens once you have taken steps to punish a particular state. There is going to be some real damage.

I would submit to you, by the way, I can name two or three states right now who are not going to accept that fact, and I think you know what happens at that point.

But at this stage of the game, just looking at this from an intellectual and from a regulatory standpoint how improbable it would be that some state is not going to react real badly the first time you propose to either shut them down or curtail them in a way where they don't have a viable fishery. It's not fair.

I've talked about the fluke problems with New Jersey. We can talk about them with other states with regard to percentages up and down that don't make any sense in terms of the trends that everybody knows: blackfish, tautog, porgies, other fisheries.

You can even analogize it to the LPS where we were catching massive amounts of tuna during hurricanes. Pat Augustine and others will remember that. Guess what? You guys were catching a lot of blackfish and other species during some severe weather this year, and you know the boats weren't even sailing during that time period.

I can't explain why that happened. And I know some of you can look and say, "you know what, though, Ray, we've got the info. You don't; therefore, we win." That's not fair.

And, again, if we keep getting back to fair and equitable when we talk about all of those concepts put together, you've got to consider not just the flaws of MRFSS, you've got to consider the equity with regard to the commercial fishery in unreported dead discards as reported by commercial fishermen who have said on the record, while I sat there and listened to it, and we can give the dates of those hearings if anyone needs them in which they said we are afraid to report them because we're afraid you're going to cut down on our quota. It's a reasonable response. We're not criticizing them for that. But, again, when we talk about equity, we don't see it.

The bottom line here is that you can't convince the recreational community of any equity here. The reason you can't is for all those reasons that I've mentioned. But you have a system in which, again, you're going to create possible, significant disparity between states and inequity for a state.

And the final thing I'll say is that you are going to separate the management system between the ASMFC and the council which is what is supposed to be a joint plan between them and NMFS. You are going to separate that and tear it apart.

The last time you tried that was when you tried to increase the quota, and it didn't happen. And I would submit to you that this is bad medicine. It's inequitable. I would suggest that you reject paybacks. Thank you.

CHAIRMAN FREEMAN: All right, thank you, Ray. Is there anyone else who would like to speak on this? Yes, sir, come forward.

MR. PAUL FORSBERG: I'm Paul Forsberg, owner of the Viking Fishing Fleet in Montauk, Long Island, New York. Most of the points that I was going to bring up have already been brought up, but I have a few things here in reference to the meeting on April 24th up in New York State that shows 30 speakers.

I'd just like to let everybody know here that the last count was 103 people at that meeting I

counted myself. It was standing room only. It was out the doors. A lot of people left early because they couldn't get a seat.

They couldn't even get into the room. Most of the people didn't know they had to sign in. It doesn't make any difference. From this information here, it only looks like there's 30 people there, but there was over 100.

As far as the MRFSS data, I think everybody is agreeable that MRFSS data is a little bit out of whack. And most people on the recreational side, I think everybody is in favor of status quo. Now I think it's great you had a lot of letters from the commercial support for against the status quo on this.

But, if you'd like to have letters, gentlemen, ladies, I carry 38,000 people a year. Would you like to have letters? I can get you a lot of letters. That's what I represent in the course of one year fishing on my boat; so if we need a letter campaign here, I can get them to you. And I'm in favor of status quo. Thank you.

CHAIRMAN FREEMAN: Thank you very much. Anyone else? Yes, in the very back.

MR. DON ZOCH: My name is Don Zoch. I'm a recreational angler. The concept of paybacks from my seat is a matter of penalty. It is not a matter of equity nor conservation. If I'm not mistaken, the entire management process on the commercial end with paybacks was to initiate a penalty if indeed that sector went over.

It is achievable to some degree as a penalty with the commercial because of the data collection which, from what I could see, is real time and accurate.

To attempt to apply this same standard, a penalty, against the recreational sector, you need real-time, accurate data which gives the recreational sector an opportunity to deter their overfishing.

Now we know MRFSS is not real time. Apparently everybody at this table knows it's not accurate. How can you penalize the

recreational sector when it's not in their control? If there's going to be a penalty, maybe it should be on the management decisions and the managers of the stock. It can't be on the recreational end.

Certainly, payback on the recreational end is not going to give equality for the commercial. I'm not even sure that it's quantifiable, the amount of the supposed overages on the recreational sector, how it impacts the commercial's TAL.

With my wife, I tried to get the answer to that question and I was told by one of the biologists that it's indeterminate, that they can't figure out how it's done.

So, if this board is looking for some type -- if the whole purpose of this Addendum VIII is to provide some type of equity with the commercials, don't go with a penalty-motivated situation. You have to go back to the drawing board and come up with something better. Thank you.

CHAIRMAN FREEMAN: All right, thank you very much. What I'd like to do, in order to stay on the -- oh, there's one other hand. Yes, Cathy.

MS. CATHY ZOCH: My name is Cathy Zoch. I'm a recreational angler from the state of New Jersey and I fish on party boats. I would imagine none of you have really probably been on a party boat. But, anyway, I go out every week fluke fishing.

I just want to let you know that what was stated earlier, you could have 20 and up people on board, and they're going to walk off, the entire group of people, with maybe seven keepers on that trip and the rest of them are empty handed.

There has been, according to the MRFSS data, no increase in the amount of anglers or the amount of trips, and I agree with that. I think these party boats would have a lot more passengers on their boats today.

I think this has cost them an innumerable amount of money due to people -- as was stated earlier -- regulars who know I'm not going to

catch any fish on that boat. I'm not going. Fluke is not a catch-and-release fish. It's not striped fishing.

People want to bring it home, bring it on the table. They're going home empty handed on all these boats. This is what you people should be spending your time on. This is a serious problem.

You want to talk about financial equities, there is a real financial, economic disaster going on here. I don't want to lose these boats. There's very few left and I don't want to lose them. Thank you very much.

CHAIRMAN FREEMAN: Okay, appreciate those comments. Bob, I'd like for you to report on the advisors' actions.

-- Advisory Panel Report --

MR. BEAL: Sure, thank you, Mr. Chairman. Each of you should have just been handed a few minutes ago, before the public comments started, a one-page summary of a Summer Flounder Advisory Panel meeting that took place on June 5th in Baltimore, Maryland.

The attendance at the meeting was somewhat limited. Two of our advisors were there and three of the advisors from the Mid-Atlantic Fishery Management Council were there. It was still a productive meeting.

We went through the document and collected some valuable comments I think for the board to consider in their deliberations.

The advisors made a few general comments, which I'll go through quickly. The first one was that Addendum VIII creates more division between the commercial and recreational sectors.

They felt that the stock has rebuilt to a condition where there should be enough fish to kind of go around for everybody and keep everyone happy, and both sectors should be able to enjoy the benefits of the larger population.

There is concern that as some sort of repayment

system may be implemented where one state has to repay overages that occur in another state, and they felt that that was not equitable. They felt that the larger size limits in the summer flounder fishery have shifted the fishery from shore-based anglers to private and for-hire boats and the landings are shifting from inshore to offshore.

There was some concern that the landings in some states were down in 2002 and that there may be a concern for recruitment and/or the distribution of the population.

There was also a lot of discussion on once the population rebuilds, what can the states do to actually decrease their size limit when the stock and the overall harvest limits allow that.

There were a number of comments that we need to collect some information on the size composition of the discards in order to be able to decrease size limit in the states as time goes on.

And then the rest of the comments are specific to the issues contained in Addendum VIII and I'll go through those pretty quickly and answer any questions if you have them.

The comments on Issue 1. The advisors at the meeting unanimously agreed that the state shares should be based on an average of a group of years rather than 1998 as it is right now. The group agreed that 1998 should be the latest year in the time series that's used and 1981 should be the first year that's used.

They didn't select a grouping of years that should be used but they felt that averaging out a few years would be more appropriate than just using 1998 for establishing the state's shares.

On Issue 2 the advisory panel was split on this issue. Four of the advisors at the meeting felt that no repayment system should be implemented given the uncertainty of MRFSS data.

And, one advisor at the meeting felt that there should be an overage based on a three-year average to dampen out the highs and lows of the MRFSS landings and with the 10 percent or so

buffer to account for the variability in MRFSS.

No one at the meeting supported the institution of a penalty for large overages. Option 4D considers if a state goes significantly over, be it 20-30-40 percent, they may have to pay back not on a pound-for-pound basis but on a 1.5 pound per pound of overage or something along those lines; 1.5 to 1 ratio.

Issue 3, which is the carrying over of recreational underages, the group was unanimous on this one, that they should not be rolled over to subsequent years, and there were a couple of reasons.

The first was that the equity issue, that commercial underages cannot be rolled over, and so therefore the recreational underages should not be able to be rolled over as well.

The second issue was that though we're currently still rebuilding the stock, we're not at the target yet. We should be at the threshold by now, but we might as well leave these fish, the underages, in the ocean, let them spawn and grow and we can get closer to our rebuilding target in the plan.

On Issue 4, which is the calculation of the commercial TAC, considering the recreational overages that have occurred, the majority of advisors there felt that we should continue to establish our quotas as we do right now, which is the 60-40 split of the overall available TAC.

And one advisor felt that we may want to consider establishing the commercial quota as described in Option 2 only if there is no recreational repayment considered or established by the management board.

One additional advisor from the Mid-Atlantic Council had contacted me following the meeting, and his comments were that we should have a hard quota for the recreational quota on a pound-for-pound repayment.

So, you know, one person that couldn't make it did make the effort to give a call and give us his comments. So that's a quick summary of the advisory panel meeting. If anyone has any

questions, I'll be glad to answer them.

CHAIRMAN FREEMAN: Any questions relative to Bob's report on the advisory panel? David.

-- Discussion on Addendum VIII --

MR. DAVID V.D. BORDEN: Not a question, but I think it might be useful to have one of our technical representatives characterize exactly what the impacts are when we exceed our TALs; I mean, how that affects any -- and you can use an example.

For instance, if state X has a very substantial recreational overage, then what is the impact of that in terms of our stock rebuilding objectives, in terms of recreational allocations to other states, and in terms of rebuilding the stock.

I mean, there were a number of statements, and I think those statements probably would benefit by some technical discussion.

CHAIRMAN FREEMAN: I'd ask Steve Doctor to make any technical comments he could.

MR. STEVE DOCTOR: An overharvest by the recreational or commercial sector would come into effect when the quota for the following year is calculated, and it would present itself in the size of the stock that was available for harvest when the appropriate harvest levels and F values or stock status values were applied towards it.

So, if there was an overage in the commercial or recreational sector, it would result in possibly, depending on recruitment, a decrease in harvest in both the recreational and commercial sector the following year.

