

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION

SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS
MANAGEMENT BOARD

February 25, 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)
Ernest Beckwith, Connecticut DMR
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
Roy Miller, Delaware DFW
Eric Schwaab, Maryland DNR
Bruno Vasta, proxy for Bill Goldsborough, MD
A.C. Carpenter, PRFC
Rob O'Reilly, Virginia MRC
Chris Ludford, Proxy for Catherine Davenport, VA
Preston Pate, North Carolina, DMF
Damon Tatem, North Carolina, Gov. Apte.
Harold Mears, NMFS
Jaime Geiger, USFWS

Ex-Officio Members

Steve Doctor, Maryland DNR, Tech. Comm. Chair

ASMFC Staff

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

Mike Lewis
Lydia Munger
Brad Spear
Nancy Wallace

Guests

Ronal Smith, MAFMC
Anne Lange, NMFS
Bob Ross, NMFS

Paul Perra, NMFS
Tony Bogan, United Boatmen

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**Summary of Motions
February 26, 2003**

Move that the Board accept the Technical Committee report as presented with approvals including PRFC and rejections as noted.

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

Move to accept the Compliance Reviews.

Motion by Mr. Fote, second by Mr. Adler; Motion passes (one abstention).

Move that the Board approve draft Addendum VIII for public comment and review.

Motion by Mr. Colvin, second by Mr. Adler; Motion carries.

Motion to Amend:

Move that the Board approve Addendum VIII for public comment and review with Issue 3 removed.

Motion by Mr. Cole; second Mr. Mears; Motion fails.

Move that the Board approve Option 1, regional management with scenario B as presented by staff which will provide states the opportunity to increase their landings by 38.8%, with the provision that Massachusetts will maintain its current regulations for 2003 and limit its increase in harvest to 22%.

Motion by Mr. Beckwith, second by Mr. Carvalho; Motion carries (3 abstentions).

Move that the States of New York, Connecticut, Rhode Island, and Massachusetts develop a standardized set of regional recreational measures for the scup fishery. Said measures to be presented to the Board no later than the ASMFC Annual Meeting for implementation for the 2004 season.

Motion by Mr. Borden, second by Mr. Colvin; Motion carries (3 abstentions).

Move that the Board adopt option 3 for mode splits governing the States of Connecticut, New York, and Rhode Island.

Motion by Mr. Borden, second by Mr. Augustine; Motion carries (5 abstentions).

Move that the Board approve the FMP Reviews for 2002.

Motion by Mr. Augustine, second by Mr. Carpenter; Motion passes without objection.

Move to establish a 1500-pound daily trip limit for Winter II scup period.

Motion by Mr. Augustine, second by Mr. O'Reilly; Motion passes without objection.

Move that the Board adjust the final 2003 summer scup quota downward by 50% of the discrepancy in 2003 and 50% in 2004.

Motion by Dr. Pierce, second by Carvalho; Motion carries.

Move to elect David Borden as Vice-chair of the Summer Flounder, Scup, and Black Sea Bass Board.

Motion by Mr. Colvin, second Mr. Frillici; Motion passes.

Move to approve AP nominations.

Motion approved without objection.

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 Tuesday, February 25, 2003, and was called to order at 8:00 o'clock a.m. by Chairman Bruce Freeman.

-- Call to Order --

CHAIRMAN BRUCE FREEMAN: We have a full agenda for summer flounder, scup and sea bass. We have a limited amount of time to conduct our business.

We have a joint meeting of the board and the council at one o'clock so we need to convene our business and move relatively quickly this morning, thereby wanting to get this meeting under way as quickly as possible.

Everyone should have or are in the process of receiving an updated agenda. I think that's being passed out by staff. I ask that you look at this. It should encompass all the work that we need to get done today.

Also being passed out are the minutes of the joint Commission Board and the Mid-Atlantic Council Summer Flounder Committee. Actually, it was a meeting of the council as a whole on December 11th. Those minutes are being passed out.

There is no need to take action on those. We will wait until this afternoon when we meet with the council to approve those minutes and give people an opportunity to read through during the meeting or at lunch. We will take action on those.

-- Approval of Agenda --

Are there any comments on the agenda? Any items that we may have missed? Seeing no comment, then we'll just proceed with the agenda. We have reserved at this time a period for public comment. Is there any public comment; anyone from the public would like to speak at this time? We should have time

available during the proceedings, particularly if we vote on any issues, to ask for public comment. Tony, come on up.

-- Public Comment --

MR. TONY BOGAN: Do you want something specific or do you want me to wait until we get to Addendum VIII?

CHAIRMAN FREEMAN: Are those, Tony, those the only comments you have?

MR. BOGAN: Yes, and Addendum IX.

CHAIRMAN FREEMAN: Okay, we'll wait.

MR. BOGAN: Okay, that's what I thought.

CHAIRMAN FREEMAN: All right, one change that I would like to make, just to make this go smoother, is the time slot of 10:15, the 2002 compliance reviews. I'd like to move those up to under the summer flounder state proposals.

So after we go through the state proposals, we will go through the compliance, and then we will go through Addendum VIII and then IX. I think it will just make the process a little smoother.

Okay, let's begin with the review of the recreational proposals for summer flounder by the various states, and Steve Doctor who is the chairman of the technical committee will take over.

-- 2002 Recreational Summer Flounder Proposals --

MR. STEVE DOCTOR: Okay, the technical committee evaluated the proposals on Thursday using the formulas and tables and state-specific data that was approved by the board. Most states were extremely precautionary.

I'd like to thank the state, also, for not proposing a lot of mode or area splits for the most part, which make analysis simplified and increase the probability of achieving the desired results.

The technical committee put in considerable effort reviewing the proposals for the past two weeks. A lot of preliminary discussions before the final conference call allowed the states to refine their proposals through continuous dialogue and made the process much easier. I'm going to go through what was approved by the technical committee.

Massachusetts is going to stick with status quo. They're allowed a 47 percent increase. They're going to stay at seven fish at 16.5 inches with no closed season.

Connecticut, also, was allowed a 55 percent increase. They're going to stay at six fish at 17 inches with no closed season.

Massachusetts' Option 2 is status quo. They also presented two other options which produced a 17 and 15 percent increase, and they're allowed a 20 percent increase. Their status quo is five fish at 18 inches and the two other options are up on the board.

New York is going to go to seven fish at 17 inches and eliminate their closed season. They were allowed a 38 percent increase and they're going to have a 2.5 percent increase.

New Jersey is going to go have eight fish at 16.5 inches with no closed season, which gives them a 17.75 percent increase and they're allowed a 56 percent increase.

New Jersey also submitted another proposal which was not as conservative and was declined by the technical committee. It was very similar to 2001 regulations where they had a large overharvest, and it was the feeling of the technical committee it would not reach their objectives.

Delaware is going to be at four fish at 17.5 inches with no closed season. They also submitted their options from the previous year, which are equivalent, and so they have to go through a hearing process to decide which of those options they're actually going to use, but they are equivalent to the season that they had last year. Their regulation with the no-closed

season gives a 3.5 increase, and they were allowed a 21 percent decrease.

Maryland is going to go with eight fish at 17 inches with no closed season. Elimination of the closed season gives them a 21 percent increase, and they were allowed a 64 percent increase.

There was some discussion in the technical committee that the regulations in Maryland were similar to the 2001 regulations where they had a higher harvest than will be allowed next year. The committee recognized the risk of this option, but believes it's conservative enough to warrant approval.

Virginia is going to increase their size. They're going to go with eight fish at 17 inches with a closed season from January 1st through March 28th. That will give them a 15 percent decrease and they were mandated an 11 percent decrease.

Virginia also submitted an option with a split size limit on the coastal side, but it was declined by the technical committee as their feeling was that it would not reach the objective. There were questions about enforcement and also effort transference that made the technical committee not want to accept that proposal.

North Carolina has a proposal that was approved by the technical committee as eight fish at 15 inches offshore and 14 inches with no bag limit inside the mouth of the inlets. There was a lot of discussion with this proposal.

Carter Watterson from North Carolina did an excellent job with the analysis of it. When you have a split, it is very difficult to analyze, but it was looked at very closely and it was agreed that this had a potential for reaching the objective.

Again let me state that most states were extremely conservative in their proposals. Can I have the next slide, please. If you look at --

CHAIRMAN FREEMAN: Steve, just a minute. Tom, you had a question?

MR. TOM FOTE: Well, I had my hand raised when he went through New Jersey's proposal.

I've got a question to ask. Do you want questions on these, since we're going to through them, or do you want to wait until we're through?

CHAIRMAN FREEMAN: Well, let Steve go through -- he's almost done -- and then we'll come back and have questions.

MR. DOCTOR: Depending on weather, fishing effort, fish migration and the vagaries of the MRFSS estimates, the technical committee recommends that the proposals approved by the committee have a reasonable likelihood of achieving the desired harvest.

And if you look at this last slide that I have up here, you'll see that most of the states were allowed pretty large increases, and for the most part they were very conservative in the increases that they actually proposed and were approved. That ends my presentation.

CHAIRMAN FREEMAN: Okay, Tom, a question.

MR. FOTE: My concern, I guess, New Jersey submitted two proposals. Both of them fell within the guidelines and the tables that basically we produced to the technical committee. I have concerns when we get a proposal that is actually, according to the tables and charts, basically fits those guidelines.

I had problems if the technical committee looks at it and says, yes, it fits the tables and the charts but we have serious concerns. We'll pass it on to the board to make a decision on this or the reference.

But to turn it down flat without basically bringing it here when it basically -- if I remember the proposal, the percentage that it basically reduced was well below what needed to be done on New Jersey's other proposals, the 16 and no closed season. Am I right or wrong?

MR. DOCTOR: Actually, it was right on the --

MR. FOTE: Right on.

MR. DOCTOR: It was not lower.

MR. FOTE: I mean, we got sued over because we don't follow tables and charts and probabilities and everything else. If the state follows the probability, yes, it has to make a decision and the board should be able to make that decision.

But my feeling is that if it fits the table and it fits the guidelines, the technical committee shouldn't be making a decision that basically outright rejects. It should put a comment there saying that this meets the guidelines, it meets what the tables say, but we have concerns that it will not accomplish what it is supposed to accomplish, and that should be the kind of recommendation.

But to vote against it when it does meet the tables and the charts, according to what we're supposed to do, and just don't even bring it before the board, I have a problem on that. Because we'll make the decision and that's what we do as managers.

But if we're going to be sued because we don't follow tables and guidelines, then we should follow the tables and guidelines and bring things forward. And that's my concern, Mr. Chairman.

CHAIRMAN FREEMAN: Let me just have Mike also add some response.

MR. MICHAEL T. LEWIS: Thank you very much, Mr. Chairman. Your point is very well taken, Tom. I just want to point out, hopefully, a memo was distributed to you that I wrote just a couple days ago that explains what was in place in 2000, what needs to happen in 2003, and then the different proposals that each state made available to the tech committee for review.

In there is New Jersey's proposal, both of them. It's important to note that the tech committee did give this a pretty good look and provided some explanation as to why they recommended that the board reject this particular proposal.

It's important to note, though, that the tech committee is not making a management decision

for the board and is not telling the board that they don't even need to look at this. The reasons behind the tech committee recommendation to the board are fairly clearly spelled out.

But the tech committee, again, is just making a recommendation. Although the math works, they don't really think it's actually going to work in the real world and that's what they wanted the board to know.

MR. FOTE: Bruce, to that point.

CHAIRMAN FREEMAN: Go ahead.

MR. FOTE: I had no problems if you did that, but when you've just put up those tables there, that was not included in what you put up on the board there; that this would have met but we had concerns on it.

That option was handed in by the state. All I got back was a memo from the technical person that we sent down there that said it was rejected. And it says rejected because of this.

But, again, if it meets the guidelines of the table, it should be put up on there -- it was not on the overhead -- saying this is our concern why it doesn't meet and you've got to make a decision whether you allow this go to forward.

CHAIRMAN FREEMAN: I think it's a valid point, Tom. Let me just indicate, I've had discussions both with Mike and with Chris Moore of the council staff relative to the calculations we go through.

I think in retrospect we can see that each of the coastal states have tried to reach the target by using the existing tables, and especially for the last three or four years that we've fallen way short of meeting our targets in that we've exceeded the target quotas.

I think part of it has to do with some way of making these calculations more realistic. There needs to be a change in the way the calculations are done.

The fact that we're looking at an amendment or

an addendum to have paybacks in the recreational fishery, I think people are looking very closely at this. I do think personally that there's some changes in the calculations that need to be made in order to give us more realistic. Your comments are well taken. Let me get Rob.

MR. FOTE: Can I speak to that point?

CHAIRMAN FREEMAN: All right, go ahead.

MR. FOTE: Yes, my problem is I don't want to go to the second proposal. I want to go to this proposal that you're basically putting.

I have a marine fisheries council that basically looks at tables and charts; and when I go back there I have to say, well, the board basically determined or something like that, and it makes a better decision for me to go forward in saying to my people to try to explain why we got rejected on the first proposal is because it would not do it, here's your 2001, things like that, and that's what I'm looking for.

CHAIRMAN FREEMAN: And, again, as was indicated by both Steve and Mike is that these are recommendations by the technical committee. There is a rationale for the recommendation.

And as indicated, in the instance of New Jersey technically, it just meets the criteria, but based upon their analysis, they believe that if the state used that it would increase. But the decision is with the board, there is no doubt about that. Okay, I had Rob and then Gordon.

MR. ROB O'REILLY: I just wanted to point out under the Virginia proposal where it starts off -- and I talked with Mike several times, but what we didn't discuss was the actual reduction required.

Virginia used its Wave 6 information and submitted the final estimate for landings, so that should be a 9.85 percent reduction rather than 11 percent reduction.

And the other thing I would comment on would

be that I presented the management plan to the technical committee. I'm not a member of that technical committee, but they did allow me to sit through the process.

And, clearly, the technical committee spent a lot of time. In Virginia we will make rules today for the 2003 season. That will be later this afternoon.

We know that it's going to be very difficult for the coastal bay area to go up two inches in the size limit. However, having listened to the technical committee proceedings, we're also aware of two things.

One, although the Virginia plan mathematically fit the tables, there are some problems with 2002; mainly, during the Wave 3 period, the effort data was not able to be used direct and was an average data.

That was one thing pointed out by the technical committee that there would be difficulties if we continued the management regime we had in 2002. There are several others listed. I just thank the committee for taking the time, because it was quite extensive, to go over all the possibilities before it decided that it couldn't support Option 2.

And, also, I thank the National Marine Fisheries Service because for the second year, the first year it was Maryland, provided a post-stratification of the data for us which is needed when you split a major component of the data. This year the National Marine Fisheries Service provided that analysis and did so on a very timely basis.

CHAIRMAN FREEMAN: Okay, Mike.

MR. LEWIS: Thank you, Mr. Chairman. I just want to point out that in the Virginia proposal, the numbers for the 2002 landings have been updated. I just neglected to change the percent alteration, so all the other numbers are correct.

CHAIRMAN FREEMAN: All right, Gordon.

MR. GORDON C. COLVIN: I just wanted to

kind of address the overhead that's up there. I think I'd like to be in a position to say that we were only taking 2.5 of an allowed 38 percent increase, but I think New York's allowed increase is 4 percent. Maybe there's a decimal point missing on that one.

CHAIRMAN FREEMAN: Any other comments? Gil.

MR. GIL POPE: Thank you, Mr. Chairman. Did you do Rhode Island's proposal or did you skip over it?

MR. DOCTOR: We reviewed Rhode Island. Do you have a specific question?

MR. POPE: No, I just didn't hear you go over it, that's all.

MR. DOCTOR: We went over it.

CHAIRMAN FREEMAN: Yes, Mike you have a comment.

MR. LEWIS: Yes, Gil, do you have a copy of the memo that's drafted? Do you see what's in there?

MR. POPE: There's no problem.

MR. LEWIS: I just want to make sure you saw the information and saw the comments the tech committee had.

CHAIRMAN FREEMAN: Pat.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. Would a motion be in order to accept the technical report?

CHAIRMAN FREEMAN: Let me just hold that and just make sure everybody is comfortable with the information presented. I see another hand. We'll get right back to you. A.C.

MR. A.C. CARPENTER: Mr. Chairman, PRFC does not have state-specific tables for the Potomac so we will use the same 17 and eight that the state of Maryland has approved; so if you just add PRFC beside the state of Maryland,

I think then the motion would take care of both of us.