CHAIRMAN FREEMAN: Bill Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. Steve, when they calculate that, what you just said, the recreational and the commercial levels, on the recreational one, do they use the MRFSS statistics to do the calculating there?

MR. DOCTOR: The level of the recreational harvest is calculated by the MRFSS figures, correct.

MR. ADLER: So if the MRFSS calculation goes into the status of the stock report there, and it shows that we were over and therefore the quotas have to be adjusted, it's actually being skewed if the MRFSS data is not correct; is that correct?

MR. DOCTOR: That is correct. I would like to also add that there is additional information that goes into the stock assessment, including surveys, so the impact of that one figure wouldn't be a one direct give-take on the amount of the figure but it would be one of the elements that goes into the computation.

MR. ADLER: So it is using this data, this MRFSS, which we just heard seemed to be inaccurate, but that is going into that overall picture, right?

MR. DOCTOR: Yes, and there is also retrospective analysis that goes in the previous year's MRFSS data so there is a continuum of corrections for types of errors like that, but there is an attempt to correct those types of errors.

CHAIRMAN FREEMAN: Tom Fote, then Dave Borden, then Pat Augustine.

MR. THOMAS FOTE: Well, Steve, I've got a couple of questions to ask then, if we're going to start asking questions. One is it's not a pound-for-pound relationship. I remember a couple of years ago when we basically did the hook-and-release mortality and we went from 25 percent to I think it was 12 percent.

And I said, well, that means more pounds of fish next year, and I got a form that says, no, because it goes in -- and I didn't really understand it, but they tried to explain it to me that it goes into the stock assessment and we would probably have to take a couple of years because it actually didn't mean more fish. It means less mortality rate.

So, really, when you talk for a pound-for-pound, it's not a pound-for-pound because you take

recruitment, you take everything else into consideration when you basically do it for the following year.

So overages on both the commercial and the recreational, even including what is used as discards for both of those fisheries, because we have a certain percentage we're using for discards, it's really not a pound-for-pound estimation is it?

MR. DOCTOR: That is correct.

CHAIRMAN FREEMAN: I have Dave Borden.

MR. BORDEN: Yes, I was just going to follow up on my earlier question and just emphasize the thought that it's important for everybody, not only the members of the audience, but the people around this table to remember that large overages in one sector, for instance, in a particular recreational fishery, can have fairly profound negative impacts on other recreational fisheries up and down the coast.

I mean, we have a tendency to talk about this as a commercial versus recreational issue, which I don't think really does it justice because, as Steve characterized, once you factor those overages into the equation, the result is that there are penalties and those penalties affect user groups, recreational user groups in other states, so it's a lot broader than just a recreational-commercial issue.

CHAIRMAN FREEMAN: Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. There have been several comments about the noted overage, perceived overage of commercial fishermen, anywhere up to 30 percent. And, we do know that those overages somewhere, the ones that are reported, end up coming off the overall quota.

My question is how does the model that you derive the final quota from, how does that handle any anticipated unreported commercial fish, either bycatch or illegally harvested fish, and at the same time how does it accommodate poaching or unreported fish from the

recreational sector?

I hope it's not -- I hope that's clear. How do we handle one versus the other? Do we handle them both the same way? Is the model structured that it accommodates for a certain amount of unanticipated reported commercial harvest and the same way it does with recreational? I think it's a fair question. I hope you can answer it, Steve.

MR. DOCTOR: I can answer that. The way that the model is set up is that we make an estimate on the stock size the following year. That estimate of the stock size should be influenced by such things as unreported commercial harvest because it's independent of those things when the analysis is made. I hope that answers your question.

MR. AUGUSTINE: Then the other part is that recreational applies exactly the same way?

MR. DOCTOR: That's correct.

MR. AUGUSTINE: Okay, thank you.

CHAIRMAN FREEMAN: Rick Cole and Jack Travelstead.

MR. RICK COLE: To get back to Dave's original question about the affects of these overages on the stock, we've all been told a number of times by Dr. Tesaro that given the size limits we have in place in both the commercial and recreational fisheries, that any overage maps on a one-to-one ratio right into the biomass.

So we're having a direct impact on rebuilding this biomass. And, as you all know, we're about half of BMSY right now. So, we've got a considerable way to go to rebuild this stock so we're at BMSY. So, any overages have a tremendous direct one-to-one impact on the stock.

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: Steve, I understood your answer earlier that if the recreational

fishery exceeds its total quota, then that's taken into account in the stock assessment and everyone loses as a result of that.

But, in a scenario where one or two states exceed their recreational quota but the total recreational quota is not exceeded, is there any penalty in the stock assessment when that occurs?

MR. DOCTOR: No. If the recreational quota is what was projected by the Northeast Fisheries Center when they did their analysis the previous year, then there should not be a problem if one state exceeds and another state makes up the slack.

CHAIRMAN FREEMAN: Gil and David.

MR. GIL POPE: Thank you very much. I guess this would be a question for either Steve or Rick. There seems to be some confusion as to why the commercial is still at 14 inches on a size limit and why the recreational varies back and forth up and down as to how they do their fishery.

I wonder if you could elaborate a little bit on, either one of you, on why it is still at 14, why a lot of the commercial fishermen have been wondering why it couldn't go to 16 and possibly get quota increases that way as they do in the recreational fishery.

And, Number 2, there was also a question from the audience about how discards are handled in the calculations either prior to allocations or projected stock assessment. Thank you.

MR. DOCTOR: The 14-inch minimum size on the commercial end is handled exactly the same way that conservation equivalency is handled between states. It is one alternative of size and length category that can be used for management of the species.

Your second question regarding discards, were you talking about commercial or recreational? What was your specific question?

MR. POPE: Commercial.

MR. DOCTOR: The commercial discards are taken into account by the NMFS when they do the stock assessment.

CHAIRMAN FREEMAN: Rick, go ahead.

MR. COLE: The other thing we seem to forget a lot of times is that the 5.5 inch tailbag requirement in actuality is designed to let 75 percent of the 14s through. I think that's what it is. So, most of those 14s are supposed to go through given that required gear size.

CHAIRMAN FREEMAN: Okay, I had Dave Pierce.

DR. PIERCE: Both Tony Bogan and Ray Bogan made some important points, many important points, actually, but the one that caught my attention was their reference to the Federal Register announcement of June 1996 where there are a number of references to the payback, using the MRFSS dataset for payback.

And when you read that, you conclude that if indeed the council was to go forward with this particular strategy, there would be violations of National Standard 4 and maybe even National Standard Number 7.

I haven't thought much about this. I'm not sure whether I agree with that. But, nevertheless, it's stated very clearly I think in this document, as reflected by the Bogans, that we can't ignore this.

Now, we've already made some decisions regarding what the options are. We're brought those to public hearing. And, now we're going to make some decisions about what options we should choose.

But, did we, when approving these options to go to public hearing, neglect that indeed we can run afoul of these National Standards. Granted, ASMFC is not ruled by the National Standards, but nevertheless the council is and we're managing cooperatively with them.

So, I guess my question would be to Harry, has anything changed with regard to the National

Marine Fisheries Service position as to how we can treat the MRFSS data for paying back overages?

Are there still some concerns regarding violations of National Standards? I think we need to know that before we pass judgment on any of these options here today.

CHAIRMAN FREEMAN: Harry, would you care to comment?

MR. HARRY MEARS: As best as I can hope explain that response, David, as I understand it, we're looking before us at an action which only includes establishment of recreational quotas in state jurisdictions.

And it in fact is not part of what is being formally proposed for implementation under the Magnuson-Stevens Act, unless I've missed some discussion where it's the intent of this group to go forward to the council afterwards and request that it formally be made part of a bona fide joint plan.

But the short answer is that the National Standards are specific to federal action and not state action in the context you just raised those.

CHAIRMAN FREEMAN: David, was that okay? Gordon.

MR. GORDON C. COLVIN: Well, let's go for the long answer now, Harry. I think that I raised this issue initially at the Mid-Atlantic Council meeting up in New York and asked that the service be prepared to address it today.

Sure, the National Standards and the Magnuson-Stevens Act don't apply. What does apply potentially is ACFCMA. And if it is the position of the National Marine Fisheries Service that MRFSS is an unacceptable basis for establishing paybacks, then is it the position of the National Marine Fisheries Service that it would not impose an ACFCMA-based sanction should we go ahead and recommended one based on that mechanism?

CHAIRMAN FREEMAN: Harry.

MR. MEARS: This is a typically challenging question from the state of New York. Not to prejudge what the ultimate Secretarial response would be to a finding of non-compliance under the Atlantic Coastal Act, there's three key issues when a state is found to be non-conforming with a required element of an interstate plan.

The first is that there is a process to be followed with timelines involving communication to the Secretary, one factor of which is what the state needs to do to come back into compliance.

Once that finding is received by the Secretary, the National Marine Fisheries Service then consults with that state, the commission, the council, on two very crucial determinations:

One, is the measure that is involved in the finding of non-conformance necessary for the effective implementation of an interstate plan? That's the key task, Number 1.

And Number 2 is, is that measure necessary for conservation of the species being managed? In that regard, again, while it's very difficult nor would I even want to attempt what the Secretarial response would be to any finding of non-compliance until we're actually faced with it, what becomes very important and crucial would be the administrative record of how issues were identified in that particular management measure and what actions and associated considerations were incorporated into the process to address any concern that arose prior to approving that measure under the plan.

So, again, the long answer is, Gordon, I don't know. The moderate answer is it depends on several factors, including the way, the manner, the issues that were addressed, any modifications which were made in terms of documenting the necessary incorporation of the management measure for compliance considerations; and, secondly, is that measure incorporated with other measures in fact part of the necessary framework for conserving and managing the species in question.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Thanks, Harry. I know this is complicated and I know you obviously can't prejudge a regulatory action, the legal action that the service might be confronted with hypothetically down the road somewhere.

The reason it comes up, of course, is that, as was pointed out in oral comment here today, the comment record on this issue includes several specific references to actions taken by the National Marine Fisheries Service with respect to the scup recommendation for action on scup and also statements made on the record by the Regional Administrator that appear to express a position that is -- I'll put it this way -- that it would appear to reflect a position that the National Marine Fisheries Service believes that MRFSS is an unacceptable basis for calculating recreational paybacks.

And I think, you know, it has been expressed more or less that way on the record. And if that is in fact the service's position, the board needs to know that now. That's why I brought it up back in New York and asked that the service be prepared to address that question here today.

And, I'm not quite sure where your answer leaves us on that other than that, you know, maybe it is and maybe it isn't; and if that's the best you can do, fine. I was hoping for better when I raised the question, frankly, a couple of weeks ago.

CHAIRMAN FREEMAN: Harry and then David.

MR. MEARS: I'll just briefly follow up with some specific comments in that regard. While I cannot technically speak for my supervisor, those comments very clearly, in reading those comments, documented that there were concerns with using the MRFSS program as it existed.

And one could read, without due consideration to its utility and effectiveness and accuracy, in such a way that it was intended to be used.

I don't think out of hand it ruled out any specific measure that could alternately be shown to be a

valid indicator in the event that a management tool were needed in this case to monitor recreational landings.

You will note from some of those comments that the words “alternatives” and “tolerance” were used, and I think there has been some previous dialogue in this group where we’ve heard reports from MRFSS’ representatives, the technical committee, relative to potential modifications or actions that would enhance the utility of any method in terms of monitoring what the harvest might be.

So, once again, I think from my perspective as the NMFS representative on this board, what would interest me most of all would be are the technical committee’s perspective currently on any dialogue that has taken place in terms of using the MRFSS data in this regard and, overall, the track record that we’ve heard the concerns expressed both today from the audience and also during the written comments that we’ve been responsive and effectively addressed any concerns and used the best available information and made the best possible decision on any management measure, including MRFSS, if that’s appropriate as a management tool for managing the summer flounder or any other resource.

So, again, the administrative record, the way we’ve responded to the concerns, the technical committee’s perspective and our comfort in standing behind any action, including here the potential inclusion of MRFSS as a management tool to use in quota monitoring.

CHAIRMAN FREEMAN: Okay, I have David Borden and then Bill Cole.

MR. BORDEN: Yes, thank you, Mr. Chairman. I just want to follow up on Gordon’s point here. And, my reading of the regional administrator’s comments is slightly different, that I took her comment to be that application of a system on a state-by-state basis would be subject to concern as opposed to coast-wide.

I think, as the Bogans very adequately testified here, there are problems applying MRFSS data

on just a one-year basis on a state-by-state basis. I think everyone around the table understands those problems, and we know it.

But I’m not sure those same problems exist if we apply or we design a system that does it on a coast-wide basis because the PSEs go down very substantially on a coast-wide basis, and it’s fairly consistent.

The other point that I would make here is that it’s kind of curious -- and Steve can correct this if this is wrong -- my understanding is that -- or Rick -- when we do the stock assessment on an annual basis, because of the court action on summer flounder, the choice that ends up being selected has to have a 50 percent probability of reaching its target.

And it’s just curious to me that is not brought into the discussions because the overages invariably result in us not meeting our target so, therefore, we’re at least in technical violation I think of the court edict when looked at in kind of a retrospective pattern.

We consistently do not take that into account and we consistently fail to meet our rebuilding objectives. So it’s just kind of a curious point.

But, I mean, the real point here is, Harry, am I misreading Pat’s comments here? Is her concern more on the state-by-state basis or is the use of the data on a state-by-state basis or does she still have the same concerns if we apply it on a coast-wide basis?

MR. MEARS: Again, David, I don’t believe I could answer specifically for her. But, certainly, that was noted, as you just indicated, that one of the concerns that needs to be incorporated here is the utility of the MRFSS as it existed at that time that those comments were made to be used for purposes of state-by-state monitoring.

CHAIRMAN FREEMAN: Okay, I have Bill Cole and then Tom Fote.

MR. BILL COLE: Thank you, Mr. Chairman. I note that the Federal Register Notice is way back in 1996. It does deal with scup and it’s

trying to address some of the unique parameters of the Scup FMP.

I hope that all of you who voted for the increases in money around the table here at the Coordinating Council of ACCSP will recall that since 1996 we have spent a fair amount of money trying to upgrade MRFSS and overcome some of the perceived problems.

The OPs Committee, working with the recreational technical committee of this commission, has spent numerous days, numerous weeks, and numerous workshops trying to get an upgrade on how you could make better use of MRFSS.

Our advisory committee has provided a lot of good recommendations. Unfortunately, I don't see any of my ACCSP leadership here today, but I think some of the questions about what you can do today, in 2003, are a lot better than what is portended in this 1996 Federal Register Notice.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: Well, Bill, after looking at the scup, what the MRFSS figure said for scup last year, and basically the big discrepancy with Connecticut, I still think we're a long way from where we need to be on that.

The other thing that I really wanted to ask was a fact that when we talk about -- since Dave brought it up -- the 50 percent probability, well, the 50 percent probability has not really -- it has to do with whether we reach the stock rebuilding, not what was caught last year; but when you take everything into consideration, what the stock assessment is for the following year, will we reach the targets for the stock assessment?

Will we fulfill those goals of how -- with the size of the stocks? I mean, that's what it is, because we're using 50 percent probability if we reach the goals of what the stock size is.

And that's really what determines what the quota is the following year, whether we reach the goals there. And so everything comes into

play when you basically put the whole mix together.

CHAIRMAN FREEMAN: Okay, let me take Gordon.

MR. COLVIN: I just have a question. I don't know who can answer it, if anybody can, but two major concerns have arisen in the comment record on the use of the MRFSS data as the basis of some kind of a payback or accountability system.

One is the uncertainty and the concern people have about the catch estimates, and that I think the example used today was New York's tautog landings last year or Connecticut's scup landings.

But the other problem, which is perhaps even a bigger one, that has also been alluded hasn't been discussed much yet in the board is it's a very, I think, justifiable concern that you can't get a handle on your catches during the season like you can with the commercial out of MRFSS.

You don't have an opportunity, if things are going haywire, to intervene during a season and protect yourself. So the question I wanted to ask is, is anybody aware of anything that might be in progress that would enable us to get a handle on some kind of an in-season estimate at any point in time on how things may be going so that we could have that kind of basis for protection?

CHAIRMAN FREEMAN: I don't know, Steve, if you want to try to answer that, but my recollection, with Chris Moore looking at this data, is that it's almost near the end of the season, Gordon, when we get the first two meaningful waves; May and June. Steve indicates that's correct. I mean, that would be one way you could dampen it down if you see the catches to be excessive.

MR. COLVIN: I'm just wondering, is anybody looking into developing some basis for us to get a quicker handle on it? Have we raised the question? Is there any kind of mechanism that could be undertaken to get up something faster?

CHAIRMAN FREEMAN: Bill, do you have some information that would help us?

MR. COLE: Mr. Chairman, I'll try. Gordon, the answer is that if you want to use it, you have to lag it a year because of the way the -- particularly with summer flounder -- the way the waves come in. You have to have some time.

So if you're going to use MRFSS, if I recall what Chris told me, is that you have to back it up one year. Yes, have we and are we at ACCSP looking into answering your second question is some sort of an ability to make an in-season or quick correction. It's very unlikely that we can right now, Gordon, at our current sampling levels.

MR. COLVIN: Follow up, Mr. Chairman.

CHAIRMAN FREEMAN: Yes, go ahead, Gordon.

MR. COLVIN: We're rolling out a new for-hire catch estimate program this year, and I'm wondering whether anybody can tell me if that new program, once it's in place, will enable us to at least get an in-season insight on the for-hire segment of the fishery which could be a proxy for the larger fishery? Are we going to be able to get more timely data out of that one?

CHAIRMAN FREEMAN: Anybody can answer that?

MR. COLE: That was the intention. But, Gordon, remember that this is, if I recall, it's a two-year effort and it needs to be cross-checked against the logbook programs to see if there is a variation. And then once you've resolved that, then you can see if it would provide more or less an indicator for the larger harvest group.

CHAIRMAN FREEMAN: A.C. had his hand up and then Tom.

MR. A.C. CARPENTER: Dave mentioned the 50 percent probability a few minutes ago, and it got me to thinking about the problem, as I see it, is that I think the recreational measures, which

have been adopted, have essentially been too liberal in recent years.

Is it possible to have the regulations rather than meet a 50 percent probability of achieving the target, have them reach a 70 percent probability -- or have them meet a 70 percent probability of reaching that quota if they had gone over their quota the prior year?

You don't have a payback situation then but you do tighten the regulations up based on an overage. If they achieve their target, then the 50-50 probability of achieving the regulations next year could be used again. I throw that out as a question more than anything else.

CHAIRMAN FREEMAN: Okay, Tom.

MR. FOTE: A.C., the tables aren't based on a 50 percent probability, are basically on what we caught the following year and how it projects out to here exactly on the catch figures. And that's one of the major concerns.

When you have a state that doesn't change their regulations for three years, like New Jersey on striped bass, and our catch fluctuates about 130,000 fish from year to year, it makes life difficult.

The other point I was going to point out is when you talked about the for-hire on summer flounder, their season really is July and August, and then they basically stop summer flounder fishing and maybe switch on to some other species, some of the boats do; whereas, the private boats, actually a lot of them start fishing for summer flounder in September and October when the guys from the beach just start in October, so there is a whole different fishery in some respects than what goes on there.

I remember sitting in one of the first meetings I sat at this august body years ago, and Bill Brennan was still director of Maine, and Bill was beating me up on striped bass and called me for I was killing small fish at 28 inches, and he had a size limit of 34 inches and he was being more conservative.

And Mark Gibson had a little fun. He said, "Here, Tom, have some fun, here's the Marine Recreational Survey." And I said to Mr. Brennan, I said, "Mr. Brennan, understand regulations are one thing. What's actually happening in your state?"

Now in New Jersey we have a 28-inch size limit but at that point in time the average sized fish we were landing was I think was 11.5 to 12 pounds, which meant about a 33-inch size limit.

I says, "Now, let's look at Maine. You have a 34-inch size limit but according to the Marine Recreational Survey, you're landing a 2.5 pound fish. Well, that means everybody is either poaching in your state or that you're basically doing something wrong."

So Bill was no longer yelling at me; he was yelling at Dick Schaefer, which took a lot of pressure off me, and screaming about the Marine Recreational Survey. We found out that the whole catch from Maine was based on two intercepts.

So, the following year he came in and asked the same questions of Dick Schaefer and they corrected it. It was up to 3.5 pounds. I mean, that's always basically a question over the years of why I look at the Marine Recreational Survey because it shows trends. It can show discrepancies.

Hopefully, over the years we've put a lot more money in it and it's showing a lot clearer record of what's going on, but we haven't reached that point yet. We're getting there. And maybe after the ACCSP and we work another two or three years, we could basically do real time. We need to do that.

We need to effectively manage the fisheries. But at this present time what's happened with scup last year, what happened with the figures going back and forth, what happened to the taug in New York, it just can't be done.