CHAIRMAN FREEMAN: Okay. Tom and then we'll get back to Pat.

MR. FOTE: Yes, I was curious. I'm looking at Maryland and Virginia, and Maryland has to go one way and Virginia has to go the other way, at a larger size limit. How do we determine where you actually fall in that and whether you are in compliance by the reduction or the catch for the following year? That's just a question.

MR. CARPENTER: If you can figure it out, Tom, you're doing better than everybody else.

MR. FOTE: I was only giving you the benefit of the doubt.

CHAIRMAN FREEMAN: All right, any other questions? Any other board members? We'll go back to Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I would move that the board accept the report of the technical committee as recommended to the board on summer flounder.

CHAIRMAN FREEMAN: With approvals and rejections as noted?

MR. AUGUSTINE: With approval and rejections as noted. Thank you.

CHAIRMAN FREEMAN: Okay, I'll just wait until Carrie gets that up on the board. A. C., while she's doing that.

MR. CARPENTER: I'll second if you'll include Potomac River as part of that package.

MR. AUGUSTINE: Yes, that would be fine.

CHAIRMAN FREEMAN: Okay, second by A. C. with the inclusion of Potomac River Commission as the same as Maryland's proposal. All right, Tom.

MR. FOTE: Are we voting to approve the plans and approve the rejections of the technical committee so they will be -- I would like a little more, for the record, why New Jersey put on the record so I can basically show why the second proposal was --

CHAIRMAN FREEMAN: All right, Steve, Tom is simply asking for the justification for the action of the rejection taken by the technical committee.

MR. DOCTOR: The New Jersey proposal, part two, was considered by the technical committee, but was declined because they felt it would not reach the numerical values that were suggested for the harvest limit for New Jersey in 2003.

Although it was close to meeting the proposed reduction by the use of tables and guidelines, there were concerns about the way the tables and guidelines would affect the season, that it would not take into consideration a potential 12 percent increase in the stock, and that a similar regulation in 2001 resulted in a large overharvest, and the potential for landings were high for exceeding the 2003 harvest limit.

CHAIRMAN FREEMAN: Let me just add, Tom, I think the overriding concern here is the empirical data. If New Jersey went back two years, which we had a 16-inch size and eight fish bag in a season, less restrictive than proposed, and we've seen that we've exceeded the quota by almost a half a million fish.

I think this was the issue that also was important to the technical committee, that even though following the guidelines that were set forth, based upon our own experience we would exceed it.

And that's where my concern is that these tables are much more liberal than perhaps they should be if we're trying to touch these targets or just meet these targets.

MR. FOTE: And, Bruce, I agree 100 percent with you. But when I go back and people have looked at tables and charts and say we get sued on it and why aren't we following the tables and

charts, I want justification from the board saying this is why we're not doing that.

CHAIRMAN FREEMAN: Steve, prior to the meeting, we had a very short discussion. Would you just speak shortly on the discussion the technical committee had on this particular issue and how perhaps it could be improved.

MR. DOCTOR: The tables and charts that we used reflect the status of the stock as closely as you can because they are the most recent tables that are -- they are the most recent year's data in almost all cases.

Some years, when we had liberalization, they went back a few more years, but most states used the most recent year's data for their tables and charts. It is hard to capture what a stock is going to do in the next year, and for that reason we use these tables and charts as guidelines.

But at the same time that you're using them as guidelines, you also have to apply some common sense and look at the overall picture and see whether this is going to be something that is actually going to work or not.

So, I mean, while we've used these tables and charts for modeling, they're never going to be an actual reflection of reality. They're going to be an estimation of reality.

The technical committee is continually trying to refine the process and find the mechanism that will best reflect the stock. The discussion I had with Bruce is in the future maybe we'll have to use a three-year average or something, because there's some variance in the MRFSS estimate that is maybe even greater than the amount of detail or precision that you're actually trying to achieve.

So, the technical committee is continuing to look at the tables, trying to find better ways to estimate it, trying to develop state-specific data. It is a continuous process that will continue to evolve.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: I'm not beating a dead horse. What I'm trying to prove is that we as managers basically make those kinds of decisions all the time, because three years ago we were accused of not making it and people said we shouldn't be allowed to make those decisions.

We are making those decision, and we can do that. If we decide that the tables and the charts are not the definite answer, we have to interpret it. We have to make management decisions.

And we know that by following those tables and charts we're going to go over in New Jersey. We're not going to do that. We're taking the responsible course.

But, other people look at tables and charts and they sue us when we don't follow it the other way, so that's the only reason I'm making a point of it.

CHAIRMAN FREEMAN: All right, Mike.

MR. LEWIS: Thank you, Mr. Chairman. I just want to direct the board's attention again to the last page of the memo that was distributed.

There is just a brief paragraph describing some of the issues associated with using historical tables that I think the board may find kind of useful, just to go ahead and review that as we continue our discussions. Thank you.

CHAIRMAN FREEMAN: Thanks, Mike. Chris, could I ask for your comments on this issue. I know we've had discussions as ways that these tables could be improved or your thoughts on how better to approach the problem. This is Chris Moore of the Mid-Atlantic Council staff.

MR. CHRIS MOORE: Yes, I think Steve said it very well. We're using these tables basically as guidelines or an interpretation of what happened in the past. And it's difficult when we're in a situation like we're in this year, where we're actually stepping backwards and looking at potential increases in recreational harvest limits for each of the states.

We've never really been in that position before. And, as Steve indicated, the technical committee struggled with that a little bit last year and struggled with it a lot this year. And, again, I think he has captured it very well.

One of the reasons that in some of the information that are in front of you we have these historic tables is because we thought it was important that people step back and look at what has happened in the past.

So, for instance, you could look at New Jersey and see what has happened in New Jersey with an eight-fish possession limit and a 16-inch size limit and note that in fact in the past that particular combination of size and possession limits has resulted in harvest limits far in excess of your 2003 recreational harvest limit.

Given that, it probably wouldn't be prudent to put that particular management measure in place for 2003. So, again, the technical committee had those discussions. Some of the things that we talked about in December were also brought up at the technical committee meeting.

2002 was a little different in terms of the MRFSS estimates. 2002 was a little different in terms of the temperatures that were experienced off the coast of New Jersey.

Some of those things may explain why we saw a reduced harvest in that particular state. So all those things should be taken into consideration as you adopt particular management measures for 2003.

CHAIRMAN FREEMAN: In your opinion, are there ways of adjusting the tables that we haven't used that could be used in the future, or is this simply going to be a judgment issue?

MR. MOORE: I think there is always going to be a level or some degree of judgment. We're never going to be able to sit down and give you a magic formula that says that if in fact you put in this particular size limit, this particular possession limit, this particular season, it will result in 110,000 fish harvested in the state of New Jersey for the upcoming year.

You know, we will never get to that level. Some of the things that have come up is maybe incorporating some of the stock assessment information into the deliberations. I think, Bruce, we've had this discussion a couple years ago, probably more than a couple, probably about five or seven years ago.

We actually attempted to include stock assessment information in projections, and that was rejected by both the council and the commission as too uncertain. So we've kind of stepped back from that and now we just base all our decisions on historic information.

But, one of the things that did come up for 2003 was the fact that it looked like the 2000 year class for summer flounder was a pretty good year class, pretty good being around average. If in fact it is an average year class and those fish recruit into the fishery, they're going to recruit into the size range that's going to be harvested by most of the states, between, 15-16-17-18 inches.

So, again, that kind of information I think is important in the deliberations, but it's tough to incorporate it into an actual calculation.

CHAIRMAN FREEMAN: I'm just curious, Chris, looking backwards in time, if we incorporated your original suggestion of some factor in the calculations that would take into consideration increases in the resource, what our targets would have looked like compared to what we finally calculated them to be.

It seems to me we're now -- we'll be talking very shortly about a payback system. We need to know more precisely what our targets should be. I'm fearful that a state may be saddled with a severe reduction as a result of an overage one year and a severe reduction the following year.

It's going to be chaotic. We've yet to determine how that's going to play out. But, it seems the fact that we're committed to such a strategy, that we need to have a better feel for what the targets should be.

And, apparently, at least for the last three or four years, even though we're trying to reach those targets, we greatly exceeded them, in some instances by doubling the target catch. If that continues into the future, that will have catastrophic consequences in following years of having to reduce a state's quota.

I could see a situation where any one of us will be indicating, because of an overage, that we're only going to have a one-month season. I can say politically that's not going to happen in any state.

There's no way, because of the importance of the fishery, that you could restrict the amount of fishing that would occur. We need to avoid that problem.

MR. MOORE: I think, Mr. Chairman, the problem really is in determining what the targets are. I think we have a system that we pretty well defined over the last couple of years to identify what the harvest limit is for each one of the states.

The trick is really coming up with a combination of bags, size and seasonal limits that achieve those particular harvest limits in any given year without excess.

I think the board and the council have done very well over the last couple of years of really defining the system and the methodology that we use to achieve harvest limits in any given year in the sense that they're really looked at these tables that I provide to the board.

They look at the combination of the possession, size and seasonal limits and really have developed a methodology that I think was probably responsible for not going over the harvest limits this last year.

And, again, the trick is really trying to refine that system. I think that will be the job of the technical committee to look at way of doing that. And as I said earlier, I think one of the ways maybe is incorporating some of the stock assessment information that we get through the stock assessments each year.

CHAIRMAN FREEMAN: All right, thank you very much, Chris. Tom.

MR. FOTE: Yes, Chris, and I agree with you putting the stock, but we should also be able to do that and actually figure out what the quotas are, because if we did that, probably the quotas that year would be larger.

Basically what the tables reflect is old data, so we're looking at it as far as old data. And that's one of the problems we go over because, as you said, the 2000 year class is coming in.

If we basically could project those figures, the same way as we do as projecting the table, it would basically better reflect what the stock is out there and probably would mean -- am I right or wrong?

MR. MOORE: No, I mean, the fact that we have a particular harvest limit at any given year, the coast-wide harvest limit reflects the status of the stock. What is of more concern to me and probably a concern to recreational fishermen along the coast is what portion of that stock is made up of harvestable sized fish.

So if in a particular year you have a really good year class coming in of three year olds, you should be cognizant of that because that could result in overages for any particular state. So that's my point in terms of the stock assessment information.

Some things that we'll never be able to model are fishermen behavior, weather. You know, all those things also impact what happens with recreational harvest limits each year. So it's not going to be rocket science.

CHAIRMAN FREEMAN: All right, Rob, you had your hand up.

MR. O'REILLY: There have been 50 proposals since 1999 that have come before the board from the states that are involved. And, I'm not sure it's such a great thing that in one year all of a sudden mostly all of the states are under, using the same type of planning and guidelines -- as

they're being called -- as when most of the states were over in the other years.

I don't have a suggestion on why that is occurring, but I think one thing that can be looked at -- and I haven't kept up with it for several years -- is that even though we had coastal measures in 1999 and sort of hybrid coastal and state-specific measures in 2000 and then followed with state-specific, it may be worthwhile for the technical committee to look at the past performance of all the plans as if there had been state-specific measures in place.

Look at the state-specific variables, look at the state-specific bag-size, and see how that matches up through the last five years. It would be a little bit of time, but it may produce some information.

CHAIRMAN FREEMAN: Okay, Tom.

MR. FOTE: Yes, I mean, Rob makes a very good point. And the point is that if this was a commercial quota and we had not allowed them to harvest 45 percent of what they could have harvested by some regulations or some quirk, there would be people standing from one end of this door to the other banging down to the council meeting and basically having it.

Because it's a recreational harvest, we basically don't do that. And that was in the early years of the plan we basically harvested way below our quota, and we put regulations in doing that.

Those regulations, by putting in place and not accomplishing about a 53 percent reduction, meant a huge economic impact to most of the states that are available by charters cancelled, party boats not going out and a whole range of items.

I understand we're not an exact science but it winds up tough. I mean, if talking about paybacks, then we probably should be talking about pay-forwards. I mean, if you basically took a 45 percent or a 53 under your quota, it has serious concerns in the following year.

Well, maybe we should be able to be look at it

as taking it in the following year. I mean, because, again, if this was commercial, it would be a whole different ballgame if we were basically that far under quota.

Now, it's kind of comparing apples with oranges because it's easy to monitor the system. But, you know, it's still out there the same way.

CHAIRMAN FREEMAN: Okay, Pat.

MR. AUGUSTINE: Mr. Chairman, I think we got far afield of what the motion was. It was really to accept the --

CHAIRMAN FREEMAN: Right.

MR. AUGUSTINE: -- technical committee report, and we're off here out in left field again in a subject area that we should be talking about when we have our joint meeting.

One final comment was that this probably is one of the clearest documents that we've gotten from the technical committee in a while; not that they haven't done good work in the past.

But the states did a good job in presenting their options, various as they were, in trying to meeting the commitment that they were dealt with. And in the meantime, the technical committee was very clear in their assessments and I think that wants to be on the record. Can I call the question? Can I do that?

CHAIRMAN FREEMAN: Okay. I was trying to give staff time to put the motion on and we kind of drifted away from the motion, but let's draw our attention back to the particular motion. It was seconded by A. C. Carpenter.

Any discussion on the motion? Discussion on the motion? Any comments from the public? Seeing none, we'll call the question. All those that are favoring the motion, please raise your right hand; those opposed, same sign; any null votes; any abstentions. All right, the motion carries. Mike will carry on with the compliance review. Gordon.

MR. COLVIN: The motion having been passed,

I wanted to address a couple of issues that were related to it, and perhaps they relate to what we were discussing before the question was called. I think I'd just like to address them at this time.

Number 1, I think the point was made. There was some discussion going on, and Chris contributed to the discussion with respect to the basis by which we estimate the likelihood of a state's proposal staying within its assigned target for a given year.

It's going to be a challenge that we're to need to regard as an exercise in continuous improvement. It's going to become increasingly difficult over time to do that.

But, it's important because there is an expectation in the user community that as the fluke stock continues to improve, that states will find a way over time to restore some of the smaller size limits that existed historically.

I don't know that anybody is expecting to see us back at 14 inches, but I know that an awful lot of users are dissatisfied with the range of uses that are commented at size limits of 17 inches and higher.

And in the long run, they're going to expect us to find a way, assuming the stock can tolerate it, to find an opportunity for those users who relied on somewhat smaller fish to get back into the fishery.

Now it has been talked about a lot. The fact is we need to find a way not to eliminate, because you can't, but to reduce some of the uncertainty associated with making catch estimates at smaller size limits.

The difficulty is that as more time goes by and for some of the reasons that Chris indicated, that becomes more and more of a challenge, but that's a challenge that I would just like to get on the table now as something that we need to think hard about, get our technical advisors working with us on and try to come up with better ways to do it.

The second point is that I think the technical

committee report and staff report, as Pat indicated, are excellent this year, very clear, very succinct. I really appreciate that effort. And to some degree, as the reports themselves acknowledge, they're a reflection of a great deal more discipline and conservatism on the part of the state.

It almost gives me reason to hope that maybe this state-by-state quota system can work. But, quite frankly, I'm not quite there yet, and I may probably never get there, but certainly there is a glimmer of optimism there.

On the other hand, maybe our next agenda item has something to do with why we have been somewhat more conservative and self-disciplined this year, and we will get to that in a few minutes.

CHAIRMAN FREEMAN: All right, thank you. What I'd like to do, Steve, is to charge the technical committee with continuing to try to develop methods to improve our target allocations as we have discussed.

I know the committee is continuing to look at it, but I would ask that working with council staff and the technical committee to try to continue that and report back to the board.

MR. DOCTOR: All right.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: Just to follow up on one of Gordon's points, people who fish the back bays basically have been pretty much cut out of the fishery when you go even to 16.5 inches. The people that fish the ocean -- and I was talking to one of the state directors yesterday and he said a lot of the people in the ocean aren't catching that big fish.

I says they haven't adjusted yet. I mean, the fishery has changed. Where we used to be, you know, half a mile from the beach, now you're eight miles, nine miles offshore in 60 feet of water because that's where you're going to catch those five, six, seven pound fluke that push you way over quota because they're so big.

But, in order to do that, you basically have to have a bigger boat. And, you know, the people on the 14 footers, the people that fish the back bays, are basically winding up being cut out of the fishery.

And just to reiterate what Gordon said, we've got to figure out a way of putting those people back in. They're the ones that suffered. They're the ones that didn't cause it. And sooner or later, we've got to manage for them.

CHAIRMAN FREEMAN: All right, very good point. Okay, Mike, let's move on to compliance reviews.

-- 2002 Compliance Reviews --

MR. LEWIS: Thank you, Mr. Chairman. Keeping in mind that we have a very, very tight agenda today, I did not develop presentations for these FMP compliance reviews. I don't think it was important to go through each stage and what every state had in place.

I would ask that each state goes ahead and has a look at what is listed for the regulations that were in place to ensure that they are correct. I took them directly out of the compliance reports that each state did give me.

I recognize that sometimes there is some error and I want to make sure that they are correct for the record. So if states could please take the time to look at that and get any comments to me in the future, I would appreciate it.

Looking at summer flounder first, this is the only FMP compliance review that we actually have some potential compliance issues.

The plan review team did not actually think that they were going to have a significant impact on summer flounder, but they wanted to note that there were some discrepancies in what the board had agreed to have happen and what actually occurred with regard to the management of North Carolina and Virginia.

The first situation is regarding the recreational

fishery in Virginia. We have discussed that. In the recreational fishery proposal for 2003, it is fairly clearly spelled out as to what occurred in Virginia in 2002.

Basically, there was an area split early in the season with a 15.5 inch minimum size and five-fish possession limit in coastal waters. These restrictions were in effect from April 1, 2002, through May 31, 2002.

In May the management board met and determined that these regulations did not meet the 43.8 percent reduction from the 2001 Virginia harvest level. On May 28, 2002, the VMRC adopted a state-wide 17.5 inch minimum size limit and eight-inch fish possession limit.

The board did approve this option. It did not go into effect until June 1; however, and so, therefore, coastal waters in Virginia had a 15.5 inch minimum size from March 28 through June 1 rather than 17.5 minimum size required by the board-approved plan.

I just wanted to point that out. Rob O'Reilly is here, luckily, and he may wish to address the board on this issue. Mr. Chairman, would you like me to do that now or go on to North Carolina?

CHAIRMAN FREEMAN: You had your hand up, so is this specific to that?

MR. O'REILLY: Specific, yes. I find a problem with the way this is characterized on two aspects. One is that the board really found Virginia out of compliance because Virginia pursued a data analysis called "post stratification" in order to find out, based on some comments we had, whether our coastal bays were a significant component or not of the inland component in terms of landings.

We received the results from that analysis from Dr. Alexei Sharov from Maryland in late April. Our intent was to find out whether these areas were significant. It turns out they were very significant; 63 percent of the landings. We then proceeded to work through the ASMFC to correct the problem.

There was another point in the document that indicated that Virginia had failed to mitigate for these circumstances. At the board meeting in May, there was discussion as to should there be some extra measures taken by Virginia to defray any potential overage because of the fact that it did have what started out as an appropriate split season and then ended up that it was not.

The advice of the management board last May was that Virginia has a target. Let Virginia complete the season. Any overages of the target then will be addressed at that time and there should not be other measures attached to Virginia's management in 2002. So it's a very difficult situation to read that Virginia failed to mitigate when it acted on the advice of the board.

MR. LEWIS: Thank you, Mr. Chairman. Rob, I'd be happy to address that with the plan review team. Again, the plan review team did not recommend any action by the board to take with regard to this issue. It just needed to make sure the board was aware of what had actually happened in 2002. Is that satisfactory?

CHAIRMAN FREEMAN: Yes.

MR. LEWIS: Okay. The plan review team would also like to make the management board aware of the current summer flounder recreational fishery management measure in North Carolina.

Management measures approved by the management board include a 15.5 inch minimum size, an eight inch bag limit and closed seasons from April 3 through July 3 and November 25 through December 31.

However, the waters south of Bogue Inlet were reopened in late April due to the negative impact the closure was having on the summer flounder fishery in that area. According to the state, only 2 to 3 percent of North Carolina's summer flounder landings come from the southern most three counties affected by this measure.

As a result, the plan review team does not

believe this will have a significant impact on summer flounder landings in the state of North Carolina. I believe Pres Pate is here or was here in case he would like to address that. But, again, the plan review team did not recommend any action on the part of the board with regard to this issue.

CHAIRMAN FREEMAN: Okay, is that it? Okay, any comments on the plan review for 2002? All right, go ahead.

MR. LEWIS: We can make this a relatively quick discussion. With regard to scup and black sea bass, there were no compliance issues indicated by the plan review team. Nothing was found that was in violation of any of the agreed-upon measures.

I just want to point out the plan review team is concerned with all three species about the timeliness of state actions and state reporting, more importantly.

We have often times had to wait for up to five months before we receive a state compliance report which makes the timeliness of compliance review fairly difficult at times.

We do want to make sure this occurs in a timely fashion, make sure the board has a chance to review things and to take action if necessary. And by having reports so late, it sometimes makes it very difficult, so the plan review just wanted to point that out.

Also, the plan review team is somewhat concerned about the timeliness of state actions to adjust possession limits and closed seasons. This used to be an issue with black sea bass. It really won't be any more but it may be for scup in the future if we do adjust the possession limits and then when the ASMFC staff directs the state to close a scup fishery.

We do not receive acknowledgement of when states implement required adjustments and closures. We are not really concerned about timeliness, have no indication that it's not done in a timely manner, but it may be beneficial to have a record of when those changes occur and

would ask states to put us on the notification list.

I would imagine that states have a notification list for all license holders to let them know when changes are taking place in regulations, and the plan review team would recommend that ASMFC is placed on that list to make sure that we get all notifications to make sure things are happening in a timely manner.

That concludes the plan review team report of summer flounder, scup and black sea bass. I would entertain any questions at this time.

CHAIRMAN FREEMAN: Okay, questions? Tom.

MR. FOTE: To Mike's last point, we have to give notification in all plans, and you should be getting updated on what we do with every species that the commission is managing when the state changes regulations.

Should it be to each individual board or should there be somebody at the commission just responsible for passing that information on, and this way we put them on the releases of the state and that won't go to one person?

Maybe it's Tina or somebody like that, and she can disseminate it to each board that's going on there, instead of having a state going to eight different people, maybe to one person who will take care of the commission. Just a suggestion.

CHAIRMAN FREEMAN: Do we need a motion from the board to accept the compliance review. Tom Fote.

MR. FOTE: So moved. Since Pat's not here, I'll make the motion.

CHAIRMAN FREEMAN: Motion to accept. Bill Adler, is that a second? Okay. Yes, what happened to Pat? All right, any comments on the motion? Any discussion?

Seeing none, all those in favor signify by raising your right hand; all those in opposition, same sign; no opposition; any null votes; any abstentions; abstention. The motion passes.

Okay, we will move right along. We're going to have Mike discuss Addendum VIII. This is the payback provision for summer flounder. A. C., you have a comment?

MR. CARPENTER: That last motion, did it include all three species?

CHAIRMAN FREEMAN: Yes. Okay, Mike.

-- Public Hearing Draft of Addendum VIII--

MR. LEWIS: Thank you very much, Mr. Chairman. This is Addendum VIII to Summer Flounder, Scup and Black Sea Bass FMP. This is addressing harvest limit overage repayment strategies for the summer flounder recreational fishery.

It's important to note that when the board requested that this be developed, they did indicate that this would probably or desire to be in place for 2003. I just wanted to let you know that things were done with that in mind.

A little background, the landings have been in excess of harvest limits since 1996. The degree of this overage has varied, but a conservation equivalency was implemented in 1999 by the board through emergency rule.

In order to make it official, a change needed to occur to the FMP on a federal level as well, and so Framework 2 was approved in 2001. The state-specific minimum size, possession limit and season regulations are what this allows.

Okay, there are four different issues that I've outlined in this addendum. It's important to note that the board may choose options from each of these issues to craft whatever management decisions they may wish to make. They're not mutually exclusive, and so elements from two or more may be used to create one management program.

The first option is status quo. Everybody knows what the situation is now. We take the performance of the most recent year's regulations to indicate what kind of adjustment

to the harvest limit each state will be required to make, or be permitted to make in the case of liberalization.

There is no direct payback of overages and there is no rollover of underages. We'll get to that in a moment. But, again, currently the only way that overages are accounted for is just to create more restrictive regulations for the next year. Harvest limits themselves are not directly reduced.

Option 2 indicates an establishment of a state-specific allocation using a different base year. This may have been characterized inappropriately. I think perhaps a better way of saying it would be a state-specific allocations using a single base year that could be used.

1998 is currently used. That was the last year that coast-wide regulations were in place for summer flounder. The technical committee has indicated that it is the most appropriate base year. The stock in 1998 was as close as it could be to what it is now.

A lot of stock changes have occurred since then. However, because we have had state-specific regulations, it would be very difficult to base landings on anything more recent than 1998, so the tech committee has recommended that 1998 stay as the base year.

Table 2 of the document is available. It's in the back of this document. It will indicate not only the recreational landings of summer flounder by state from 1981 through 2001; it also includes state shares from 1992 through 2001.

I'd like to thank Chris Moore for the production of this table, by the way. We have got a number of different options that could be used but, again, the tech committee recommendation has been to stay with 1998.

And, again, this is something that the board has discussed, some would describe as ad nauseam over the past couple of years. I just wanted to include it for continued board discussion in the event that somebody still would like to bring it up.

Option 3 is the establishment of state-specific allocations using an average landings over multiple years as the basis. So instead of using 1998 as the only year, we would go through and use the average of a couple of years.

Table 3 in the document indicates the landings 1998 through 2000, and then the percent shares associated with using a variety of year combinations. I'll let the board go ahead and look at that at their leisure.

This document has been distributed since December so hopefully everybody has had an opportunity to look at that. So that's Option 1 and how we want to calculate state-specific recreational allocation.

Issue 2 really gets to the meat of what we're hear to talk about, which is quota overage repayment. Again, the status quo is there is no quota overage repayment in a direct fashion. Harvest limits are not reduced based on overages.

Recreational regulations are just made more restrictive in the event that the landings from the previous year are in excess of the current year's harvest limit. They are relaxed in the opposition situation.

Option 2 suggests the establishment of a recreational quota. That could be done through using the same base year or using the different base years I just went through a moment ago. But regardless, it would indicate that any overages on the state-specific level are taken directly off of the next year's harvest limit.

Basically it would create a recreational quota. There has been a number of problems associated with this that we have discussed in the past with regard to using MRFSS data to create a hard quota. It is certainly not designed to do that, and there are some technical issues associated with doing so.

However, the board has indicated that this may be something that they want to do. But, again, recreational harvest limit for Option 2 would in

fact create a hard quota.

Option 3 is to combine the overages and underages from the most recent two or three years to calculate repayment. Because of some of the variations that occurs from year to year, one of the board members suggested that I include this option.

It would give opportunity to account for the variation in landings. There are some situations where, for example, in 2002 some states were under their recreational harvest limit whereas in 2001 they were significantly over.

This would give an opportunity to take the average of those two and to see if overall an overage has taken place, and if the quota needed to be reduced for the following year.

Option 4 is to repay a percentage of state-specific overages. This is based on using the percent standard error from MRFSS data. Summer flounder has among the lowest percent there is of any species in the MRFSS database.

It ranges from 3.4 to 4.4 on a coast-wide basis and 6.3 to 20.9 on a state-specific basis. There is a table in the very back of the document that indicates the different state-specific and coast-wide PSEs for a number of years.

Option 4A suggests using the state-specific PSE for repayment calculation. There are some pretty strong arguments the tech committee has made against this. But, again, the board has indicated that they would like to explore the possibility.

I am going to go through these relatively quickly. There is an explanation and example in the document. Hopefully everybody has had a chance to review those. I'm not going to go through it now because I think doing it verbally may be fairly confusing.

So unless anybody has a direct question, I am not going to go through the details of each example. I'm just going to explain what the ideas are. It's more important that you guys have a chance to talk than me.

So, Option 4B, to go from using state-specific to using coast-wide PSEs for repayment calculation. You can see that the coast-wide PSEs are generally lower than state-specific PSEs.

Option 4C is to use a standard coast-wide percentage for repayment calculation. This indicates that while there are some recognized errors associated with using MRFSS data, we may wish to, instead of using direct percent standard error, to just have a negotiated number that would be used as a buffer -- that way, a buffer below which no repayment will be required.

That way, let's say if we wanted to go forward with a 5 percent negotiated coast-wide percentage for repayment calculation, so long as a state did not go more than 5 percent over their recreational harvest limit, no payment would be required.

However, anything over a 5 percent overage would be paid back in a direct fashion. That's when the harvest limit would be reduced in the following year.

Okay, Issue 3, a quota harvest limit underage rollover. Right now there is no provision for harvest limit underage rollovers. Anytime that a state harvests less than its harvest limit, that fish is just kind of left on the table. It's left to continue to be a productive part of the stock.

However, there has been some indication that states would like to explore the possibility of rolling over unharvested fish. There have been quite a few conversations about this on the tech committee level.

The consensus was that allowing the rollover of a small percentage of total harvest from one year to the next would result in minimal biological effect. However, the harvest for each year is determined in the preceding August and assumes the entire quota in each year will be harvested.

If a percentage of the first year's quota is allowed to roll over and be caught after the second year's fishing level has been established,

the increased catch will raise fishing mortality rate in the second year above the maximum specified in the FMP.

As a result, the committee does not recommend the transference of quota from one year to the next. Chris Moore is probably the person to ask about any details of how that works. However, that is, I think, the gist of what the tech committee has to say on that topic.

Option 3 is a rollover of a percentage of state-specific underages. This is similar to the option previously that discussed using percentage standard errors for repayment calculation.

This could be used as a buffer, for example, if the state-specific or coastwide or the negotiated percentage was, say, 5 percent and a state underharvested by, say, 4 percent, no rollover would occur.

However, if 6 percent was left on the table, 1 percent would roll over to the next year. And that is anything in excess of whatever percent the board would choose would roll over to the next year. And this could be used in combination with an overage repayment strategy as well.

A percent standard error applies not just to overages but to underages equally. And so if the board decided to put in place any kind of rollover or quota repayment strategy, they could use the same PSE for both and could say that, okay, a 4 percent buffer is going to be put in place.

If any state goes over or under their harvest limit by less than 4 percent, no direct change to the next year's harvest level will be made. However, anything in excess, any variation in excess of that established percentage would require a rollover or a repayment.

Now, Issue 4 is something that was discussed at the planning group meeting back in October. This issue is an allocation of commercial quota based on a total allowable landing calculated without recreational overages.

This is a fairly extreme option that was presented just because it indicates one direction the board could go that would make a very real impact on the recreational fishery. In this case two total allowable landings would be calculated. I'm going to refer to them as "TAL 1" and "TAL 2".

TAL 1 assumes no recreational overages. That means the TAL would be calculated as if the harvest limit was made and hit right on. Once that TAL has been calculated, 60 percent of that TAL would be allocated to the commercial quota.

TAL 2 would then be calculated and that would include recreational overages. Recreational overages, of course, affect the total allowable landings for the next year just because of how it affects the stock assessment.

And so TAL 2 would be calculated to include recreational overages, and then the commercial quota that had been calculated from TAL 1 would be subtracted from TAL 2, and any remainder would be the recreational quota.

I would be happy to explain that in further detail if anybody doesn't understand exactly what I'm talking about. I understand it's fairly complicated. That is the conclusion of what I have prepared for discussion for this addendum. I would be happy to entertain questions or comments at this time.

CHAIRMAN FREEMAN: Okay, questions? Gordon.

MR. COLVIN: I have no questions, Mr. Chairman. I think this is a good job. I think it's ready for the next step, and I move the board approve it for public review and comment.

MR. LEWIS: May I say something?

CHAIRMAN FREEMAN: Wait a second, we need a second for that motion. Mr. Adler, seconds. All right, Mike.

MR. LEWIS: Gordon got to my point that I, in

my excitement, neglected to mention. This is a public hearing draft of the document. This has not been circulated for public hearing. No comment has been received.

It has not been made public yet. I just want to let you know that any approval that the board makes of this document will be for public hearing. I would be more than happy to help schedule public hearings throughout the states as needed.

CHAIRMAN FREEMAN: Comment? Dave Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. A quick comment, just to follow up on Gordon's point. I really think this is an excellent document that the staff has prepared. It's very comprehensive. There's a good range of options.

I think it will serve the interests of the recreational community very well because they will be able to look at it and evaluate different options and basically come back to us with guidance.