CHAIRMAN FREEMAN: Okay, Bob Beal would like to make a comment relative to some of the questions that have been asked. There

may be some insight here.

MR. BEAL: Okay, just to hopefully clarify a few things, first of all, the 50 percent number from the court decision, the way that works is the court decision said that when the commission, Summer Flounder Board, and the council are setting the quota, the summer flounder quota for the following year, there has to be a 50 percent probability that that quota will achieve the fishing mortality target that is contained in the plan.

So, when we set our number, it has to have a 50 percent chance of achieving F of 0.26, which is the current target. So the recreational tables and biomass and all those things really don't come into account with the 50 percent number. It's just the fishing mortality target that the 50 percent rule, you know, dictates the decision.

And then kind of to respond to what A.C. was asking, there are ways to adjust the recreational bag limit and size limit tables to account for or to increase the probability that the regulations contained in those tables will hit the fishing mortality, the recreational mortality target or the recreational landing target.

Two things, two ways, two adjustments that could be made are the tables right now are not constructed assuming the growth in the population. The summer flounder population has been going up, and those tables could be adjusted to account for the increase in population that is projected to occur the next year.

In other words, if we have a trajectory of growth of this population and we are just using the previous year's data and assuming everything will be equal the next year, but the reality is that the population is growing and the availability of fish is increasing the following year, so that's one adjustment that could be made if that's the way the board wanted to go.

And the second thing that we don't account for in those tables is year class strength. If we know there's a whole lot of age twos in the population that are about to recruit and grow into the

recreational size limit of 16-16.5-17 or whatever the size limits are within the state, if we know there is a big, strong year class that's about to recruit to that fishery, those tables can be adjusted as well to account for that year class strength.

So there are a couple ways those tables can be tweaked to better hit the recreational target. The overall calculations would be done how they're done now, but the numbers in those tables would be done a little bit differently.

CHAIRMAN FREEMAN: Okay, I have David Pierce, Gordon and then Jack Travelstead.

DR. PIERCE: Yes, Mr. Chairman, most board members I believe have striped bass at 3:30. It's now a little bit after 2:00. Do you have a particular plan that you would like us to adhere to as to how we can address these individual issues because there are four issues regarding this addendum and then there are other items on the agenda as well. So, just looking to you for some guidance, Mr. Chairman.

CHAIRMAN FREEMAN: Yes, again, it's kind of a dilemma here. We want to allow people to have the needed discussion, but we do have a time constraint.

The way I think we need to best proceed at this point is to make a determination of whether in fact we want to take action on Addendum VIII or not; and then if we do, then we need to proceed through the document.

But it's going to be a lengthy process to go through. I think that we need to make that determination, at least get the feeling of the board of how it wants to move on this issue. Let me just take a few more comments and then we need to make a decision at least relative to Addendum VIII. I had Gordon, Pat and then Jack.

MR. COLVIN: Thank you, Mr. Chairman. One of the things that keeps coming up is the concern that we all have about the unpredictability and lack of precision of the MRFSS catch estimates.

And, we expressed that concern with respect to

the prospective use of those estimates in a payback or a compensation or an accountability syndrome. But the fact is, don't forget we already use them as an integral part of this management program and we use them in a quantifiable way.

We use them, as indicated, to determine what the catch estimate is with respect to adjustment to the biomass, available biomass estimate when we set the quota. And we use the MRFSS catch estimates to measure our success and to adjust our recreational regulations when we have exceeded our catch estimates.

Now, for the last couple of years, we've managed the summer flounder recreational fishery on the basis of a state-by-state, state-specific quota system, and I think that's exacerbated our problems.

It certainly has, as Dave Borden pointed out earlier, made this one a much more interesting problem because of the effect of overages in one state on every other state's recreational and commercial quota availability.

I would remind the board that New York did not support that, still doesn't, and would be happy to support a return to a single coast-wide recreational management regime. I assume we're still in the minority, so I won't go any farther with it.

But, yes, maybe there is somebody else that's willing to reconsider that, too. But let's think about what it does. What we do every year now as we assign each state a quota and we project what they will catch if they keep their regulations the same and then the states look to adjust.

And for the most part we've been adjusting by becoming more restrictive, as some of the commenters pointed out, but we face the prospect in the future of adjusting by becoming more liberal, which is a pretty scary idea given the uncertainty of all this.

What seems to happen is when we're looking at the prospect of adjusting to become more

restrictive, those MRFSS numbers are the only things we've got to work with and we work them pretty hard. They get sliced and diced down pretty good.

We start coming up with management options. I think one year we saw 30 or 40 from one state that we had those MRFSS estimates sliced up by different geographic areas, by different seasons, by different modes of fishing.

And we've all done this to some degree or other way more than our technical committee has confidence in. I mean, heck, even just whacking them up by state is tough enough but now we're going to subdivide them by all different sorts of things.

And who is pushing us to do that, by the way? Some of the same interests and folks that are expressing concern about the use of the MRFSS data to pay back overages. Now I don't blame them for that.

Constituents are trying to get what they want and that's perfectly plausible. But there is a certain element here of "you can't have it both ways", you know. So we need to give some thought to that as well.

I'm certainly concerned, and I mean the numbers that came out today about the tautog landings in New York are certainly something that will make the hair stand up on your neck, but I'm a little less concerned about our use of it that way than I am about the other issue I mentioned a few minutes ago, which is the need to have the ability to understand what's going on during a season because we all know that no two years are alike.

The weather isn't the same, the distribution of the fish isn't the same, and we need to have some measure of protection. I'd like to see us try to attack that problem directly in some way here soon; and maybe when this discussion of this addendum is over, we can discuss how to do that.

CHAIRMAN FREEMAN: All right, Pat and then Jack.

MR. AUGUSTINE: Thank you, Mr. Chairman. While Mr. Cole was making his presentation, he talked about the viability of using the party boat/charter boat logbook system that's now put in place for this year as possibly a proxy for the larger recreational sector.

That scares the hell out of me. You all hardly ever hear me say that on record but I'm saying it today. The question is we have no idea how valid that's going to be.

And if some of the horror stories come true that have been told to me so far about what some of the folks are going to do relative to reporting that, I just cannot imagine using a document that will be one year old or one season year old to set the whole theme for the complete sector.

I guess it raises a second question which would be is there anything else in the ACCSP toolbox that could come on line sooner.

And then it raises another question, the third question is how much more validity can we put in MRFSS between now and the end of the year so we have some other kind of a tool that we can rely upon?

So, I don't know who wants to try to answer those questions but right now the hair on the back of my neck is kind of standing on end because if we end up with flawed party/charter boat information that's not much better than what is perceived to be the MRFSS data, I think we're in real deep doo-doo.

CHAIRMAN FREEMAN: Jack.

MR. TRAVELSTEAD: I had a question for Bob. The two measures that you mentioned to improve the effectiveness of the rules we put in place, would it require an addendum to utilize those or could they be a part of our specification-setting process?

MR. BEAL: They can be part of the specification-setting process. Framework 2 gives the board the latitude to tweak the methodologies that they use each year to set the

conservation equivalency tables, so we have the ability to do that.

MR. TRAVELSTEAD: Then I would just ask that when we get to that later in the year, that you remind the board of the availability of those two things that you mentioned to improve what we're doing.

MR. BEAL: Sure, there may be some value in the technical committee or monitoring committee taking a look at some of those things before the December meeting gets here and have some proposals ready for the management board at that time.

CHAIRMAN FREEMAN: Okay, we need to move along on this. I think we had the discussion we needed. There needs to be some action taken. I would ask if there's someone that has a motion? David, do you have a motion?

MR. BORDEN: I don't have a motion, Mr. Chairman, but I have a suggestion. In spite of what I've said here -- and I think I've been very consistent on the record -- I consider this a significant conservation problem in terms of fluke management because we're not meeting our rebuilding objectives.

I also consider it an equity issue between the user groups. I wouldn't sit here and condone the commercial sector going over their quota by 60 percent, and I'm not going to sit here and condone the recreational sector going over by 60 percent.

Now, having said that, I am not comfortable -- and I came prepared to actually make a motion, but I'm not comfortable with all of the alternatives in combination.

I think that what we should do is basically table action at least for this meeting on this item; and in the spirit of what A.C. and Jack had suggested, ask the technical committee to look at the methodology that we follow on an annual basis and see if there is a way of ratcheting down the -- or, let me retract that and go back, and just say see if there is a way of increasing

our probability of success with the recreational measures by imposing a higher standard on them on an annual basis and then basically bring that back to the board.

I mean, there's a down side to almost every single strategy that's in this document. I think we all can sit here and articulate the pros and cons of those, but I'm not sure that's going to be successful.

So, I think A.C.'s suggestion is a different way of getting at the same result. Nobody around this table wants to penalize the recreational anglers. What they want to do is get them to comply with their allocation, their share of the allocation. That should be the objective, and maybe A.C.'s strategy is the appropriate strategy to do that.

CHAIRMAN FREEMAN: That's a good suggestion. Let me just make an additional comment. At least in my view, there seems to be some threshold which is reached and it does definitely have an impact on the recreational fishery.

I think on a coast-wide basis this last year we're looking at a 40 percent underage, and that threshold may be reached. I mean, the size limit now is becoming considerable, as we all know, because of our experiences.

But this last year it definitely has had a tremendous impact. Whether that will continue or not certainly remains to be seen. But, Gordon, and then Tom.

MR. COLVIN: Thank you, Mr. Chairman. I'm sort of coming at this from a similar perspective as David, but before we get there I wanted to ask is it not necessary for us to take action on Issue 1 today; or, ought we not adopt an addendum that addresses Issue 1 to get that behind us?

CHAIRMAN FREEMAN: That's a good point. I'll ask Bob to comment.

MR. BEAL: I think for clarity it would probably make some sense to deal with Issue 1. Each year the issue is 1998 the appropriate year

to base the shares on? It keeps coming up during the annual specification-setting process.

And if the board wants to make that decision final and not revisit this time and time again, making Addendum VIII simply deal with Issue 1 and put the other issues off until the future is an option that the board does have today.

MR. COLVIN: Thank you, Mr. Chairman. If you'd rule it in order, I would move that the board adopt the addendum with Issue 1, status quo.

CHAIRMAN FREEMAN: All right, I'll accept that motion. It is seconded by David Pierce. Now, what I intend to do is get discussion from the board; and then before the board does vote, I'll go briefly to the public and then back to the board for a final determination.

Gordon, just a clarification on your motion, was this intended to simply isolate and deal with Issue 1 or is this intended to be at this time we'll deal only with Issue 1 and not the rest of the other issues?