I would make one suggestion. On Option 4A, this use of the state-specific PSEs, I would just use my experience with some of the U.S.-Canada deliberations. One of the ways that the Canadians handled this with their own industry is they have a differential repayment schedule.

In other words, it would work just the way you're proposing it in this example, but if a state, for instance, went over by 20 percent or 30 percent or 40 percent, then you would change the repayment rate so that it might be a slightly higher rate.

And what that does is for states that are obviously trying to adhere to the repayment schedule, there is virtually no penalty with the specific example.

But if a state is not spending the time and energy to really manage the resource properly or track the resources properly, then there is an escalating penalty schedule at some point that

kicks in.

I'm not suggesting that we want to incorporate it in here, but if we have problems with states, I think we should go back and reconsider that perspective at some point.

MR. LEWIS: Thank you, Mr. Chairman. David, if we can have a separate discussion outside of the board meeting, I would be more than happy to get the details. I'm not familiar with that system at all, but I would be more than happy to include a discussion of that in public hearings, should we have any, as an additional option or just to have a presentation prepared for the board at our discussions at the next board meeting when we evaluate public hearing.

MR. BORDEN: All right, and I would be more than happy to work with you, if that's the prerogative of the chair.

CHAIRMAN FREEMAN: If there is no objection to Dave Borden's suggestion, it seems to me it would be useful to modify that portion to include that concept at least for public review. And, Gordon, if you would agree.

MR. COLVIN: I agree.

CHAIRMAN FREEMAN: Okay. Again, I think it's a good process. And I think, David, it would be useful for the public to essentially at least understand and ask for comment on that. Okay, any other comment on this motion? Harry and then I have Rick Cole.

MR. HARRY MEARS: Thank you, Mr. Chairman. I support this document for public hearing purposes. I believe certainly the discussion we have had at previous board meetings have been incorporated into a description of each of the issues.

My main concern here is as comprehensive a document as it is, I think the devil is in the details. I believe it's going to be a very confusing document to the public once it hits the street.

There is a whole host of quota-related issues,

many of which involve, obviously, allocation of quota from one year to the next and also between the recreational and commercial fishery.

There are two issues, Number 2 and 3, where we present hard cases where we have been advised by our own scientists that this would be very difficult to do, yet we're identifying it as a management option where essentially the perception is, well, they're telling us that there is no justification yet they're asking us if we think it should be done.

That's why I think as it goes to public hearing, which I hope it will be, I believe there are some very major issues here that do need public airing, that there be some time spent in trying to simplify it as much as possible, to frame the issues, the pros and cons, and also perhaps emphasize the fact at this point we want input from particularly here the recreational fishing community, and there are no preferred options at this time. Thank you.

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

MR. RICK COLE: In general, I certainly support the concept here, but I have some of the same concerns that Harry just addressed, and that is in the complication of this document.

I look at Issue 3, for example, and we've been repeatedly told by the technical committee and by the council staff that given the way the quotas are calculated the whole management process, the whole quota management process has been developed for this plan, that a rollover is not an advisable approach under the current management strategy.

I wonder if we should go back to the public and say now here we have an option where possibly some kind of rollover policy could be incorporated into the plan, but we know that it's not a reality.

In other words, we know from a technical standpoint that essentially we would have to change the whole quota process in order to

accommodate a rollover, and this concerns me because I think we're giving false hope to the public.

I look at Issue 4. Having been part of this process from the beginning, I can't imagine our annual August meeting trying to set quotas under a system where you would have two or three different quota systems to try to operate. It's complicated enough now.

So, again, to me some of these issues that are in here I think need further discussion to better refine this document. Possibly we can get it done here today and go ahead and get this approved. But as it stands right now, I have concerns with the complexity of the document. Thank you.

CHAIRMAN FREEMAN: All right, Dave Pierce.

DR. DAVID PIERCE: Yes, assuming the document is approved as it now stands, I would strongly recommend that during the public hearing presentation, the staff go the extra mile to explain the concept of PSEs.

It's extremely difficult for the public to understand what it means, the implications of large PSEs versus small PSEs, and, in particular, I think it will be a challenge for the staff to explain what we have as some of the options relating to the PSE.

For example, for the repayment of state-specific overages, the greater the PSE, which means the greater the error in the landings data, the smaller the payback of overages.

That may be a little bit difficult for the public to understand when the data are squishy, inaccurate, imprecise. However, we should define this, the payback is smaller for a state that has a bigger PSE.

It still is hard for me to completely grasp, but work has done into this already; we've discussed this at length and I don't think we should prolong the discussion much more. Let's move forward and bring it to public hearing and then

see what results.

CHAIRMAN FREEMAN: All right, other comments? Eric.

MR. ERIC SCHWAAB: Thank you, Mr. Chairman. Two comments, one on Issue 4. I just wonder if we shouldn't specifically list options as we have with the three other issues, Mike; whether Issue 4 we could list specific options including a status quo option as well as some alternative options. I think that helps the public in reacting if they have specific options that they can refer to. Do you follow me?

MR. LEWIS: I do follow you. I guess there would be basically two options.

MR. SCHWAAB: Right.

MR. LEWIS: Which would be to do it and not to do it.

MR. SCHWAAB: I would suggest we format it that way.

MR. LEWIS: Sure, I can throw in a status quo option here.

MR. SCHWAAB: My other and perhaps more important issue relates to implementation schedule. I don't know if the board has an opinion as to whether we still expect, particularly as it relates to the second issue, to attempt to apply the outcome to 2003 overages as appropriate or whether we are already sort of facing the reality that this would apply beginning with 2004 performance.

I would suggest that we need to be a little more explicit about what our intention is in that regard so that the public can have a clear understanding going in what the time table might be. And if we're not sure, that might be something that we would solicit input on.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: To that point, I agree with Eric. I think it's very important to put a time focus on this. I think it will also help to elicit a good

strong public response. It certainly has up until now.

And I, for one, am not yet ready to concede that the application of this to the outcome of the 2003 fishery is impossible. I would like the board to continue to press towards adoption of an addendum that can be applied at the end of the 2003 recreational fishing season and essentially implemented for the 2004 fishing year based on that. I would agree with Eric. I think we need to communicate that and it will really focus us.

CHAIRMAN FREEMAN: Gordon, just a point of clarification. What you're advocating would be to put an addendum in place for 2003 but have it apply to the 2004 fishing year; is that correct?

MR. COLVIN: I think that's what I'm saying. What I'm suggesting is that the performance of the 2003 fishery would be the initial output to be applied to and used in the implementation of Addendum VIII.

And, of course, exactly what and when it gets used depends on which of the options are ultimately selected. If we use an option that was for a multi-year situation, that would have a different outcome than a single subsequent year payback option. I think in the simplest case what I would be looking to is that overages that occurred in 2003 would be addressed in 2004.

CHAIRMAN FREEMAN: Or subsequent years.

MR. COLVIN: Yes.

CHAIRMAN FREEMAN: Okay. Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman. Just a follow up to that point, that was the agreement. When we met jointly with the Mid-Atlantic Council, I think that was the unanimous agreement of the assembled individuals there that the actions in 2003 would be the starting point.

So the repayment might not take place until

2004 or 2005, depending upon the options, but I think we put everyone on notice that the activities in 2003, you're going to be held accountable for your individual activities in 2003.

CHAIRMAN FREEMAN: It's an important point. We did talk about it. We just needed certain clarification so that everybody has this exactly as it's going to apply. I have Eric and then Gil.

MR. SCHWAAB: I just agree with that goal. I think that makes it all the more important that we be very explicit about our intention.

CHAIRMAN FREEMAN: Yes, and I think it's also important that when we hit public hearing that the public is aware of this issue. It's going to be very important. Gil.

MR. POPE: Thank you very much. Rob brought up some good points, too, that it seems like every year we're going over and then under, but sometimes really great amounts, as much as 50 percent.

And from talking with recreational fishermen over these last two years that we've had this current method of management in place, they want off of this rollercoaster ride as quickly as possible. They really don't understand what we're doing here.

They kind of do, but when you talk to them about using this MRFSS data and being very specific with it when you're talking about 17.5 inches and there is a 39.125 percent possibility, they're going what in the world is this.

It doesn't need to be as precise as we're making it here, and it doesn't need to be as complicated. This is a fantastic document, and I hope that we go forward with this document that you just presented.

But I think this fishermen are expecting from us sooner than later to kind of have us come up with some kind of calculations or figures to smooth this out when you go from state to state and it runs from 16.5 inches to 18, back to 15,

five fish, three fish, four fish.

In other words, it's extremely complicated. I don't see this in many of the other fisheries programs that we've done. I couldn't agree more with this notion that we need to do something as quickly as possible.

I would like to see something even come out of this meeting. I don't know what, but I'd like to see some kind of smoothing out factor be figured out here very quickly and do something. Thank you.

CHAIRMAN FREEMAN: All right, further comments? Rick.

MR. COLE: Thank you, Mr. Chairman. I'd like to offer a motion to amend. I'd like to move that the board approve the addendum made for public comment with Issue 3 removed; Issue 3 being the quota harvest rollover.

CHAIRMAN FREEMAN: Is there a second to that motion? Second by Harry Mears. All right, just, again, Issue 3 deals with the rollover provision. Mike has described that. Rick has drawn your attention to it. Is there discussion on this amendment? Dave Pierce and then Dave Borden.

DR. PIERCE: I understand Rick's position on this and, frankly, I share his point of view. I think this would be extremely difficult to work. The technical committee has already made that point very clear.

However, at just about every meeting we have had, council meeting and board meeting with the large recreational fisheries representation in the audience, they have consistently said that this sort of strategy should be considered.

Therefore, let's keep it in the document and let's have a good airing of it, and the pros and the cons will be made known through the public hearing process to those who are strong proponents of this particular strategy.

I think it's reasonable to at least include it in the

document. I really don't think it's going to take that much time at the public hearing, frankly. It will be more of an opportunity to just clarify the concerns that we have about this particular strategy and to emphasize the technical committee's position.

CHAIRMAN FREEMAN: Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman. I won't belabor the point. Dave Pierce is 100 percent correct. This will be discussed at public hearing after public hearing and we might as well have it in the document to focus those deliberations.

I think it's fair to point out -- in respect to Rick, I think it's fair at the public hearing for the staff to point out the concerns that have been voiced both by the National Marine Fisheries Service and the Mid-Atlantic Council on this and some of the technical difficulties.

But if you don't have it in here, I don't think you're going to get the type of input from the affected constituents that we want. I agree with Dave Pierce and I call the question.

CHAIRMAN FREEMAN: Okay, any further discussion? I didn't see any hands. All right, you've heard the discussion. The amendment or the motion is to move that the board approve Addendum VIII for public comment with Issue 3 removed.

All those in favor of the motion, please raise your right hand; those opposed to the motion, same sign, right hand, please. I have a question about --

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

CHAIRMAN FREEMAN: David, point of order.

MR. BORDEN: I'm not trying to bog this down but the way you read the motion, the motion really is to delete Issue 3, and that's the impact of it. There were hands that were going up and down on the other side of the table. I think that if you --

CHAIRMAN FREEMAN: Did I read it incorrect?

MR. BORDEN: If you clarify that in the motion, a vote for this motion is to basically delete Issue 3 from the document.

CHAIRMAN FREEMAN: Right. That's what the motion indicates on the screen, that if you approve this motion, you will delete Issue 3 from the public hearing document. If you vote against the motion, you will include it.

All right, let's try this again. Those in favor of the motion

-- wait a minute. Tom, you have a question.

MR. FOTE: Yes, did you ask for the public comment on any of these yet so far?

CHAIRMAN FREEMAN: Tom's issue was should we get public comment. All right, I indicated I would. Is there public comment on this issue, specific to this motion. All right, there is none. All right, we'll proceed with the vote, again.

Those in favor of the motion, please raise your right hand; all right, those opposed to the motion, same sign. All right, the motion fails. The motion to amend fails.

All right, back to the main motion which is to approve the document for public hearing. Rich Novotny, you had a comment. Please come to the microphone.

MR. RICHARD NOVOTNY: My name is Rich Novotny. I'm with the Maryland Saltwater Sports Fishermen Association and representing the recreational fishermen. All we're asking for is a fair and equitable allocation of this fishery.

This is a very important fishery for the recreational community, as well as the commercial community. Years ago when most of the management agencies were composed, they were composed to manage the commercial industry.

I applaud their efforts for doing that, and they

did a very good job. But, through the years and as the years progressed, the recreational community has grown by leaps and bounds.

Now we feel, though, that we want a fair and equitable share of this fishery. We no longer feel a 60/40 split represents the true fishery. We feel that a 50/50 split would be more in line.

For one example, 12 boats out of Maryland trawl draggers out of Maryland are given 60 percent of the fishery, yet thousands upon thousands of recreational fishermen that fish the coast are only given 40 percent of the fishery.

How can this be fair and equitable? I think all of you must do a little soul searching and look towards the recreational fishing community as a very important industry besides the commercial industry.

In fact, I feel as though the recreational industry definitely puts more money in the coffers of the United States, more so than the commercial fishery. Once again, public perception out there is that these boards, especially NMFS and other agencies, are very biased towards the commercial industry.

We see it in this document here. The document has no allocation or no commitment to change the quota system, change it to a 50/50 split. As this has been up and down the whole coast, I've talked to fishermen and they're asking why we must keep this 60/40 split. So, with this in mind, I would like to see this included in the document as well. Thank you.

CHAIRMAN FREEMAN: As indicated, Rich, the determination of the 60/40 split was made. It was a decision made some time ago. It's not addressed in this amendment, and you're asking that it be.

MR. NOVOTNY: Correct, just like we made an amendment for the striped bass allocating 40-some percent more towards the commercial fishermen in the striped bass fishery.

I don't see why this board can't do the same thing for the recreational fishery as well and ask

for another 10 percent of the fishery that belongs to the commercial and this will help solve some of the problems.

The commercial fishermen are allowed to take a 14-inch fish. Recreational fishermen are allowed a 17-inch fish. Once again, where is this fair and equitable?

CHAIRMAN FREEMAN: All right. Well, I can indicate that if the board is to address that issue again, it really needs to be done as a separate item and not attached to this. Mike.

MR. LEWIS: Thank you, Mr. Chairman. I just want to point out that any change of that magnitude will require a full plan amendment whereas this is an addendum. The addendum are done much more rapidly and don't require some of the things that a full plan amendment would require, which includes joint work with the council.

There is a planning meeting with the council after this meeting, starting at one o'clock this afternoon. If you would like to make sure that the council has an opportunity to hear your comment, that would be an appropriate time to go ahead and bring that issue up,

Just so you know that in terms of this addendum, it's not something that really could be included at this level of regulatory change.

CHAIRMAN FREEMAN: Yes, I would indicate, Rich, that when the council and the board meets later today, that would be the time to raise that issue.

MR. NOVOTNY: Okay.

CHAIRMAN FREEMAN: All right, further comments. Pat and then Rob and then Tom.

MR. AUGUSTINE: Thank you, Mr. Chairman. Unless it's germane to the motion, I'd like to call the question.

CHAIRMAN FREEMAN: All right, let's go through the two other comments. Rob and then Tom.

MR. O'REILLY: Just briefly, if this becomes a public hearing document, could you have a little bit about the reason for the rollovers in terms of the change.

I think you do talk about the way management has been, but I know even this year in Virginia, several in the public were wondering why there was no way that ASMFC was willing to account for the extreme underages that Virginia achieved in 1999 and 2000, why that didn't somehow help out for 2003.

And, of course, we had to explain that, but I assume that this issue might come up perhaps in some other states as well, that there was a coastal limit. That was the way management was at that time and now there have been changes. I think you do some of that in here.

CHAIRMAN FREEMAN: I think, Rob, relative to not making this document more complicated, that issue could be raised at any one of the state public hearings and addressed in that manner. Tom, you had a comment.

MR. FOTE: Yes, I was going to make the same point Mike made about we should be discussing this this afternoon and not now. But before we call the question, I saw another hand in the audience from the public.

CHAIRMAN FREEMAN: Oh, Tony, would you come forward, please.

MR. BOGAN: Thank you, Mr. Chairman, and thanks, Tom. Usually I'm not that hard to see. This does pertain directly to Addendum VIII. My name is Tony Bogan. I represent United Boatmen of New York and New Jersey.

We're an industry group of about 110-115 party and charter boat operators from both states. A couple things I want to add to the comments I already had made up because of things that I heard.

Mr. Pope made a comment about how the recreational fishermen have expressed to him a desire to get off that rollercoaster of one year

we're 50 percent over and 50 percent under, and this addendum does not address that problem.

That is a MRFSS-related problem. That has nothing to do with whether we're still going to be deemed as being 50 percent over or 50 percent under. The same system is still used to make that determination, and Addendum VIII does not address that in any way, shape or form.

But it was a very accurate explanation of how a lot of the recreational fishermen feel. Another thing that I found interesting is that we are talking in specific numbers. I've heard this commission, every council, the National Marine Fisheries Service and probably the Boy Scouts of America comment about the inaccuracies of MRFSS data.

Yet I'm glad to hear that if MRFSS does say so themselves, they only have a 3 to 5 percent standard error along the coast, because that is an unprovable number and has been questioned by every council and commission; not that specific number but the error rates that are involved and the discrepancies in the MRFSS data.

I had a bunch of comments that I was going to try and be succinct. I have a tough time with brevity so please forgive me if I go on a little long and feel free to interrupt me at any point in time.

As far as the overruns are concerned, which, again, it relates directly to this addendum and what it addresses, some overruns do merit subtraction. In the event that, you know, mortality and subsequent -- I shouldn't say that.

Quota adherence contributes to target mortality and subsequently helps sustain the rebuilding schedule, so in the event that you have overruns and the sector that is creating those overruns has an ability to adjust their behavior to compensate for it, then it would make sense.

And, of course, the commercial fishery has that ability to a limited extent. I'll give you an example of what I'm talking about. If a sector can't alter their behavior in a timely manner, how do you do it?

How do you compensate for them not being able to adjust their behavior? What if the need for such an alternation isn't apparent until it's too late to react, we don't find out that we're over until the season has long since been done with?

What do you do if the quota overrun is not that it's the sector's fault, it's more the result of inadequate management in the sense that the measures were not -- not that the managers were doing something wrong intentionally, it's that the measures were not sufficiently restrictive enough to prevent quota overages?

If the fault lies with management, why should the fishing sector bear the burden of the penalty? And to me that's part of the justification for even moving this document from the stage it's at now to the public information stage.

And to me therein lies the essential difference between the commercial and the recreational overages. Yet many who suggest overrun adjustment in the former sector justifies implementation of the technique in the latter sector have ignored the differences between commercial and recreational fisheries.

Certainly, without analyzing the causative factors. subtracting quota overages in both sectors seems to equate and in point of fact they do not. And that has been used as an example of the whole impetus for Addendum VIII is discussing how overage subtractions are done in the commercial sector.

The commercial sector operates under a system of more timely performance measurements; not real time, more timely. While it's not real time in any sense of the word, landings data are nevertheless more readily available as the fishing season progresses.

The result is seasonal management with associated closures as landings approach sub-period quotas -- another thing that the recreational sector does not have. Consequently, fishermen have an opportunity to alter their behavior and thus control, to some extent, the amount of the quota overrun.

It's virtually impossible, therefore, for the commercial overages to be so large as to completely shut down next year's fishing. They can be large, and as was witnessed with bluefish, there can be mitigating circumstances.

And, therefore, overrun subtraction has been deemed as a justifiable and effective tool to ensure harvest mortality goals are met. And in that construct the commercial system is not a model for recreational management because now you are comparing a quota-based part of the fishery to a target mortality-based part of the fishery. You're talking apples and oranges here.

We don't work in the same way that they work, yet it has been convenient for a lot of comparisons to be made between the two sectors, another reason why I don't feel that Addendum VIII should be put any point beyond this point right now. I believe it should go out with a whimper since it came in with a roar.

And timing is everything. Behavior modification or the lack thereof is essential. It is an essential consideration when examining quota subtraction. Although recreational performance as measured by MRFSS occurs in two-month waves, landings data are often not available until well after the fishing season or even the calendar year has passed.

Putting aside for the moment what I believe are valid questions about MRFSS accuracy, but we'll ignore them for the moment, it's impossible for the recreational sector to adjust behavior to landings data or for in-season adjustments to be applied by the management system, unlike the commercial sector which does have that ability to some degree.

And in that context -- and you will forgive me for reading, but I'm trying to keep my comments short -- recreational performance is simply conformance with management measures. In other words, we've been following the rules.

If those measures are not sufficient to hold recreational performance to the sector's quota, the fault lies with the measures in the

management system that define them, not the angling public.

Subtracting quota overages penalizes anglers for playing by the rules when it's the management system and the managers themselves that should be brought to heel. It can also result in the total closure of a recreational fishery with enormous associated economic hardship.

And this, too, is a radical departure from the commercial model. Let's remember, this is not a procedural change; this is a substantive change and should be treated accordingly.

I had my last little title here was the "sword over collective management heads," just giving myself little titles. As I've already stated, subtraction generates unfair angler penalties because the angling public, despite fishing according to the rules and regulations, pays for the management system's errors.

This critical aspect of the recreational subtracting concept, in my opinion, merits careful analysis because philosophically quota subtraction is or should be aimed at fisheries managers where the dialogue officially at the August 2002 joint meeting of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission the idea was aired, and the emphasis was on controlling recreational harvest, holding it to the associated quota, as if the recreational sector had somehow engaged in aberrant behavior leading to excessive landings when in fact all we simply did was abide by the regulations that the management system imposed upon us.

Operationally, the provision to subtract overages would essentially function as a motivational sword to stimulate managers to set effective measures in the first place. In other words, we think you've already accomplished your goal.

And the technical committee has actually backed up that assertion by proving what you talked about earlier, that all of the states were very conservative in the underages that they had this year and in subsequently changing their rules.

That's really the whole purpose of this is to make sure that it doesn't happen. And if it does, well, we figure out a way to fix it. Well, you just figured out a way to fix it. You've threatened to do exactly what you're doing. And it has been proven that people have taken that into consideration.

Anglers would have to pay for any shortfall in measure, though, setting through a reduction in the next year's quota as if we had committed a serious transgression. And nowhere in the dialogue associated with the aforementioned August 2002 meeting was there acknowledgement of this conflict.

The duality inherent in this situation cannot be lightly brushed aside. It's not a reach to state that subtracting overages is negative reinforcement; whereas, setting effective measures in the first place would be positive reinforcement.

Any in conclusion -- and, again, thank you, Mr. Chairman and commission for being so patient -- the bottom line in our opinion is that the management system's intent to achieve quota control is not at issue. Rather, it's the misguided application of a tool drawn from management practices associated with the commercial sector which is at the center of the conflict.

Managing managers, themselves, should not be fueled by unjustified recreational penalties. Yet subtracting overages does exactly that.

The essential issue surrounding recreational performance is the effectiveness of measures to hold performance to the quota -- MRFSS inaccuracies aside at this point -- not angler behavior, which by definition is compliant with the regulations that have been imposed.

Solutions should be applied to causative factors, not just to priming the hyperbole pump as far as we're concerned. And, again, thank you very much, Mr. Chairman, for your time. I appreciate you listening to my comments.

CHAIRMAN FREEMAN: All right, thank you, Tony. Gary Caputi, public comment.

MR. GARY CAPUTI: Yes, thank you, Bruce. I'm not here on behalf of the council this morning, although I will be this afternoon. I just wanted to make some personal comments. I am a member of the Jersey Coast Angler's Association and the Recreational Fishing Alliance.

I found the comment interesting about when the captain was making comments about perceived inequities in the recreational-commercial split, about how that would require a full plan amendment rather than an addendum because it's a substantive change of the plan.

I believe that changing the rules that the recreational fishermen fish under from a target harvest to a hard quota, which is basically what this accomplishes no matter how you want to define it, is a basic substantive change to the plan.

And if you're going to do it, you should do it as a plan amendment, and it should be done before both bodies as a full plan amendment, not a commission addendum, first comment.

Second comment, about a year ago I attended a meeting in San Diego on behalf of the Mid-Atlantic Council. That meeting was to explore the possibility of recreational quota management and even in-season quota adjustments.

It was attended by fisheries managers from all over the United States, from just about every group you can imagine, states, commissions, councils. And after two and a half days of going round and round on the subject, the basic outcome of that workshop was dealing with the current level that we have of information on recreational landings, it wasn't feasible to deal with recreational fishing as a hard quota and that in-season quota management was totally out of the question.

It seems like we're going headlong down this path without taking into consideration those concerns. We're just brushing them aside. I don't think standard percent of error takes into consideration just how little confidence there is

in what is used to judge recreational catch and recreational landings in the MRFSS system.

I do have a suggestion, something that you might want to look at as an alternative. I don't know if it is too late in the process or not, but it just kind of struck me a little while ago as I was listening to all the machinations and the options and this, that and the other thing.

And it kind of builds on what Tony just said. We're dealing with -- right now you're looking to penalize the recreational fishing public for our mistakes as managers in setting recreational specifications each year and our inability to meet them.

And sometimes it's not just that we don't feel we've set measures that are conservative enough -- I mean, if you have been around this fishery long enough, you know that there are regional abundances and regional scarcities from one year to the next.

The fish aren't always in the same place. They aren't always inshore where the greatest number of fishermen can access them. And catches go up and down accordingly. So what do we do in a situation like that?

It's nobody's fault. The management measures were conservative enough, but there more fish than anyone imagined would be available, or more larger fish than anyone imagined would be available. I think Virginia has been through that.

New Jersey had just the opposite this year. Our management measures were conservative. Our catch was way down, but a good portion of that catch was way down was because the fish stayed well offshore, further than even in the last few years.

And those fish that were available on the inshore grounds were so small that people who couldn't access the fish in deep water simply couldn't catch fish, and that was the majority of the people that chase summer flounder.

I would like to see us explore the possibility of

doing something as far as recreational management is concerned that addresses the inaccuracies of the data we have to deal with, the latitudes that it can take above and below, and possibly look at a way to establish a three-year running average per state and make adjustments accordingly.

Because if you look at most states that go over one year, they adjust downwards. They ratchet down the next year; and in most cases, catch go down.

A three-year running average, when a state knows it has screwed up one year, and makes the proper adjustments the next year, would probably average itself out over a three-year period.

It's just another way to look at this. I think we've gotten a little bit draconian on this. In fact, I think we've gotten a lot draconian on this. It's a very confusing document to read. It's even more confusing for the general public to even comprehend what the heck we're talking about. I think it's a lot more than this problem needs to correct it. Thank you.

CHAIRMAN FREEMAN: Thank you, Gary. Vince, could I ask you or Bob Beal the process the commission went through to determine this was an addendum or meets the standards of an addendum rather than an amendment? It was the first issue that Gary raised.

MR. ROBERT E. BEAL: We went back through Amendment 12 to the FMP, which has a list of actions that can be adjusted through adaptive management in the commission's case or a framework action in the case of the Mid-Atlantic Council.

And on that list I think one of the issues is recreational management program, which obviously this is. So, by that determination, we decided we could do it through an addendum versus an amendment.

CHAIRMAN FREEMAN: All right, that answers or addresses one of the comments, Gary, you made. You also raised the issue of

multiple years, and I'm looking in the document for the specific heading but --

MR. CAPUTI: Dave Borden just showed me that particular option. You will have to excuse me, but this is the first I've seen the document was this morning and I haven't --

CHAIRMAN FREEMAN: All right, because it is a commission option, but there was a provision to use multiple years. David.

MR. BORDEN: Yes, just with your indulgence, I ask, Gary, does that do what you want? Is everything in that option?

MR. CAPUTI: Well, I'd have to spend a little more time looking at the document in depth to see just how it affects it.

CHAIRMAN FREEMAN: All right, comment? Tom Fote.

MR. FOTE: Bruce, after listening to Tony and Gary and realizing what we just voted on this morning -- I mean, I look at New Jersey, according to the tables, we could have gone to a 16 inch. The technical committee did not recommend that.

As a matter of fact, instead of taking a 53, we could have come up with other alternatives to get a 40, a 30, or something else. We did not do that. What we took is instead of taking a 53 -- looking for the 53 percent comeback, we basically took, what, a 13 percent or something to that effect, Mike? I kind of lost the figures off the top of my head. It was very ultra conservative.

Next year for some strange reason we go over. Now we've basically have taken the advice of the technical committee, threw out one option here, and yet for some strange reason it is basically we just did a bad job or something was unforeseen. The stocks were greater than we estimated, the whole thing -- and that's what is the scary part about this.

And I know Pat has got his hand and he's ready to call the question. But we took public

comment and I'm basically addressing the public comment, Pat.

I mean, it has real concerns to me because we sat around here and we basically were very ultraconservative, every state was. And if we go over next year, we're going to hear the same screaming, we went over it, and we're penalizing the anglers for the tough job we did. Just take that into consideration.

CHAIRMAN FREEMAN: I think, too, Tom, the very first option is remain where we are, in other words, take no action. This, again, is a public hearing document. Other comments? Jaime.

DR. JAIME GEIGER: Thank you, Mr. Chairman. This discussion has been, I think, extremely valuable, but I think we're somewhat far afield from the primary motion. Several comments that I would like to make is I think this document is vastly improved.

I congratulate the staff for trying to certainly put together very complex issues in as clear and concise a manner as possible.

However, I do share some of the concerns that you have heard, that is still an overly complex document and it's going to be certainly challenging to bring this to public hearings and try to get appropriate feedback under the variety and smorgasbord of options that have been identified.

However, I do believe that the staff still has an opportunity certainly to clarify and simplify this document. I do think that where we have technical committee input, I think that needs to be highlighted and not necessarily buried or subjugated in the text.

I think we need to lay out some of those concerns straight-forwardly and up front. I think that will go a long way to, I think, assist in clarification of these overly and quite frankly very complex issues for the general public to consider. And, Mr. Chairman, I would respectfully request to call the question. Thank you.

CHAIRMAN FREEMAN: Okay, any other comments? Seeing none, we will call the question. This is a motion to move the document forth to public hearing. One-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Okay, everyone ready to vote? Those in favor of the motion, please signify by raising your right hand; those opposed, same sign; abstentions; null votes. The motion carries.

-- Public Hearing Draft of Addendum IX--

All right, we've got to move on. The next item is the Addendum IX action. We need to take action for the scup recreational catch for 2003, and, Mike, can we run through that quickly.

MR. LEWIS: Thank you very much, Mr. Chairman. On the agenda you will notice that it says "public hearing draft" of this document. I said that for the last one as well, but I want to make sure everybody understands the difference between the state of both of these documents.

Addendum VIII was just approved for public hearing, and that means it will go out for public comment at this time. However, this document has already been out for public hearing. I did not receive any, but it has been distributed and it has been available for public comment for a number of weeks.

I just want to make sure that everybody understands the difference. When decisions are made with regard to Addendum IX, these decisions will be for implementation and not for public comment.

Moving forward, just a little bit of background, 22 percent of the scup TALs allocated to the recreational --

DR. PIERCE: Mr. Chairman, if I may.

CHAIRMAN FREEMAN: David Pierce.

DR. PIERCE: Yes, would you clarify that, Mike. You said that this document has already gone to public hearing. I mean, we did have a telephone poll regarding this document, whether we felt it was satisfactory or not, but as far as I know no public hearings were set up to deal with the addendum.

MR. LEWIS: I think perhaps I could have been available for public comment. No state indicated to me the desire for a public hearing. I asked everybody to let me know if they wanted a public hearing. Nobody did so.

And, you know, there were a number of opportunities available for states to indicate to me that they wanted to have a public hearing in their state. I was available for that. Unfortunately, nobody indicated they wanted it and so we have moved forward.

DR. PIERCE: I'm sorry, Mike, that message was not received by me. It's not that you didn't send the message; it just was not received by me. I clearly completely misunderstood what was happening here relative to this request. Be that as it may --

CHAIRMAN FREEMAN: Tom.

MR. FOTE: I had the same feelings as Dave. I thought this was going to public hearing. I mean, I read this; and by the time I read the document that says we're not going to public hearing, the time span had already elapsed.

I'm saying what's going on here. I mean, it was my concern. I mean, I would have had a public hearing on this document, too. It was very confusing the way it was done, if you didn't read it right, and there's always the devil is in the details, especially when it comes through e-mails. I mean, reading things on a computer is different from reading a hard copy of something coming through, and assume that you get to it in a timely manner. Sometimes computers are down, e-mails are not working, and I have the same concerns as Dave does.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Just for the record, I don't. I fully understood that at the end of the FAX poll that this document was ready for public comment in whatever form we chose.

CHAIRMAN FREEMAN: All right, we've heard the comments. We'll move forward. Mike.