MR. COLVIN: Well, it's intended to isolate and deal with Issue 1, and what we do with the other issues is to be determined. It could be nothing or we could deal with them.

CHAIRMAN FREEMAN: Okay, I didn't know the intent of the motion. Okay, any discussion on the motion? A motion has been made. Any discussion? A.C.

MR. CARPENTER: The advisory committee on Issue 1 recommended what again?

MR. BEAL: The advisory panel recommended taking the average of a suite of years, somewhere between 1981 and 1998, rather than the single year 1998, which is the status quo.

CHAIRMAN FREEMAN: Rick.

MR. COLE: For the record, Mr. Chairman, I'm going to vote against the motion. I've said before that I think the fact that we're only using one year penalizes those states that were able to

get their management measures in place early in '98 and their harvest was thus restricted.

I would prefer to see an approach similar to what we use in the commercial fishery where we use a number of years to calculate an allocation. I just wanted to go on record as opposing it. Thank you.

CHAIRMAN FREEMAN: All right, other comments?. David.

DR. PIERCE: Well, I've looked at the addendum and obviously spent some time on it. I chaired the public hearing, for what it was, in Hyannis about a month and a half ago. I'm certainly not a fan of status quo.

Massachusetts is set at 5.49 percent. That's because we use 1998. And we used 1998 almost -- well, we had no choice. We went back a number of years and 1998 happened to be the year we chose.

There weren't any alternatives we could adopt instead of 1998 so we've used 1998 for a number of years. There are some states that believe that there are some inequities as a consequence of that, and I appreciate that fact.

We've seen some of the consequences of using 1998 for some states. However, when I look at all the options as they stand right now in this addendum, I see that every option, every choice, reduces Massachusetts' percentage down from 5.49 percent, a very low percentage, to 2.3, 3.7 percent.

And, to me that is just inappropriate in light of the fact that our recreational fishery can be hit or miss. It depends on weather conditions and other factors. When there is a good year class around, we can have excellent fishing. When there is not a good year class around, then the fishing drops down.

Massachusetts has not had any significant overages, if any overages at all. So, the motivation for other issues in this addendum wasn't brought about because of what happened in Massachusetts.

It happened primarily I think because of overages that occurred in some other states; notably some of the Mid-Atlantic states. That's no fault of the Mid-Atlantic states where they had those overages because, again, we can't monitor the progress of the recreational landings.

It's impossible for us to do so. New Jersey and New York have had some rather significant overages. Again, it's not because they tried to; it's just the way the chips fell.

So, I see very little reason for me, and for that matter for any other New England state, to choose anything but the status quo since the majority of the options, if not all the options, are also very unfavorable for Connecticut and Rhode Island, certainly for Massachusetts.

So, I don't like 1998 by itself because it's only 5.49 percent, so I'm on the record at least stating that, that I'm not content with that low percentage; however, of all the other options within the addendum, that is the best one for Massachusetts. So for that reason, Mr. Chairman, I would obviously support this motion.

CHAIRMAN FREEMAN: Okay, I have Tom Fote, Pete Jensen and David Borden.

MR. FOTE: After looking at all your different options, every one of the options except for status quo in '98 gives Jersey more fish, except we start playing with that game, and I just think we'll waste a lot of time, and I don't want to do that.

Even though my fishermen might not all agree with me, because most of them said status quo, I could just accept status quo and stay there even though by going to any of the other options except '98, New Jersey gets more fish.

CHAIRMAN FREEMAN: Pete.

MR. W. PETER JENSEN: A couple of questions. One, if we don't adopt this, what would it be based on? Would it not be based on

'98?

MR. BEAL: The board would have to make that determination each year when they set the annual specifications.

MR. JENSEN: Okay, so that would be the equivalent of status quo. I guess, Gordon, I would only comment that it seems to me that the only way to address this variability of the MRFSS, which has been discussed here ad nauseum, is to average it over as many years as you possibly can because that volatility in the estimates is not going to change. It's going to continue.

And so it seems to me that we're better off as a basis for what we do next to average this over as many years as possible just to deal with the volatility in the estimates we're going to get year to year that are used, as you have pointed out, in the stock assessment.

CHAIRMAN FREEMAN: David Borden.

MR. BORDEN: Yes, a point of clarification on the motion, a question of Gordon. Gordon, is it your intent that this motion is just going to deal with Issue 1, Option 1, and then there will be a subsequent action on the rest of them; or, are you envisioning this as all at one time?

MR. COLVIN: I think this is kind of the same question that Bruce asked earlier. My intention is that this just deals with Issue 1, Option 1, and whatever happens with the rest of it happens.

MR. BORDEN: Okay, then I would just point out I'll have a motion after we deal with this.

CHAIRMAN FREEMAN: Okay. Gordon, you had a comment.

MR. COLVIN: Yes, you know, why did I make this motion? When this issue first came up, I think I was the guy that asked that the technical committee go back and evaluate alternatives to the use of a single year as the basis for the state allocations, and they did so.

They made their report and recommendations to

us. I was surprised by their report and recommendations, but nonetheless I accepted it. In fairness, too, I would point out that the predominance of public comment that we heard was in support of the status quo option here.

So, given the technical committee advice and the public comment, that's why I've made the motion. I admit that I was a little surprised at that outcome. I thought a group of years might be the preferred approach, but in this case appears not to be, so I've accepted that.

CHAIRMAN FREEMAN: Okay, let me just quickly go to the public. Any comment from the public? Cathy.

MS. ZOCH: Just a couple of comments. Cathy Zoch, Z-o-c-h. First of all, for my friends in North Carolina, 1998 is completely unfair to them. I would like to see you do status quo right now, today, just so that you have time to really get more in depth into this.

For North Carolina, they don't have the large fish. So if you look, they really lost a share from the original years of the '80s where the 60-40 split was made, because back then that was the size.

There was no size limit back then, and they had plenty of summer flounder. But now they're in a situation in North Carolina where they don't get fish over 15 inches. They do offshore for their commercial fishermen, but they don't inshore. So, it's really not equitable or fair to North Carolina.

Also, it's minor but you have the wrong numbers for the year 2000. It's not off by much, but you do have a few. I'd also like to just take issue with the man from, I think it was Massachusetts, there.

I did my own little study and, yes, you see larger overages in pounds from the state of New Jersey or New York, but you have to realize that each state has different shares. And percentage-wise of going over, actually Massachusetts comes in quite high for some of those years, so I would really debate that one.

And I think you have to look at it that way. If each state is being asked to reduce by 43 percent and each state goes over by 10 percent, well, naturally New York and New Jersey is going to have a higher amount of pounds because they have a higher size.

That would be like taking North Carolina and — they have a 40 percent share commercially. Oh, I'm making it too long. I think you get my point. Thank you.

CHAIRMAN FREEMAN: Okay, any other comments from the public? All right, back to the board. Any further discussion? Peter.

MR. JENSEN: Gordon, is this intended to be a one-year thing or if we change our mind later we're going to have to do another addendum, right?

MR. COLVIN: This is intended to make this decision permanent so that we don't have to keep making it every year. We always have the option of adopting another addendum to change it if we want to in the future.

CHAIRMAN FREEMAN: I would only add the comment that when we originally debated this issue, these were the same arguments. The difficulty is it's virtually impossible to come up with a system that everybody feels is the right system.

I'm sure if we looked at the minutes of our meetings eight-nine years ago, they're really not much different than they are today. What advantages one group at one time will disadvantage another. It's virtually impossible to find a perfect combination. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Based on Gordon's comments relative to when we requested the technical committee to come back and come up with their recommendations, there was no question, it surprised a lot of us. But it's on the money so I'd like to call the question.

CHAIRMAN FREEMAN: All right, let's vote on this. Yes, let's do it by a show of hands.

Okay, two-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Caucus is over. All right, board, please take your seats, we're going to have a vote on this. All right, we're going to vote on this by a show of hands.

All those who favor the motion, raise your right hand; opposed, same sign; abstentions; and null votes. All right, the motion passes eight in favor, three no, one abstention. David Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. I'd like to make a motion to table further action on Addendum VIII until the next meeting, and if I get a second I'll tell you why.

MR. TRAVELSTEAD: Second the motion.

MR. BORDEN: The reason is that I think there have been some valid strategies that have been brought forth here. I won't repeat what I said before, but it may be possible for us to gradually tighten our confidence intervals around the assumptions we're making relative to the recreational fishing analysis.

I think that that whole process warrants just a little bit of time for the staff to work with the technical committee and come back to us at the next meeting with a proposal. So that's the reasoning.

CHAIRMAN FREEMAN: Jack Travelstead seconded the motion. Tom.

MR. FOTE: I'm just looking at the date of the August meeting. The August meeting is the worst time for the recreational fishing public to attend a meeting.

Also, we set the commercial quotas because most of the party boats and charter boats and the people that make their living from the industry are basically making their living at that point. They have to basically get it then.

We will have a meeting where we set the recreational limits for next year in I guess a joint

meeting with the Mid-Atlantic Council sometime in December.

I think that's more of an appropriate place to do that since we'll have the recreational community at least be able to get their public comment. I hate to say it but a lot of people showed up here today because, you know, they've had a tough season.

We're talking about recreational statistics this year. Well, if we were farmers this year and if you look at the recreational fishing industry and the commercial fishing industry, they'd be in FEMA asking for emergency relief because of the weekends they've been washed out between -- every tackle store owner I've talked to is basically down this year.

I would imagine the commercial guys also can't get out because of the weather in the northeast. I wouldn't want to take them out of the business when they're trying to make their money. And August is one of the most important months.

So I would assume if we're going to do this, we do it at the same time we set the recreational quota and the recreational size and bag limits on scup, summer flounder and sea bass. I hope, Dave, you will basically accept that as a friendly part of your amendment.

CHAIRMAN FREEMAN: David, let me ask Bob Beal a question relative to if in fact the technical committee is going to be able to fulfill this requirement within that timeframe. I think that's one issue that needs to be addressed.

MR. BEAL: The timeframe you're questioning is will the tech committee be able to get their work done by August?

CHAIRMAN FREEMAN: Yes.

MR. BEAL: Okay. The next couple of months are a pretty busy time of the year for the summer flounder, scup, black sea bass folks. They're getting all the annual specification things together for the August meeting where, as Tom said, the commercial specs are set and then the recreational and recreational harvest limit and

commercial quotas are set.

So it would be pretty busy between the next two months to get that done. If they had more time until December, it would probably be able to get a better product to this board with more options and more fully examine the potential ways to address those tables.

CHAIRMAN FREEMAN: David.