MR. LEWIS: Thank you very much, Mr. Chairman. The recreational fishery for scup is managed via a harvest limit. It is similar to summer flounder, at least has been managed historically. We may be taking steps here to change that, but there is no hard quota.

Any overages or changes are made with regard for scup recreational fishery are done with changes to the regulations and not actual adjustments to the harvest limit. The Scup FMP from its coast-wide harvest limit regulations; however, landings have exceeded harvest limits since 1999.

Addendum VII last year provided the first mechanism for state-specific management. States indicated that they may benefit from having the opportunity to craft regulations to meet the needs of their specific fishery, and so we worked together to create Addendum VII.

State-specific management measures were available for Massachusetts through New York. There was ample data for those. Regulations were based on an average of 1998 through 2001 landings.

Mode splits; that is, the separation of the party and charter boat from the remainder of the recreational fishery, were permitted with a 30 percent maximum percent standard error for mode-specific data.

And this whole process required a proposal evaluation and approval process. States proposed their regulations. The technical committee reviewed them and then the board approved them. As I'm sure you probably remember, this was a fairly arduous process last year. It went through a number of stages as states continued to adjust what they wanted to

do for 2002.

The absence of data prevented state-specific measures for New Jersey through North Carolina, and they were assigned a minimum size, possession limit and season regulations by the management board.

However, it's important to note that this addendum expired December 31, 2002. So, there is currently nothing on the record to indicate that the states will have the opportunity to do state-specific management for Massachusetts through New York at this time.

In 2003, the scup recreational fishery, a board motion in December 2002 did establish specifications for New Jersey through North Carolina. Those are currently on the board. There is a motion that was passed and so these have been established.

New Jersey was given a 10-inch minimum size, a 50-fish possession limit and an open season of July 1 through December 31st. The states of Delaware through North Carolina have established an 8-inch minimum size, 50-fish possession limit and an open season of the entire year.

That is consistent with what was in place in 2002. New Jersey's season has been expanded. That was the only change that was made for those southern states.

2003 regulations for Massachusetts through New York may be based on the performance of the 2002 regulations. If I follow the same procedures that were used in the development of Addendum VII, the numbers that are on the board behind me are what each state would be required to do with regard to 2003.

I say required, Connecticut is the only state here that will be required to make any changes. They have a 9 percent reduction in landings. However, Massachusetts, Rhode Island and New York would all be permitted to liberalize their regulations, in some cases to a very high degree.

I have broken -- like I did in the last addendum -

- these things up into individual issues and then options to address each issue. Again, this addendum is designed to address the states of Massachusetts through New York.

New Jersey south has already been established unless the board takes action to change that, so everything I'm talking about is just specific to those northern most four states. There has been some indication that some states would like to consider regional management.

The MRFSS data for summer flounder is a little bit better than it is for scup. And some states have said that, well, perhaps we might want to look at scup management at a regional level, so I have regional management.

Option 2 would be state-specific regulations with landings adjustment through modification of minimum size, possession limit and season. Again, that is what was in place under Addendum VII.

And then Option 3 would be landings adjustment through season modification only. I'm going to go into a little bit of detail here.

Option 1, regional management, there are a couple of different scenarios that could be used and I'm going to use some examples. One state suggested to me during the public comment process that I include uniform regulations for all four states.

What was suggested to me was a 10-inch minimum size, a possession limit exceeding 50 fish. As many of you know, there is statistically really no difference in the MRFSS data between using something to the tune of -- I think it's 13 fish and above. I think 99 point something percent of fishermen land 13 fish or less.

And so, there really is no way to calculate the affect of increasing the possession limit beyond 50. Fifty was chosen by the management board a couple years ago and so we've just stuck with that. But, again, there is no statistical difference. There may very well be a real-world difference and I'll talk about that in a moment.

And, finally, the open season that was suggested

was May 15th through November 15th. I've done some calculations and estimated landings in 2003 under this regional allocation to be 4,813,959 pounds. Excuse me, I take that back, I apologize.

The 2003, your regional allocation; that is combining the allocation for all four states, is 4,813,959 pounds. I have estimated landings under this scenario and have estimated those landings to be 4,259,822 pounds. That is 13 percent below the regional allocation.

However, it is important to note that there is a fairly high risk of some landings problems here, primarily with a very large possession limit, above 50 or 100 over. As we know, MRFSS data is generated through dock-side intercepts and then an expansion of that information.

Should we have in place a very high possession limit, for example, 100 fish or 150 fish, throughout the scup recreational fishery, should the MRFSS surveyors come upon a situation where, for example, a boat with eight people on it and everybody has got 150 fish, that would cause the MRFSS estimations of scup landings to be very, very high.

The possibility of that, I wouldn't even speculate as to what the possibility of that happening is given the number of people who are likely to be catching that many scup. However, the possibility is there and I want to make sure the board is very aware of it and how it could strongly affect next year's regulation for scup.

Another scenario for regional management is to use regional data, is to take all that MRFSS data and put it together and come up with the alteration that the states would be required to make on a state-specific level but using regional data.

So that means every state would have different regulations but it would base on a pooled data source. In this case regional data would result in a 38.8 percent liberalization for each state.

In this case each state would submit a proposal to the tech committee for review and we would

go through the same process we did last year. However, again, every state would be permitted a 38.8 percent permitted liberalization.

That's different from the current or from the state-specific information which indicates a reduction for Connecticut and then expansion for the other three states, in New York's case being almost 90 percent.

Option 2 is state-specific regulations. I've already gone through this a little bit. Landings adjustment would be through modification of minimum size, possession limit and season. This table is the same one I showed you a few moments ago, using the average of 1998 through 2000 landings as the basis and calculating the percent alteration that each state would be able to make to their landings based on the performance of the 2002 regulations as compared to the state allocations for 2003.

In this case, Massachusetts would be permitted to liberalize by 22 percent. Rhode Island could liberalize by 53 percent. Connecticut would be required to reduce landings by 9 percent. New York would be permitted to liberalize by 89 percent.

Here is another situation where landings adjustment would be through season modification only. This was the option that was recommended by the technical monitoring committee should the states wish to go forward with a conservation equivalency management of the scup recreational fishery.

They suggest a 10-inch minimum size, a 50-fish possession limit and then landings adjustments would be calculated through season modification.

I have made a projection for what Massachusetts landings would have been under a 10-inch minimum size. They currently had a 9-inch minimum size in 2002. I have reduced their landings to account for that. In this case, it changed the Massachusetts alteration. They could liberalize by 35 percent.

All of the numbers that I read out a moment ago

are the same. Just last week I was approached by the state of Connecticut with some information that indicates that perhaps their Wave 5 landings may be overestimated in the MRFSS data.

As such, we looked at the Connecticut catch per trip, which was estimated at 1.17. This is significantly different from the Rhode Island and New York catch per trip, which were estimated at 0.52 and 0.55, respectively.

The state of Connecticut suggested to me that we use an average of 0.535 -- that's the average of Rhode Island and New York -- for Connecticut's catch per trip and then to estimate landings accordingly.

In this case, they would have a pretty significant change to what Connecticut would be permitted to do for 2003. In this case, it would change it from a 9 percent reduction to a 39 percent liberalization for 2003.

Okay, now we have the issue of mode-specific management. Mode splits were permitted in 2002 under the provisions of Addendum VII. In this case, mode splits for the charter and party boat fishery, that is the charter and party boat fishery were managed separately from the remainder of the recreational fishery for those states that thought it was important, with a maximum 30 percent maximum percent standard error for mode-specific data.

So, I included three different options to address this issue. Option 1, which was recommended by the technical committee and technical monitoring committee, is to not permit mode splits for the 2003 fishery.

Some states have contended that the main incentive for many participants in the party and charter boat fishery is the promise of large catches.

In the event that the possession limit for this sector is set too low, the incentive would be removed and many party and charter boat captains and crew would experience severe economic consequences due to a lack of

participation.

It's important to note that the tech committee has stated that the tools to evaluate the impact of mode-specific regulations on landings do not exist given the current data limitations. As MRFSS data was designed to show trends in recreational landings on a large scale, it does not lend itself well to mode-specific management within a state.

The tech committee just wanted to make sure that everybody understood that should mode splits be permitted, they do not feel that they can really accurately estimate the impact of those mode-specific regulations.

Should the board choose to go forward with that, they will certainly do their very best to perform a thorough review, but they want the board to know beforehand that they are uncomfortable with evaluating those mode-split regulations.

With that in mind, Option 1 is mode splits would not be permitted for 2003. Option 2, mode splits would be permitted with a 30 percent maximum percent standard error. This, again, is what was implemented under Addendum VII in 2002.

Option 3, mode splits permitted with a 20 percent maximum PSE. The technical committee had some conferences with individuals from MRFSS from MRFSS who gave some indication that should mode splits be used, a 20 percent maximum PSE may be more appropriate. I just wanted to make sure that the board was aware of that and that was an option.

There are some additional recommendations from the plan development team and/or technical committee. Both groups recommend extremely conservative liberalization. As in summer flounder, a lot of states would be permitted under some of the different options presented here to liberalize their landings or their regulations for 2003.

However, the main reason that this is permitted is the extremely high spring survey observation in 2002 which has resulted in an increase in the scup TAL. This spring survey index is

somewhat suspect for a number of reasons.

One of the clear indications is that the abundance of all age groups in the survey increased substantially as it compared to 2001. While survey observations indicate strong recruitment and some rebuilding of the age structure, an increase in every year class usually takes years to occur.

One possible explanation for this is that this is not so much an issue of abundance as availability. One possibility is that the survey did come upon a very concentrated population of scup, therefore, indicating that there was more scup really out there than really are.

The realities of the scup fishery may not be quite as optimistic as the survey indicates at this time, I think is probably the best way to explain that. Also, the tech committee recommended a minimum intra-season closure of two weeks.

This is to account for recoupment; not recruitment but recoupment effects for short seasonal closures. Anytime that a seasonal closure is very short, those who are involved in the fishery are likely to just adjust their fishing effort.

They will take their vacation at a different time to make sure that it corresponds with an open season if fishing is important to them. So, they want to make sure that any minimum intra-season closure is two weeks.

Finally, there are possible consistency issues associated with what the Mid-Atlantic Council recommended to National Marine Fisheries Service in December. Right now they recommended a 10-inch minimum size, a 50-fish possession limit and an open season from January 1 through February 28th and July 1 through November 30th.

Any changes that the board may wish to make on a state-specific level may have an impact with regard to consistency with what will be required from the National Marine Fisheries Service. That concludes the presentation that I have for this addendum. I'd be happy to

entertain any comments or questions at this time.

CHAIRMAN FREEMAN: All right, questions, comments? Tom.

MR. FOTE: Yes, I'd like to look it over one more time. Could we take about a five- or ten-minute break. We've been going for two and a half hours straight, so let's take a five-minute break and come on back.

CHAIRMAN FREEMAN: Okay, we can take a short break but let me just see if there's any comments. Ernie, did you want to talk about your proposal? I mean, Mike did describe it but do you have anything you want to add to that?

MR. ERNEST E. BECKWITH, JR.: There are a couple ways of solving the problem that I have, but let me just explain what the problem is.

As you recall from the meeting in Duck, North Carolina, I had some concerns about the MRFSS catch estimates for Wave 5 for the state of Connecticut. They looked extremely high. I went back home and started looking at that data.

And, as Mike had put up on the screen there, it's pretty obvious to us, once we looked at it, what the problem was, and that's the catch per trip for Connecticut was extraordinarily high compared to the states adjacent to us.

I think we all know how the MRFSS estimates are derived. The number of trips comes from the telephone survey but the catch per trip comes from the intercepts. During Wave 5 we were only open 25 days. We had the shortest open season in Wave 5.

I don't have the exact number on the tip of my tongue here but around 200 people were interviewed. About 40 of those people have scup. We looked at the data and there were some extraordinarily high catches, which obviously skewed our catch per trip and resulted in very high landings estimates for us.

It really doesn't make sense that we would have very high landings comparable to the state of New York. They have many more trips and

much larger fishery than we have.

And so one way of solving our problem, what we had proposed is just doing an adjustment to the catch per trip, just taking the catch per trips for New York and Rhode Island, which are adjacent to us, and just averaging those two and then using that as the multiplier times the number of trips.

That results in an adjustment to the Wave 5 landings, which drops it down to about 300,000 fish. And, taking that adjustment off our total landings results in a situation, when you compare it to the 2003 target, where we can have a 38 percent increase instead of a 9 percent decrease.

And, as it turns out, if you average all of the increases and our decrease as the percent alteration for 2003, it just so happens to come out to 38.8 percent; exactly what our increase comes out with the adjustment to the catch per trip.

So that would solve our problem, but I think we realize that the larger problem we have is the MRFSS estimate and the nature of our fishery. Our fishery for scup is truly a regional fishery. There's really only four states that really catch virtually all of the fish here.

And given the variance in the MRFSS estimates this year and in the future, it's going to happen again. I mean, we got bitten this past year, but what happened to the state of Connecticut can certainly happen to any other state.

I just point out that the state of New York can enjoy, if they so choose, an 89 percent increase, and I know Gordon doesn't feel that's really appropriate. I think he feels that his landings are also skewed, too.

So, another solution to the problem is a regional approach where we all go with the 38 percent baseline and you could have a couple spinoffs of that. You could have a standard creel bag and season that we all have for all the states, or you can have an option where each state works off of 38 percent baseline increase, and then they are

free to submit proposals of changes in season or whatever and how they would meet that 38 percent.

I just want to throw that on the table for now. I'm not going to make a motion at this point in time. I'd like to give an opportunity to some other states to just comment on these issues, also.

CHAIRMAN FREEMAN: Okay, are there other comments? What I want to do is take comments on this. We will take a short break and then come back and try to resolve this. I have Gordon and Dave Pierce.

MR. COLVIN: Thank you, a couple of points. Number 1, I'm completely and totally in sympathy with the situation that Connecticut finds itself in as the result of the very odd estimates for the September; really, that brief September period in which they were open. And Ernie is quite right, that could happen to any of us.

Just a question, Mike, do any of us have handy here today any data that indicates the number of intercepts in which MRFSS intercepted scup catches for the northeastern states? I know those tables were around at some point. I'm wondering if we have that number handy?

I think it's an illuminating number. As I recall, it's an incredibly small number as compared to the number of fish. I mean, a million porgies landed in New York; and what do we have, a couple hundred, maybe, if we're lucky, successful intercepts?

I don't know how you can find that few trips if there's a million of them being landed. It's almost like you have to try. It's kind of weird. So, I believe that we clearly have a problem that's evident in the numbers.

That said, I have a concern about addressing any MRFSS number that we don't like by saying that number is no good, we're going to find another way to calculate a number; not because I think that the concern is misplaced. It clearly is correctly placed.

That's a precedent that takes us in a direction that has lots of ramifications. I think I mentioned to Mike over the phone in one of our conversations, when this came up, that I don't like the New Jersey fluke estimate for 2002.

I think it's low. I think they caught a lot more, and I think they think so. They can't say it on the record but I think they think so, too. Well, I don't see any of them nodding. But the fact is that every now and then a number pops up that we don't like.

And, you know, for better or for worse, we've made these decisions about managing these recreational quotas on a state-for-state basis. You know how I feel about it and I think we're really stretching it. I just have a concern about the precedent that we established by adjusting it that way.

That said, I think that the low number of intercepts and the high degree of variability suggests that the way to handle this that doesn't put us into this unfortunate situation of creating a precedent is to look at some way of regionalizing the data that we have, pooling it, looking at some form of regionalized approach.

I agree with Ernie. I think either Scenario A, as Mike outlined it, or Scenario B of Option 1 is the way to go. I think either one of those ultimately could be made acceptable to New York, although I need to do a little bit of checking at the break.

I think I'd prefer the Scenario A option with a standardized regional creel bag and season, although perhaps a season just a tiny bit longer than the one that Mike suggested running through the end of November. There seems to be room for that in terms of about 600,000 or 550,000 pounds difference between the target and estimated catch.

And so I would like to kind of get that out there for some discussion; and if that is helpful, good. We can also discuss, I think, Scenario B, which was, I think, a 38 or 39 percent across the board, which is something I hadn't heard before today,

and I think it's an excellent suggestion.

CHAIRMAN FREEMAN: David Pierce.

DR. PIERCE: Thank you, Mr. Chairman. For the board's information, Massachusetts did, in the poll vote, against approving this document for public hearing, and the rationale for that objection was detailed a short memo to Vince and to Mike. I have copies. I will make that available to you during the break.

I won't say any more about that at this point in time; however, I will quickly note the regional management option that's up on the board -- well, that's not the right slide, but the regional management option that was just mentioned that requires a 10-inch minimum size; and then, of course, it goes on from there, I think in the case of Massachusetts, and maybe for other states as well we are -- well, no, it's Massachusetts because we have a 9-inch minimum size right now.

I think the other states have 10 because they had to go to 10 in order to meet requirements for last year. In our particular case, for 2003 we have a 22 percent increase in allowable level of landings for the recreational fishery largely because of our being way under our target of 2002 and our being allowed an increase in 2003.

So it becomes difficult to accept any kind of regional management strategy that would force us to increase our minimum size by one inch.

It's very difficult to explain to recreational fishermen that, oh, by the way, you were being allowed a 20 percent increase. We have no problem with our recreational fishery in Massachusetts, but despite that fact, we have to increase our minimum size.

That is very difficult to explain. It's actually indefensible.

So, that's the regional management approach that may be favored by some, I think, will not be favored by Massachusetts. In addition, it's almost March 1 and the spring is not too far away. There is a consequence of that. To our way of thinking, the status quo approach makes

a lot more sense.

CHAIRMAN FREEMAN: Okay, any other comments? Harry Mears.

MR. MEARS: Thank you, Mr. Chairman. When we reconvene, one of my major concerns here, I'm still uncertain on the implications on consistency between individual state regulations under this addendum, which I understand is specific to recreational fishing specs for the 2003 fishing year, and also the procedure that would otherwise go forward, particularly with respect to communications with the council and also with the National Marine Fisheries Service.

We've had several conversation in the past about how several of our decisions do in fact impact a polarization of state permit holders from federal permit holders.

I certainly would like some assurance that the path we're going on would not worsen any perception, actual or perceived, that we would be widening the split between the two. Thank you.

CHAIRMAN FREEMAN: We've heard the comments. We need to, at this point, take a ten-minute break and at the end of the break we will come back and address this issue. We will begin back at ten minutes to eleven.

(Whereupon, a recess was taken.)

CHAIRMAN FREEMAN: Will members please take their seats. Okay, we'd like to reconvene. Our ten-minute break went a little over. I'd like to try to pick up the pace here. We do have time constraints.

If we want to have lunch today, then we have to move fairly rapidly through the rest of our agenda. We are committed to beginning a joint meeting with the council at 1:00 p.m. We have council members arriving and we need to keep on schedule. Tom, you have a comment?

MR. FOTE: Yes. I was going to do this before and I basically just wanted to wait until after the break. It's important to remember the history of

this plan, what was put in place in '92 and in '94. We kind of forget that in discussions when we go on here.

We also realize there's a 22/78 split did not come from figures that were basically -- that was adjusted also. So at one point it was 28/22 - - I mean 72. And we basically had done some adjustments based on, what, catch or landings, one or the other. That part of my memory has slipped over the years.

But, also, what the scientists said at that time -- and it was NMFS and all the people that were working on this -- that it wasn't the directed fishery, commercially or recreationally, that was causing the problem. If we basically ever did solve the bycatch problem, this species was going to come back like gangbusters in a real way.

That's exactly what happened. We basically affected -- we put the right mesh. We did what needed to be done with the loligo fishery, and we brought this stock back fantastically in a couple of years time.

We also said at that time that the recreational catch could be whatever we wanted. It's not going to affect the stocks because what was killing the stocks was the harvest of these small fish as a bycatch.

Now we're trying to tweak on a quota that was basically established on a split that was basically established when this fishery was collapsed by bycatch and not by directed fishery. It makes it difficult for the recreational sector because that quota that was based on -- it was already collapsed under bycatch so there was no fishery.

You know, when you look at New Jersey's catch during the other periods of time before the bycatch had collapsed, it was greater.

And the other problem is we get New Jersey one time -- I just found it really interesting that as little as we catch and as little as we make on the resource, we're at 10-inch minimum size and Massachusetts, that harvests a heck of a lot more scup, is sitting there with a 9-inch size.

And we're supposed to be more conservative. I mean, it just doesn't really make any sense at all in this plan, being at the farther end of the reach. I just had to make those few comments.

CHAIRMAN FREEMAN: All right, Ernie. Again, let's focus our attention on Addendum IX.

MR. BECKWITH: Bruce, I have a motion. I move that the board approve Option 1, Scenario B, and states will utilize a regional average of 38.8 percent for development of 2003 proposals for the scup recreational fishery.

CHAIRMAN FREEMAN: A motion has been made. Gerry, seconds. Discussion? Dave Pierce.

DR. PIERCE: That's not quite right. We did have a long discussion at the back of the room to try to work this out amongst all of us, just four states involved in this, really.

And it's my understanding that the 38.8 percent was going to apply to the states of New York, Connecticut and Rhode Island with Massachusetts remaining at the 22 percent increase for this year.

In other words, we will not share in the benefit of a 38.8 percent. We'll keep the 22 percent. This motion is primarily an effort, on the part of the abutting states, to work together to solve a problem specific to Connecticut.

Connecticut had to take a major cut in 2002 and now a big cut in 2003. So my understanding is those three states are working together to prevent Connecticut from a further cut in recreational landings. Am I incorrect, David and Gordon, regarding that specific intent?

CHAIRMAN FREEMAN: Ernie.

MR. BECKWITH: Yes, David, I don't think you're correct, at least not the way that I heard it. The way that I heard it was that the motion would be made for a regional approach using

38.8 percent.

We talked about the issue of Massachusetts having a different length limit and also a different creel limit for the charter party; and in order to accommodate some of the concerns that we other states have with your regulations that, on the record, you would say that Massachusetts, although they could with this motion go to 38.8 percent, would remain status quo for 2002.

DR. PIERCE: Yes, but, Mr. Chairman, indeed I did say that I understood the problem of the other states regarding their being at 10 inches as a minimum size and Massachusetts being at 9 inches.

And, frankly, the 10 inches was a consequence of problems the other states had last year to get to their targets. Massachusetts didn't have a problem so we could stay at 9 inches. New Jersey and other states had a problem. You had to go to 10 inches. That was a mandate because of your large landings.

I have said to the other state representatives that I will commit to proposing 10-inch total length as a 2004 minimum size in our recreational fishery, of course, subject to results of public hearings in Massachusetts and support of our Marine Fisheries Commission.

Obviously, we haven't had public hearings in Massachusetts on this issue. There is no way in the world I can say 2003 we're going to go up one inch to 10 inches, and I can't say today we're going to go up definitely to 10 inches in 2004 without a public hearing.

That would be pretty irresponsible of me to even consider that, and the other states understand my position. We're all pretty much working with the same regulatory process.

So, the motion, my understanding was that we would have the 38.8 percent for those three states; Massachusetts would remain at the 22 percent but then, as I just indicated, on the record, I'll commit to supporting the 10-inch total length as a 2004 minimum size, but subject to the results of a public hearing in Massachusetts and the support of my own state

marine fisheries commission.

I can't take my own state commission out of the process. Bill Adler and Vito Calomo, they're members of my state commission. We all have other entities to which we must be responsible. So, David Borden, Gordon, am I in correct with my summary of what I thought our understanding was?

CHAIRMAN FREEMAN: Tom, let me just try to get this and we'll get back to you. Dave Borden.

MR. BORDEN: Yes, I mean, it was a fairly complicated and contentious discussion I think, as everybody knows. I think a way to change this motion, so it reflects the discussion, would be after "38 percent", you would put a comma basically and then put "with the provision," Mike, or whoever is typing, "with the provision that the state of Massachusetts will maintain its current regulations and limit its increase in harvest to 22 percent."

That's one concept I think that was discussed, and David has already committed on the record to do that. The second point is a big issue from my perspective, is I need some kind of commitment from the states -- if I'm going to go back to the Rhode Island recreational fishing industry and say that Gerry and I came to this meeting and basically agreed to a 38 percent when the data supports a 50-some percent increase, I need a concession and that concession is fairly simple.

I need an agreement that we will implement a regional scheme in 2004. And if the states around the table commit to that, I will vote for this motion.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Thank you. I can't really add very much to what David Borden just said. I think that his perfection of the motion is helpful and amplifies some things. The intent of the motion is to address I think three or four different problems.

Certainly one of those problems relates to the Connecticut Wave 5, 2002 estimate. One of those problems relates to the concern that I have raised continuously that I do not believe the MRFSS data supports individual state management and that some kind of, at a minimum, regional if not coast-wide management approach is required.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. Before we start debating this, I wonder if it would be helpful, is this a friendly amendment or what is the status of Dave Borden's wording here regarding the maker of the motion?

CHAIRMAN FREEMAN: Well, at the present time, that was a friendly amendment. I have not asked Ernie whether he would agree or not.

MR. BECKWITH: It's fine with me. Gerry was the seconder.

CHAIRMAN FREEMAN: And the seconder, Gerry.

MR. CARVALHO: Yes.

CHAIRMAN FREEMAN: All right, friendly amendment, both agreed to.

MR. COLVIN: Thank you, Vince. In addition, a third issue that the motion addresses, hopefully, or helps us to begin to make progress to address is the issue that David raised about the concerns of our user groups.

I can assure you that we did discuss the scup options that emerged conceptually from the Duck meeting with our Marine Resources Advisory Council in New York state, and they have expressed a clear preference for a regional approach and for standardizing size limits.

So, I think clearly there is, David, in New York an intent to proceed in the direction that you have indicated. The only thing I can say is that in our case we're being asked by this motion to reduce our allowable increase from 89 percent to

39 percent, which is an even larger reduction, and that engenders, if it passes, a very clear expectation on the part of our stakeholders at home that we will move towards a more common and regional approach to resolve the allocation concerns that these things are raising, particularly in light of the weakness of the data that I've mentioned.

So, New York will support the motion with some reluctance. We appreciate what Massachusetts has put on the record in terms of their intention to maintain their regulations at status quo from last year to this year and to engage a dialogue within the Commonwealth on ten inches.

I appreciate that and I hope that we all get there next year. We're going to really need to be I think in that mode if we're going to continue to work cooperatively. Thank you.

CHAIRMAN FREEMAN: Let me get Vince and I'll get you, Tom, but I just want to try to get this resolved.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. I just had maybe one point of clarification. It seems that Massachusetts will maintain its current regulations and limit its increase in harvest to 22 percent. I'm just wondering how that would happen?

CHAIRMAN FREEMAN: David.

MR. BORDEN: Bob raised the same concern to me, and I think the intent was that Massachusetts would maintain its current minimum size and maintain its current bag limits, and that the issue of the liberalization will be in terms of the season.

So, in other words, they're not going to liberalize their size and they're not going to further liberalize their bag limits, but in order to get their 22 percent increase, they can stretch their season. And that would be at least my intent, and Ernie and Gerry can specify on the record that that is the intent of the motion.

Now, while I have the mike, Mr. Chairman, as to

the second issue which is the issue of the regional regulations, I'm comfortable to vote on this as soon as we can. I will make a second motion to address that issue.

CHAIRMAN FREEMAN: David, the option that this motion refers to was the option presented by Mike. It doesn't correspond to the draft public hearing document, and that particular scenario talks about the regional data, using the regionalized data.

I think it doesn't address this, but what we need read into the record is what Scenario 1, Option B, specifically says so there is no misunderstanding. Before I do that, David, relative to the comments that David Borden made concerning the 22 percent, is that an understanding that you have?

DR. PIERCE: Yes, it's an understanding, and we don't intend to change our season, which May 10 is the beginning. You know, we have no intent to make any changes. We're just assuming that with the 22 percent increase, that with status quo regulations, we should not expect to see much of an increase, certainly not an increase beyond 22 percent, for landings 2003 versus 2004.

We've done some sea sampling of our charter and party boat fleet. We've got a pretty good idea as to what they're landing. I mean, MRFSS is always a crap shoot, admittedly. That makes me uneasy as it makes everybody uneasy, but we live with it.

So, you know, we're comfortable with the 22 percent, with status quo regulations, with the desire to move forward to achieve some regional management approach for scup. We're very sympathetic to that, and we do support that need. We're sympathetic to the concerns of the other states.

I've already given my commitment on the record for my agency to support that move subject to, of course, the public hearings and my own state commission. I see the merits of it and my agency will push for it, some sort of a regional management approach.

CHAIRMAN FREEMAN: David, I understand what you're saying. At least, I want to make it clear. The fact that you do have a 22 percent underage this year would allow you to increase your catch to that amount; and what you're saying is that based upon the future increase in the resource, you're holding that 22 percent as more or less a reserve, expecting your catch to increase but not more than 22 percent. So, your present regulations would remain as they are or as they were for 2002?

DR. PIERCE: Exactly. Even though we're entitled to take another 22 percent, it's not our intent to change the regulations to reap that benefit.

CHAIRMAN FREEMAN: Well, my question would be in order to make this motion read a little clearer, simply leave out that phrase that deals with the 22 percent. It appears you're going to keep your regulations the way you are and then somehow you're going to adjust 22 percent. And I'm just wondering --

DR. PIERCE: Well, I don't want to create a trap for myself, Mr. Chairman. The 22 percent should be in there because we're entitled to it. And when the MRFSS data come in, if for some reason we're up by 22 percent then, okay, we fall within our allowable increase. But we're not going to promote that increase by changing our regulations.

CHAIRMAN FREEMAN: No, I understand that. As staff indicated, it reads such that it seems to be contradictory. You remain where you are, but you're going to take a 22 percent increase. The issue is, well, how can you do that?

The discussion is such that that is a buffer that Massachusetts will use because we anticipate the stock increasing somewhat, and you don't want to be in a position of having to go over and you're looking at this very conservatively, remaining where you are.

And it's just the way it reads. It's not that we disagree in the concept, but when you read this motion, it seems to be contradictory. Well, okay, Ernie and then Harry.

MR. BECKWITH: Bruce, just to clean up, you mentioned an item or two in the motion, have it read "move that the board approve Option 1, regional management, with Scenario B as presented by commission staff, which provides the opportunity for increased landings of 38 percent."

And when you're finish that, Brad, I will have one more minor adjustment. Down where it says, "with the provision that Massachusetts will maintain current regulations", why not just specify "maintain its current size and bag limits for 2003", with the understanding that -- don't add this in, but with the understanding that they can adjust their season if they choose. Does that work?

CHAIRMAN FREEMAN: I had Harry and Dave Pierce and Dave Borden.

MR. MEARS: Mr. Chairman, we're about to vote on an option that pertains to a Scenario B. This is the very first time I've ever heard of a Scenario B. Is there anything that would describe it in writing?

MR. LEWIS: As the motion reads, it was presented by me as part of a presentation I developed, a couple of different scenarios regarding regional management in order to assist the board in their discussions this morning. Scenario B has not been printed. I described in the addendum that there are a number of different methods that regional management could be approached, and the two scenarios that I devised were just reflections of a couple of different ways of looking at regional management.

The Scenario B that they're referring to is state-specific regulations based on regional data, regional data that results in a 38.8 permitted liberalization when you pool all the data from all four northern states, and that's what they're using to base this motion on.

There is nothing printed in the addendum. I have not provided anything to the board in print. It has been put on the board in my presentation,

and I am sure we can put it up there if there's any issues that you think you might have, Harry.

CHAIRMAN FREEMAN: All right, I had Dave Pierce.

DR. PIERCE: If you could go back to the motion, Mike. To respond to your concerns, Mr. Chairman, perhaps better language for the end of the motion would be, okay, after "bag limits for 2003", it would be "and will be afforded a buffer of 22 percent increased allowable harvest to account for any increase in 2003."

Sorry, Mr. Chairman, I thought I had the language right, and I'm reading it again and it's not going to work -- "with a buffer of 22 percent to account for any increase in landings." Okay, "to any increase in landings, increase in 2002, increase in 2002" --never mind. I've going to have to rework this. I'm sorry, Mr. Chairman.

MR. BECKWITH: David, it really isn't needed. I mean, it works the way it is.

DR. PIERCE: Well, as long as the record is clear that that's what it is. It's a buffer, 22 percent, to account for any unexpected landings that might occur beyond what we anticipate with status quo.

CHAIRMAN FREEMAN: Do we have agreement on the wording? Is the motioner and seconder satisfied? The motioner is. Is the seconder?

MR. CARVALHO: No.