MR. BORDEN: Yes, I recognize Bob's dilemma here. He's got a lot of work on his plate so it's fine with me that if the motion passes, that we will do so in the context that they will try to meet that deadline if they can; and if they can't, we'll put it off until the next meeting which would -- I mean, what I would prefer to avoid is going into the December meeting with a document and strategy that nobody around this table has read and had a chance to digest.

So the earlier you do that type of work, the better it is for not only us, the better it is for the constituents. Then we can go into that quota-setting process; and if Bob's characterization is correct and it doesn't require an addendum or any other change, then it's simple, we're going to lessen the workload.

CHAIRMAN FREEMAN: Comments. Let me get the board and then we'll get the public. Harry.

MR. MEARS: Mr. Chairman, relative to the motion, we've had a lot of discussion here this afternoon that's led to this motion. A lot of the preface and background as incorporated into this addendum speaks to the current way of doing business under Framework 2 jointly with the council working with National Marine Fisheries Service and annually establishing commercial and recreational fishing measures.

I think it would be helpful for the record to kind of just give the current status of where we are, where we have already been relative to the Framework 2 process, the technical committee's review of the individual state proposals and whether or not these have been forwarded to National Marine Fisheries Service for acknowledgement in announcing the 2003

fishing year quota specifications. Thank you.

So I guess my question is, here we are in fishing year 2003, we're talking about recreational fishing quotas. Where are we today relative to how the 2003 recreational fishery will be conducted and what the individual state recreational fishery management measures are?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: The states have all submitted proposals and had some or all their options approved. Those states have gone home and implemented those management programs, and we have sent a letter to the National Marine Fisheries Service notifying them of what the states have implemented for 2003.

I can't rattle those off right off the top of my head but, yes, they've all been approved and implemented.

MR. MEARS: That provides the clarification, thank you, because we're in the process of issuing a final rule soon formalizing those, and this acknowledges we're following the procedures in place in the joint plan this year.

CHAIRMAN FREEMAN: Okay, public comment on this motion? Raymond.

MR. BOGAN: Thanks, Bruce, Ray Bogan. An August deadline would effectively knock the recreational community out of the box from a comment standpoint. We are right now just by the unfortunate set of circumstances of having horrible weather and an unbelievably bad May and June -- and, by the way, MRFSS will probably say we caught the hell out of them -- we are having a horrible, horrible June.

We've had a decent amount of people come from New York, New Jersey, Connecticut, down to this meeting. You do this in August, you have to know that effectively you've made a decision to exclude a whole lot of folks from this process when new considerations are being given.

It's not as though you're only going to be talking

about the addendum. You'll be talking about options that are newly considered. So, it would exclude public comment and public input into this process. I would hope that instead you folks would consider putting it to some time in the future so that we can address them. Thank you.

CHAIRMAN FREEMAN: Thank you, Ray. Any other comments from the public? Tony.

MR. BOGAN: Yes, Tony Bogan from United Boatmen. I want to reiterate what Ray just said; and while I am completely confident that this is not the intent, nevertheless the perception would simply be this was simply tabled to a time when it was apparent that the recreational people were not going to be able to attend and simply avoid the long and lengthy comment period like we had today.

Additionally, to address Mr. Borden's concerns about coming into the end of the year with a document that's still being proposed, then I would suggest we stay here tonight until we finish it now. It would be one or the other. Thank you very much.

CHAIRMAN FREEMAN: All right, any other comments from the board? Eric.

MR. SMITH: Is it possible that we can do a joint board meeting with one of the Mid-Atlantic Council meetings that's slightly after August, but in anticipation or in advance of December?

I know the board has done that in the past and I don't know what the Mid-Atlantic Council's schedule is, but maybe you can find an accommodating date September through October that meets both needs.

CHAIRMAN FREEMAN: Bob's comments are -- and I do have their schedule in my briefcase, but it looks like October the council meets, the Mid-Atlantic Council. Rick.

MR. COLE: I don't see any reason to have a joint meeting to address Addendum VIII. The council has already submitted their recommendations to the commission. And basically on Issue 2, which is the main thrust

here, the council said status quo. So I don't think, really, we have to worry about coordinating with the council to address Addendum VIII.

CHAIRMAN FREEMAN: All right, just a point of clarification, Rick. You and I were at that meeting but officially the commission has not received any indication of what that discussion was or what that vote was.

But, as you indicate, it was status quo. Other comments by board members on this motion? The way the motion reads would be the next meeting, but, as Bob indicated, that may not be possible simply because of time constraints.

I would also submit, David, relative to your request, it wasn't part of the motion that the technical committee look at this. It's possible at this point to go back and utilize the two strategies of increased resource as well as year class strength, to go back and actually determine, if we had used different numbers, what those quotas would be.

So we could go back and actually determine what would be the more accurate number. I'm not sure how quickly that could be done, but at least from my perspective, we could go back and construct "what if" and then may have an answer to if we did this, what would it have meant, what would the quotas have been to give us a better indication of how close we would be. Tom.

MR. FOTE: If you also think of the process that we went through this year, we came up with the specs in December because I never got down. My plane never left the ground so we never got out of New Jersey. But you set the specs in December.

And then we went back and we set up the tables, which was actually after the December meeting, because then we set up the tables. So the tables didn't come out until about January or later because most of the fisheries don't open until that period of time, and we were getting the regulations in place.

And if you look at the tables that were basically suggested or allowed last year that came out, I don't know of any state, but maybe there was, but I know in New Jersey we did not use the table as it was designed.

I mean, as the table was designed, we could have went to 16 inches and had a full season because of our 40-something percent underage. As a matter of fact, we could have went to a 16.5 with no season, and that would have been very conservative, more based on the year coming up.

By the time the anglers get through, went to the Marine Fisheries Council, that's not what they wanted to hear. They wanted a very conservative, more conservative than the tables required, and they went from a season that did a closure and eliminated the shore-based fishermen.

Now that was the final decision but they decided to do that. So they took a table that was probably more than like an 85 percent probability. They did that with good faith; I mean, looking at the tables.

Now by some slight chance -- I think hopefully we'll get a nice season someday but if we went over this year because of what went on there, this is with a table based on probably a 92 percent probability that we'd take what we did. And we could still wind up going over because who knows what could happen. But I'm just saying that's how people are looking at the tables. It's a lot different than we looked at tables five years ago and six years ago where everybody tried to get the extra fish and go the limit.

Now people are saying, looking at a table and saying, how can we really -- if the tables are too lenient, how can we actually keep within our quota. I think most states did that last year. I think they did that. I know New Jersey did.

CHAIRMAN FREEMAN: All right, what concerns me relative to the motion, David, is it's the next meeting. We could come to the next meeting, have a report that the technical committee has not completed its work and then

further take action or leave -- I don't know, I guess we would have to take action because that is the next meeting.

I'm just wondering if there is wording that could be used to give us the time needed or give the technical committee the time needed. Bob.

MR. BEAL: There may be an adjustment to the motion saying that, you know, table it until the options paper by the technical committee is available, with the understanding that the technical committee is going to work for August, but if it's not available at that time, we'll try to get together either in October, following or right before the Mid-Atlantic Council meeting, or in December at the ASMFC meeting week.

CHAIRMAN FREEMAN: David.

MR. BORDEN: I mean, that would be acceptable to me if it's acceptable to Jack, so it would be move to table further action on the Addendum VIII until the next meeting or until such time as the analysis is prepared.

CHAIRMAN FREEMAN: Jack, is that acceptable?

MR. TRAVELSTEAD: Fine.

CHAIRMAN FREEMAN: Vince, you had a comment on wording.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I think probably "postpone" is probably a better way to handle this. It's just a motion to postpone because you're talking about taking it up at a specific time in the future.

The difference is going to be whether or not it's debatable or not. A motion to table is not debatable. I'm hearing some other things here saying that so if you want to talk about debating postponing it.

MR. BORDEN: I would just note that we've already had about 25 minutes of debate on the motion to table. I think everybody understands what the intent is here. And my suggestion, Mr. Chairman, is just force us to vote and put us out

of our misery.

CHAIRMAN FREEMAN: Relative to this motion, if it passes, are you intending to give specific recommendations to the technical committee or use the comments you made previous to this or when you made this motion? Just clarification.

MR. BORDEN: I would be happy to do that, but I think the record is going to be the record. There are two or three different strategies and alternatives that have been suggested here, and we have a verbatim record of the meeting, and I think that will reflect that.

CHAIRMAN FREEMAN: Well, one thing, certainly, from the standpoint of the technical committee, we need to give them clear instructions so they don't waste a lot of their time.

We can do that by using the record, and I think it's required now that we do ask questions of the technical committee be put in writing. Is that not true?

Then I just want to make sure people understand the basis for this and what it implies. All right, any other comment of the board? I'll take one other comment. Dennis, we'll take you because you haven't spoken yet.

MR. KANYUK: Dennis Kanyuk, and I have two party boats in Long Island from United Boatmen. I didn't take the day off from work, pay a gentleman to run my boat, lose money today for you guys to cop out on something that's been around for ten months.

Why weren't these issues addressed during the procedure and had them all finished by now? You're going to delay it two months to August, then you're going to delay it to October.

We're still trying to make money. This has been the worst start of a season we've ever had. I mean, we didn't get paid to come here. I pay people so I can come here and you're going to cop out on a motion that is just going to push it off for two months.

That's why people have lost their faith in this system. It stinks. When you can come down here, drive for 5.5 hours and then find out, well, we may do it in August, ah, it may be October, come back again, come back again.

Come on, either do it or don't do it, but do it now. Don't make a decision later; make your decision now. Sooner or later you're going to have to make it. We'll live by what you make it. If you make the wrong decision, maybe then a judge will have to make the decision, but I've had enough. Thank you.

CHAIRMAN FREEMAN: Okay, we need to take a vote on this motion. Five minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Take your seats. We'll take a vote on this motion. You've heard the comments. All right, all those in favor of the motion, signify by raising your right hand; those opposed, same sign; abstentions, no abstentions; null vote, no null vote. The motion carries. All right, Gordon.

MR. COLVIN: Mr. Chairman, as I understand it, what we're trying to do here is to give ourselves some time to charge our technical committee to try to develop some alternatives to the way we operate, that if we implement them will give us a level of comfort with how we're operating so that we may not need to implement any payback strategy.

That seems to be my take on what the sponsor of the motion has indicated. The question I have is at some point it would seem appropriate that there would be a charge to the technical committee, laid out a little bit more formally than just this discussion in terms of what we want them to do and so on and so forth.

I'm wondering what the mechanism is going to be for developing that charge and for letting the board members all maybe have a look at it.

Just one other thought and that is that I'd like to see if there is some opportunity, also, to fold into

this charge and this examination that we're asking for some of the MRFSS-related questions that were talked about here today and maybe to arrange for some consultation with the ACCSP Rec-Tech Committee, who has been looking at a lot of that same stuff and get their input on those questions as well.

CHAIRMAN FREEMAN: Gordon, those are good suggestions. What we'll do is have Bob review the record, in cooperation with myself and Steve, come up with a draft letter and then circulate that to the board members, give several days for them to comment and then get that sent out.

And when the ACCSP meets later, tomorrow I guess it is or whatever, day after, that we raise this issue to see if in fact -- Bill, remind me -- if in fact we can give a better answer; and if not, if there is something reasonable that could be required to get a more specific answer.

And then the issue, Gordon, you raised dealing with the fisheries service, we'll get together with Harry and perhaps Pat and see if we can get some more details on the questions you raised. There were other comments. Tom.

MR. FOTE: While the technical committee is looking at that, I guess New Jersey did an analysis of actually how much commercial fishermen have went over in the last ten years and how much recreational -- the scientists and technical committee people in New Jersey did that.

And one of the things that came to my attention was I always knew that there was a tolerance for 13-inch fish when we basically did this, but I didn't realize that a 50-pound box really doesn't weigh 50 pounds.

It usually weighs about 52, somewhere around there, so there is really a 4 percent overage on the commercial side on each box of fish. And so I'd like to find out what that calculation comes out to over the years.

I mean, if we're not really looking at a 50-pound box, we're looking at a 52 or 53, that's an

overage, the same way as the recreational overage. If you're basically compounding every box, we should be looking at that statistic also.

CHAIRMAN FREEMAN: All right. Just to comment to industry, I know Tony and others have made comments, this is certainly not an attempt to exclude the recreational industry, particularly party/charter boats, from the discussion.

I do appreciate the fact that many of you have come great distances and taken not only a day but several days to get here to give us your opinion. We do greatly appreciate that. I personally don't see how this will be done by the next meeting. I'd be very much surprised if it is.

It doesn't perhaps give you all the information you would like to hear, but it's not an attempt by the board to exclude the industry. It's an attempt by the board to come up with a solution that I think everybody can agree to.

We're very much aware of the impact our decisions have on industry, and we want to make certain that we move in a way that would allow the industry to prosper, not certainly to damage it or diminish it. David, you had a comment.

DR. PIERCE: Yes, I think that we're also likely to get back, in addition to those analyses from the technical committee, some advice that they have consistently given us for years, advice that, of course, has been offered up by the Mid-Atlantic Council staff consistently, and that is we're dealing with MRFSS data, we're dealing with the recreational fishery that is hard to track.

We're dealing with a fishery that habitually has large overages. Hence, there is a need for us to be collectively much more conservative with our management approaches for the recreational fishery for fluke.

Up to this point in time, I think our track record would demonstrate that we've been fairly liberal with how we deal with the regulations for the recreational fishery, and understandably so because it's a very valuable fishery, all sorts of spinoff benefits.

Nevertheless, we have had some significant overages that has led to this particular addendum, and the advice we'll get from the technical committee I'm sure will be yes, there are other repayment strategies that can be calculated, but there is no substitute with this type of fishery for a very conservative approach for managing it, so that we don't end up with significant overages and we don't end up, then, with what could be a very complicated repayment strategy that relies even more heavily on the uncertain MRFSS database.

-- 2003 Scup Recreational Proposals --

CHAIRMAN FREEMAN: Okay, we need to move on to scup. Bob.

MR. BEAL: Do so?

CHAIRMAN FREEMAN: Yes, do so.

MR. BEAL: Three of the states this year were allowed to implement recreational management measures for their scup recreational fishery that allowed their landings to increase by 38.8 percent relative to their 2002 landings.

These three proposals were submitted to the commission, were reviewed by the technical committee. I'm just going to go through them real quick and give you highlights of what happened last year versus what's happening this year in those three states. And then I'll comment on the states of Massachusetts and New Jersey following that.

Up on the screen are the 2002 regulations for Rhode Island. They were closed through June 30th. They are open from July 1 through August 23rd with 10-inch fish, 10-inch minimum size and an eight-fish bag limit; and then from August 24th through the end of the year, they had a 50-fish bag limit and a 10-inch minimum size.

For 2003 they're proposing to be open all year at 10-inch minimum size with 50-fish possession limit. This is expected to get a 33 percent increase, which is obviously below the 38.8 percent allowed under Addendum VII. So, the

technical committee reviewed the way they have done their calculations and recommended approval of the Rhode Island management proposal.

Connecticut also supplied a proposal. Their 2002 regulations were open from July 13th through September 25th, again, a 10-inch minimum size, 50-fish. This year they're proposing to lengthen their season from May 24th through October 30th and the 10-inch minimum size, 50-fish bag limit.

This achieves the 38.69 percent increase or expected increase in landings. This, again, is below the 38.8 percent as allowed by Addendum VII. The tech committee reviewed their methodology and recommended approval of this proposal as well.

New York, the 2002 regulations were 10 inch, 50 fish, but they had different seasons depending on what type of vessel you were fishing from. The party and charter boat had a June 25th through the end of November season.

And, all other persons fishing either from private or rental boats or shore-based anglers had a season from June 25th with a two-week closure at the end of September, and again were open through the end of November.

2003, they're proposing to be open all year, 10-inch minimum size, 50-fish bag limit for all modes of their fishery. This is expected to give them a 29.8 percent increase, again, below the target. The technical committee reviewed this and recommended approval of this set of management measures as well.

So those are the three states that needed to supply proposals on 38.8 percent increase in landings. Okay, and to recap, at the last meeting, Massachusetts, it was noted that they were allowed to increase their landings by 22 percent.

However, at that time it was agreed that Massachusetts would maintain status quo in their regulations, which are a 9-inch minimum size, 100-fish bag limit for party and charter

boats and a 50-fish bag limit for all other modes.

The open season is May 10th through the end of December in Massachusetts, and so it was assumed by the technical committee that -- no proposal was supplied by Massachusetts for the technical committee to review so it was assumed that they would maintain status quo.

CHAIRMAN FREEMAN: David, is that true?

DR. PIERCE: Well, I think there might be an error. I'm embarrassed because I can't recall specifically, but my understanding is that our fishery closes on October 6th. It doesn't go through the end of the year. I'm having that regulation checked right now just to make sure I'm correct.

And with that understanding, October 6th, I think all board members or most board members should have a memo that I made available today regarding the need for us to extend our season by one week.

Again, we're not going to take action to take advantage of the 22 percent allowable increase. That's not our intent. We said we would not do that. However, this season has been remarkable in terms of how poor it has been relative to the scup fishery for the party and charter boat fishermen, specifically.

We've had a number of very interesting phenomena in our waters. The scup did not arrive until quite late in May. We had to postpone our black sea bass season. Well, I shouldn't say "postpone", we had to extend it. The regulation allows for May 1 through May 22nd. That's when sea bass commercial fishery can occur. And then there is a closed season and then it opens up again.

But, anyway, the sea bass didn't show until almost May 22nd so there was about a three-week delay for the arrival of black sea bass on the grounds. And, we had other instances where clearly something happened within our waters, probably temperature related.

The horseshoe crabs didn't even show up on the

spawning beaches. They were two weeks at a minimum late. So, recognizing that, you know, I did commit at the last board meeting to not making any changes in the regulations for this year and just keeping the 22 percent "in the pocket," so to speak, and just see what the MRFSS data shows, and then we have 22 percent as a safety valve.

In light of the fact that the party and charter boat vessels in particular have approached us and have said that they have indeed seen a very dramatic drop in their business because of a lack of fish, it seems appropriate for us to make this change.

So I offer up to you this memo that describes the situation. I hope that the majority of the board members will understand and will appreciate that there is a need for us to be reasonable and to react -- I'm looking at you in particular, Pat and Gordon.

There is a need for us to be reasonable with regard to how we act within Massachusetts and for us to be as flexible as we can possibly be, but not to do something that would be contrary to what we said we would do. I'm hoping that we're all reasonable around this table and that there will be support for this one-week extension.

Again, we're not taking advantage of the opportunity for us to take 22 percent more. All we're doing is extending it for one week to bring us through Columbus Day, which was the request of the industry.

CHAIRMAN FREEMAN: All right, the board has heard from those states that action needs to be taken; the three states, Rhode Island, Connecticut and New York's proposal, which has been reviewed by the technical committee, and then the one-week extension request made by Massachusetts. Is there any action the board would like to take? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'd like to make a motion we accept the proposals as presented for Rhode Island, Connecticut and New York, and they be

approved accordingly.

CHAIRMAN FREEMAN: All right, is there a second to that? Second by Gil Pope. The motion is that we accept the proposals as presented for the states of Rhode Island, Connecticut, New York. Comments. Harry.

MR. MEARS: Mr. Chairman, I will abstain from this motion, not because I disagree with it, but because of various comments which have been made in previous discussions on how this is a joint plan with the council.

The way we manage the scup recreational fishery is different from the way we manage the summer flounder recreational fishery where there is a framework to describe how jointly conservation equivalent proposals are identified, reviewed by the technical committee, and then notification is made to the regional administrator who can then formally acknowledge what the state-federal partnership recreational measures for scup would be if we followed a Framework 2-type of procedure.

At the current time, we're approving state-specific proposals where state and federal permit holders have different sets of regulations between state and federal jurisdictions.

I just want to say that for the record, and I would hope that we can put this on the agenda to discuss whether or not other board members feel as though this is a problem or in fact may not be a problem hopefully at the next board meeting. Thank you.

CHAIRMAN FREEMAN: Any other comments from the board? Comments from the public? No comments. Do we need a caucus? Anyone request a caucus? No caucus; we'll take the vote.

All those in favor, signify by raising your right hand; opposed, same sign; abstentions; null votes. The motion carries. All right, now we need Massachusetts. David.

DR. PIERCE: Yes, I was right, the reference to

the open season May 10 through December 31st is incorrect. It goes through October 6th.

So with that in mind, with those dates being the date of the full closure, I would move that the board support Massachusetts' extension of the scup recreational fishery from October 6th to October 14th.

CHAIRMAN FREEMAN: All right, you heard the motion. Is there a second to that motion? Gil Pope seconds the motion.

DR. PIERCE: If I may, Mr. Chairman, there was one other issue that I neglected to raise, and that is we did have another very unusual circumstance in Massachusetts this year and that was an oil spill.

End of April, the beginning of May — I can't recall the exact date — just prior to the beginning of the scup fishery, the recreational fishery, we had a spill of 95,000 gallons of oil, which lead to a closure of 180,000 acres of shellfish beds, which lead to a lot of press coverage, a lot of concern by the public that seafood from the area of Buzzard's Bay, specifically, might be contaminated.

That apparently lead to decreased interest on the part of potential customers to come and ply the waters of Buzzard's Bay to fish for scup. As you know, whenever we have these sorts of environmental pollution events, there is an undesirable outcome.

So, this oil spill, in concert with these very unusual temperatures delaying the arrival of many species of fish in our waters this spring, prompts us to make this motion in hopes that everyone around the table would indeed understand our situation and would indeed not hold us to that which we said we would do at the last board meeting.

This is a very unusual situation. And, when I agreed in February to keep status quo for 2003, I assumed that we would have a similar situation 2002 versus 2003 and then obviously that did not occur. So that is the rationale for it.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Well, we're certainly all reasonable people, and we're usually all reasonable state delegations. I just think that the notion of making in-season adjustments to the measures that we implement because of weather is a very slippery slope.

First of all, as has been attested to abundantly here today by industry representatives, the weather problems are not unique to one state. They are something that all the states have experienced and continue to experience in this very unusual year.

The notion of making an adjustment of the nature suggested raises lots of other questions in my mind such as why only a week? How would you calculate how long? What if the fish show up early next year, are we going to make an in-season adjustment to make it shorter?

We're all supposed to do a two-week black sea bass closure in September, shall we take up a motion next to not do that? It's just there are so many other issues that flow from that. It's not the first time it's come up.

It has come up in other contexts in other fisheries in the commission's management programs in other years, and usually we've walked away from it.

I don't know how folks feel about oil spills. That's a different question and I'm not really sure how to get at it, but the weather one is one that bothers me because of the precedent and the questions about where do we go from here with it.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: I agree with Gordon. I mean, we had a sewer break in Raritan Bay that went on for a long period of time and we could have come and asked for an adjustment. I don't feel that's appropriate.

And the weather, we all have the same weather problem. I just stated a while ago, I mean, the

fleets are basically doing -- if we do this for one state all of a sudden every marine -- well I know in New Jersey I'll have the New Jersey Marine Fisheries Council coming to me and requesting it all the time.

Yes, if there was an extraordinary event, we could do it for the whole coast or something like that that went on. I also remember during a hurricane that we caught a whole bunch of bluefin tuna according to the National Marine Fisheries Service.

So, I'd be interested to see what happened actually when the survey comes out, what happens during the oil spill. I really have a hard time supporting this motion. I mean, because it opens up a whole can of worms that I don't want to deal with.

CHAIRMAN FREEMAN: David.

DR. PIERCE: We just approved a motion to allow states, a few states to take up to 38 percent more than last year, and that is certainly appropriate because they were told they could. I supported that motion. It was fair and reasonable.

In our particular situation, we're entitled to 22 percent increase but we're not proposing to take advantage of that 22 percent increase.

All we're proposing to do is to have an extension of one week that brings us through Columbus Day, which is a very important day for vacationers, holidayers in Massachusetts, and it's extremely important to party and charter boat fishermen, as they've recently indicated to me.

Now, I would wager that when all is said and done, when we look at the MRFSS dataset for 2003, we'll see that the recreational fishery landings in Massachusetts have dropped dramatically because spring is a primary fishing season for scup, recreational fishing season, and May, specifically.

I would wager, therefore, that there is going to be this very significant drop. We know our

fishery in Massachusetts. We know how it operates. As a consequence, we're attempting to be reasonable to our constituents, to our fishermen specifically, and those who patronize them, by making this very simple request that is temperature related as well as related to this oil spill problem.

CHAIRMAN FREEMAN: Eric.

MR. SMITH: I actually support this motion. Gordon made real good points and Tom Fote did, too, about the weather. I wish David hadn't even raised that issue because it's the slippery slope Gordon talked about.

The oil spill is a little bit different. The real thing about this motion that compels me to vote for it is if we don't vote for this, a state that could have increased their fishery by 22 percent will never in the future want to come forward and say, "We're willing to hold ourselves back" for whatever reason.

Because, then, when they come forward and say, you know, some conditions changed, we need a little bit of accommodation, and they don't get it, no state next year or the year after will ever hold themselves back.

I think this is reasonable. It still probably keeps them well within that 22 percent. I just tend to want to vote for it and ignore the argument on weather because I think that's a self-defeating one. Thank you.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Well, it isn't that simple, Eric. In order to understand the basis of the 22 percent, you have to understand the basis of what all the rest of us agreed to when we adopted the scup measures for this year. I think New York was looking at how much of an increase?

MR. AUGUSTINE: 85.

MR. COLVIN: Ninety percent, 85 percent, something like that. So we held ourselves back to 38 primarily for the sake of coming up with a

coast-wide compromise that all could live with and it, frankly, solved the problem of the overage in Connecticut.

I haven't stopped hearing about that since then, by the way, back home. I haven't stopped hearing about it. So, yes, that's kind of going through my head when I look at this motion as well.

It's difficult once we make decisions and come to agreement and compromises and accept the price we pay for doing that, to then have to come back and revisit them because then it brings all this stuff back up again, and it's very troubling.

So, you know, it's a lousy week, and, you know, so who really cares about a lousy week? But at the same time there are some principles involved that are bothersome.

CHAIRMAN FREEMAN: All right, do we need a caucus on this? All right, we'll take a vote. We can all read it up on the screen. Those who support the motion, signify by raising your right hand; those who oppose the motion, same sign; abstentions; null votes. The motion fails. All right, the New Jersey report.

MR. BEAL: New Jersey also supplied a proposal for the technical committee to analyze. They requested the tech committee to analyze the impacts of having the New Jersey recreational scup fishery open in January and February of 2004.

The technical committee saw no technical reason for prohibiting a January and February opening, noting that it is often assumed that the catch in this wave is actually zero since there is limited MRFSS activity and very limited fishing activity. I don't know if Bruce wants to comment on that.

CHAIRMAN FREEMAN: Let me just quickly comment. Last year at the request of our industry -- we have an offshore deepwater sea bass fishery in January and February. And incidental to that fishery, scup are taken or porgies are taken.

And in order to avoid a bycatch mortality, we requested that they be allowed to land those fish, particularly in the depth of water they're fishing. It was at the time denied. We essentially wanted to raise this issue with the technical committee to see if there is any reason not to do it.

Our only request is in the future, if in fact this issue is raised, to consider the report of the technical committee. That's the only action we're asking for, so really it's no action, just keep it in mind. Thank you.

-- Advisory Panel Nominations --

MR. BEAL: Advisory panel.

CHAIRMAN FREEMAN: Advisory panel. Yes, we need to take action.

MR. BEAL: Okay, there are three nominations for advisory panel members. There is one for the Summer Flounder Advisory Panel and that's Doug MacPherson, a recreational fisherman from Rhode Island.

The Scup Advisory Panel has two nominations; Doug MacPherson from Rhode Island and Christopher Brown from Rhode Island, as well. So there are a total of three nominations for the two advisory panels.

CHAIRMAN FREEMAN: All right, you have those nominees. A motion to approve them. Pat Augustine, a motion to approve; Tom Fote seconds the motion. Any discussion?

Seeing no discussion, voice vote. All those in favor signify by saying aye; opposed, no. The motion carries.

The last item is sea bass. We became aware of a situation this winter where a vessel was landing sea bass in Pennsylvania. Obviously, a coastal state has a large sea bass fishery.

Our expectations were that this vessel would be violated by the federal agency because it shouldn't be landing sea bass, and to our surprise found out that that wouldn't be the case. Mike, perhaps you could update us on where we

stand on that.

-- Other Business --

MR. MIKE HOWARD: Mike Howard, coordinator for law enforcement for the ASMFC. As of this week they're still -- this involves a fish company that has a retail/wholesale market in Philadelphia.

New Jersey officers, Delaware officers and Pennsylvania officers have been aware of this landing which surpasses or usurps the quota system as the ASMFC delegated.

There was no prohibition against landing these fish in states that didn't have a quota. That's the official position of the federal government. So, knowing that, as they did with horseshoe crabs, which was a similar incident, the state of Pennsylvania promulgated regulations and had them approved to prohibit the landing of horseshoe crabs.

They are now, again, put in the position of adopting rule-making procedures for prohibiting the landing of sea bass. That procedure has -- at least the process has been approved by the fish commission.

They are putting it out to public hearing but it will be at least fall before these rule-making procedures are done. Public hearings are coming up shortly. They don't see any roadblocks to this. The commission is in favor of it.

It is a back-door approach. And in the meantime fish continue to be landed; not necessarily sea bass but other species. And in an effort to ensure that we, as law enforcement community, are supporting the FMPs, there is a concerted effort between the Coast Guard, National Marine Fisheries Service special agents, and the three states involved to monitor this.

If we see any significant landings of fish that are unusual, we will, again, you know, bring this to your attention as soon as possible.

CHAIRMAN FREEMAN: Thank you. The outcome of this is that whatever is landed in

Pennsylvania is coming off all our quotas, so our commercial fishermen, coastwide, are paying for this, for someone to essentially usurp what we had in the management plan.

So, we want to take care of this situation as quickly as possible. Talking about fair and equitable, this is certainly one that's not fair to our commercial fishermen. And we're all under stringent quota qualifications right now. Gordon.

MR. COLVIN: Do we have any idea of the approximate quantities we're talking about here?

CHAIRMAN FREEMAN: Mike, do you have any? I know there were some considerable catches made in the fall, but I'm not sure what.

MR. HOWARD: When this was detected, it may have happened a few times, and I really need to get back to the exact numbers, but it was a substantial amount as far as sea bass fishing goes. Potentially the other fisheries that are involved could also be substantial, so I'll try to have that information for you by tomorrow.

CHAIRMAN FREEMAN: Gordon, my recollection is at least on one occasion the trip limit on the federal side I think was 5,000 pounds in order to set it high, so they will all be under that. And my recollection is at least on one trip, perhaps two, it was very close to that 5,000 pounds.

So not only is everyone paying a price, but they're bringing in much larger catches than all of us are allowed. I mean, it's a serious situation. I just want to make the board aware of that. Pennsylvania hopefully is taking action, and we'll ask Mike to keep us apprised of developments.

All right, any other business? This board meeting is concluded. Thank you very much.

(Whereupon, the meeting was adjourned at 3:35 o'clock p.m., June 9, 2003.)

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