CHAIRMAN FREEMAN: David Borden.

MR. BORDEN: Yes, since I think I caused some of this confusion, let me try to correct it. As I understand the description from the state of Massachusetts, it is their intent to maintain all of their current regulations, not liberalize any of their current regulations for 2003.

And it is also their intent that should their landings go up more than 22 percent, that they will make an adjustment the following year to compensate the resource. That's what I

understand the intent being. Is that correct, David?

DR. PIERCE: Well, now you're reading more into it. I thought that the discussions this morning related to how we deal with recreational fishery overharvests, and that's a bigger issue. It pertains to every state regarding how we deal with overages of recreational landings. Well, we talked about underages but overages as well.

MR. BORDEN: All I'm asking you for is your intent for 2003, let's not talk about an amendment.

DR. PIERCE: Well, the intent for 2003 is to hold the current regulations in place with an understanding that we will be allowed to have a 22 percent increase in our harvest once the MRFSS numbers come in.

If the MRFSS numbers come in and it shows that we are 22 percent above 2002 landings, then that's all right because that's our allowable increase in harvest.

If it happens, it's probably going to happen because of a statistical artifact as opposed to an intentional move on our part to spur additional recreational harvest. That's not our intent. Our intent is to hold it as it is.

Now there is no guarantee that that will happen because we're talking about a recreational fishery with landings that occur with no monitoring. No states have any monitoring of these landings.

We don't know what they're going to be until the year is up so we'll see what happens. Now, obviously if it ends up, if we end up at 23 percent or 30 percent, then there will have to be some accommodation for that just as every other state would have to accommodate a penalty -- whatever that penalty may be -- if you end up with 39 percent.

I'm not sure what that strategy is right now because we haven't discussed what each individual state will have to do if they exceed

their recreational harvest for 2003, with each state being New York, Connecticut, Rhode Island being 39 percent and Massachusetts being 22 percent.

MR. BORDEN: Okay, and that's what I said. We're not wordsmithing here. I think what David said was what I said in a slightly different manner, which means that the motion should slightly change to on the third line from the bottom, it would be "maintain its current regulations" should be the intent. In other words, they're not going to liberalize any of their current regulations.

CHAIRMAN FREEMAN: I would suggest that each year we look at either underages and overages and determine what we're going to do on scup. I don't think we need to be that concerned about 2004. When we get there at the end of 2003, then we decide what we're going to do or not do. Okay, go ahead.

MR. BORDEN: I mean, it's an important point that we'll argue about for days next year, is that the intent of this motion is that Connecticut, New York and Rhode Island, if they're over the 38.8 percent, then they would have to address that in some manner.

The intent of the motion is that if Massachusetts is over by 22 percent, it will have to address that. Up to that amount you're fine. If you go over that amount, you're going to have to do something different.

CHAIRMAN FREEMAN: That's correct, but bear in mind what we determine, what we will do the following year we've always discussed. It's not preordained. We make a determination. I don't want this point to become such that we don't get a motion here. That's my only concern.

But the intent here, I would agree, as Dave Borden indicated, that if indeed the three states, as this motion reads, the three states exceed the 38.8 percent, some action may be necessary, and if Massachusetts exceeds 22 percent, some action may be necessary. I emphasize "may be necessary." It's our determination whether we

do or do not do something. Gordon, you had a comment?

MR. COLVIN: You just made my point, Mr. Chairman.

CHAIRMAN FREEMAN: All right. Now, again, are we comfortable with the wording? Gerry.

MR. CARVALHO: If we have regulations, then we don't need size and bag limits.

CHAIRMAN FREEMAN: You're indicating there is a redundancy, so what they're suggesting is just omit "size and bag limits" since "regulations" --

MR. CARVALHO: Yes.

CHAIRMAN FREEMAN: Okay. I would ask both the motion maker and the seconder to review that motion and make sure you're satisfied. We'd like to bring this to a vote. Gordon.

MR. COLVIN: I just wonder if for the same reason the change that Jerry Carvalho just suggested be made shouldn't also apply to removing the parenthetical "seasonal adjustments may occur." The Commonwealth has committed to maintaining its regulations status quo.

I know this takes us back to where we were, but I think that's a reflection of what is on the record. And based on the record of this discussion, it's understood that increase relates to essentially the number that we would monitor for some appropriate course of action in the future, should it be exceeded, whatever that course of action may be according to this board.

CHAIRMAN FREEMAN: All right, the maker and motioner satisfied? Ernie? Okay, yes. Gerry.

MR. CARVALHO: Yes.

CHAIRMAN FREEMAN: Okay, we're going to vote on this. Joe, do you need that motion

read? You're not following all this, I can see that.

Move that the board approve Option 1, regional management, with Scenario B as presented by staff, which will provide states the opportunity to increase their landings by 38.8 percent, with the provision that Massachusetts will maintain its current regulations for 2003 and limit its increase in harvest to 22 percent.

Do we need a caucus? No need for a caucus. Those in favor, signify by raising your right hand; those opposed, same sign; abstentions, three abstentions; null votes, no null votes. The motion passes. David and I had Tom.

MR. BORDEN: Yes, thank you, Mr. Chairman. I'd like to address the second concern that I voiced. I think the situation with having four sets of regulations with some of the vagaries associated with the confidence intervals around this data is really intolerable.

And unless we're going to improve the data collection system and put a lot more resources into sampling the fisheries in these areas, we just have to get on with developing one set of standard regulations in the area.

I would move that the states of New York, Connecticut, Rhode Island, and Massachusetts develop a standardized set of regional recreational measures for the scup fishery. Said measures to be presented to the board no later than the annual meeting for implementation in the 2004 season.

CHAIRMAN FREEMAN: A motion has been made and seconded. Gordon Colvin seconded. Tom.

MR. FOTE: I would like to have the same option in the southern region. I mean, I'm sitting here listening to what is going on and I'm in the southern region here, and I look at have a no season closure in three states, one state does.

We have an 8-inch size limit in three of those states and a 10-inch size limit in one. Because

we wind up getting the southern end of this region, we wind up getting regulations. It always amazes me now that I'm at a 10-inch size limit in New Jersey and Massachusetts harvests way more scup than us are at a 9-inch size limit.

I mean, I have a real concern. So, you know, unless we basically fix the southern situation -- I mean, this is one of those examples of New York giving it to New Jersey. Unless we address this situation, I can't support this motion unless we're going to deal with all the regions, both regions.

MR. BORDEN: I'd just be happy to add the state of New Jersey into the food fight.

MR. COLVIN: That's acceptable to the seconder.

CHAIRMAN FREEMAN: Let me think about that.

MR. FOTE: And, Gordon, that's the flippant attitude that you've been handing New Jersey. We are in the southern region. We basically had a minor catch in this fishery.

And when we basically had a raised size limit, that basically affected the Delaware Bay's catch and it's going to affect the Barnegat Bay's catch. And it seems like, you know, it can be the flippant attitude of this board and laugh about it, but that's the consequences.

And, you know, Dave sits here and threatens to sue all the time over what he thinks is inequitable. We don't do that, but maybe we're going to have to start doing that.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: I'll ask the chair for recognition before I respond. It's not flippant. I don't personally think that New Jersey is in the "southern zone," quote-unquote. We all have difficulties between north-south boundaries. We always have. It's one of the toughest things we have to deal with.

But the fact is that there are very real economic consequences, extremely real economic

consequences, that afflict the shared fisheries in the New York Bight, just as they afflict the shared fisheries east of Long Island or in the area between Massachusetts and Rhode Island or the area between Maine and New Hampshire.

These are tough problems. But the fact is that you have fishing vessels from two states fishing nearby on the same grounds, and I suspect that in this instance the more appropriate boundary for our common management is not at the New York/New Jersey boundary but somewhere further south. I don't say it flippantly; I mean it. I think it's right.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: The more appropriate would be the Chinacook Canal or someplace else like that in the middle of the state, and New York doesn't want to put it in the middle of the state.

But when I look at what has happened between Delaware and New Jersey, then that's the same economic hardship that we suffer that you suffer with other states. So it's really we're in the middle of this boundary line and we kind of get messed up, and it is treated unfairly.

CHAIRMAN FREEMAN: David, let me just interject. I see your hand and David Pierce, but I understand what Tom is saying but I agree. New Jersey right now is a transition state, and in fact the northern part of our state is very different than the southern part.

Our border with New York is very different than our border with Delaware. And, Tom, I would ask at least at this stage is it's probably better to treat us as a transition until the resource increases to a point where we have catches throughout the state.

And the reason I say that is twofold. We need to give more thought to this process, and the issue with the four New England states is complicated enough. If we're thrown in the mix, I can tell you it's going to get more complicated, and I'm not sure we'll get anything resolved.

I have concerns about our transition position.

I'm not happy with it, but I think it's easier to work as a transition at this point than to throw us into this mix. It's going to be very, very difficult for our fishermen to get into the big league here at the present time if we do that. I had David Pierce and then David Borden and Harry.

DR. PIERCE: Yes, to the motion, Mr. Chairman. I've already indicated that I would like to see regional fisheries management for scup in the recreational fishery for scup. I have indicated our support for the 10-inch minimum size, to work in that direction, public hearings and my marine fisheries commission and all of that.

However, this particular motion causes me some problems because if we have a standardized set of regional recreational management measures for the scup fishery, potentially that could mean that Massachusetts would not have a scup recreational fishery, party boat/charter boat scup recreational fishery if, for example, the other three states liked to maintain the open seasons that they have in place right now, because their open seasons do not include the month of May, which is critical to Massachusetts.

So that's why I say, David, I'm not sure what a "standardized" set means. Does that mean that everybody, we all must have the identical measures?

Because if that's the case, then I'm not sure how we're going to end up if indeed Massachusetts is trying to preserve its May fishery, and the other states say, no, there must be a standardized set of regional management measures, and that means the open season would be from June 25th through the end of the year, which is a possibility. See what I mean, David?

I hope we can continue debate and dialogue and work towards something that we can all agree to, but I just want everyone to understand that's a potential problem that we all must recognize from the get-go.

MR. BORDEN: Well, I intentionally left some flexibility in the motion for the four states to

negotiate. What I would like to avoid is having this discussion next year and having four sets of different regulations within a 30-mile distance. It's just absolutely irresponsible to continue to do this.

But that is going to come out of the negotiation. That means the four of us are going to go into a room, with the appropriate commissioners backing us up, and have at it. Hopefully, we will come forward with one strategy that we can come forward to the board and avoid all this next year.

CHAIRMAN FREEMAN: David Pierce, my understanding of the motion, "to develop a standardized" doesn't mean every state has to be identical, but there has to be, at least the way I interpret this, that there needs to be some structure. And it could allow for some differences between states but some agreed-upon strategies. Go ahead, Harry.

MR. MEARS: I have a question for the maker of the motion. We currently attempt to manage the resource through a joint process, both between the commission, the council and between state and federal waters.

Is what is being proposed here meant to be part of, consistent with or independent of the annual setting of recreational fishing measures, which is currently done on an annual basis in consultation with the council and National Marine Fisheries Service? That's the question.

MR. BORDEN: Harry, that's a good question, and my response is it should be part of the council process. My intent is that the four states are going to put together a position prior to the point where we do the recreational specifications with the Mid-Atlantic, and then that would be part of that record.

And hopefully we could sort out any differences between the two. I mean, the issues of different regulations in federal waters and the problems that creates for federally permitted vessels, I think we ought to try to wrestle with at the same time.

MR. MEARS: One follow-up comment to that.

I believe that's a very good approach, but I think the motion as written "for implementation for the 2004 season" arguably short circuits that type of communication and deliberations that should at the very least be considered prior to the time that any regulations would be voted by this board.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: To that point, our annual meeting this year is going to be December 14th, so that will probably be after the rec specs are put in place, Harry. The joint meeting will be before that. I'm just saying that 2004 will work because our meeting is so late. Our annual meeting this year is December 14th in New York. And I imagine the council meeting will be before that.

CHAIRMAN FREEMAN: All right. Well, in August -- Chris, correct me if I'm wrong, in August we do the specifications and then usually in December we do the recreational determination. I'm assuming, David, you had those in mind when you made that.

In other words, it's up to those four states to get together and thrash this out and come forth with a position that we all understand, that you can provide us and we can agree to. All right, any other comments. All right, let's take this motion.

MR. BORDEN: As I usually do, I totally agree with the chairman. And I think New Jersey is a special case and should be left out of this motion.

CHAIRMAN FREEMAN: All right. Joe, do you need that motion read? **Move that the states of New York, Connecticut, Rhode Island and Massachusetts develop a standardized set of regional recreational measures for the scup fishery. Said measures to be presented to the board no later than the annual meeting for implementation for the 2004 season.** Okay.

All those in favor, signify by raising your right hand; those opposed, same sign; abstentions;

null, no null votes. The motion passes. All right, David.

MR. BORDEN: Yes, one other issue and this should not take a lot of debate. I would move that we adopt Option 3 on mode splits, which is a 20 percent maximum PSE governing the states of Connecticut, New York and Rhode Island for 2003.

CHAIRMAN FREEMAN: Just a point of order, my understanding that the previous motion we passed with the regulations staying in place would allow Massachusetts that option.

MR. BORDEN: And I left them out of this motion, Mr. Chairman. The intent of this motion is if any of the states of Connecticut, Rhode Island and New York want to do a mode split, they have to meet the 20 percent PSE standard.

CHAIRMAN FREEMAN: All right, I understand, you're right. It's a valid motion. I need a second.

MR. AUGUSTINE: Second.

CHAIRMAN FREEMAN: Mr. Augustine seconds. Discussion on the motion? Any public comment? All right, let's take a vote on this. All those in favor, signify by raising your right hand; those opposed, same sign; abstentions, five; null votes. What do we do, we have a five and five? What do we do when we get a tie? It's five, four and five abstentions. Does that pass?

MR. BEAL: You have five votes in favor. How many against?

CHAIRMAN FREEMAN: None against, five abstentions.

MR. BEAL: It passes.

CHAIRMAN FREEMAN: All right, it passes. All right, we're okay. All right, we're in lunch now so we've got to move, folks. Every minute we spend here, we're missing our calories. Go ahead, Mike, FMP reviews.

--2002 FMP Reviews--

MR. LEWIS: Thank you, Mr. Chairman. I will make this extremely brief, as I did for bluefish yesterday. I have updated everything in all three documents with the most up-to-date information that I could find.

I do have one correction to summer flounder, and that is with regard to landings in the state of Maryland. I have landings for the years of 2000 and 2001, which were not previously included in the documents that were distributed.

Table 1 on Page 9 is what we are looking for. The year 2000, according to NMFS data, is 251,751, and that brings the total landings to 11,262,100, and then 2001 updated landings are 222,860. That brings total landings to 10,966,040. I'm sorry, again, I am on Table 1 in the Summer Flounder FMP Review. Yes, this is summer flounder.

I would be happy to redistribute the document to everybody with the updated information if we want to try to make sure everybody gets the right numbers in the right cell. We can simplify things by just having me redistribute.

CHAIRMAN FREEMAN: Okay, in order to speed things along, it is simply some technical changes in the numbers. They've been updated. I'll ask Mike to send copies to all of us so we will have the most recent information. Without objection, go ahead.

MR. LEWIS: Again, I have updated all the information in all three FMP reviews, for summer flounder, scup and black sea bass. If anybody has any issues with the information that is included in these documents, please be sure to contact me; otherwise, I'd be happy to take any comments or corrections right now.

CHAIRMAN FREEMAN: Okay, with those technical changes can I have a motion to approve the FMP review? So moved by Mr. Augustine; seconded by Mr. A. C. Carpenter.

Any discussion? Any objection? Without objection, it's accepted. Okay, Winter II possession limit, Mike.

-- Scup Winter II Possession Limit --

MR. LEWIS: Thank you very much, Mr. Chairman. During the specification setting process, the board opted to not set a possession limit for the 2003 Winter II quota period. The Mid-Atlantic Council recommended a 1,500 pound possession limit for 2003 in Winter II, and they did that in December.

However, we need to go forward and -- excuse me, they may have done that in August. Regardless, we need to make sure that we do so before the beginning of the Winter II possession limit period. Up on the board right now is just an idea of what we have done for the past couple years.

In 2001 we had a 2,000 pound initial possession limit, had a trigger at 70 percent where it dropped to 500 pounds. The closure date was November 20th.

In 2002 an initial possession limit of 2,000. There was no trigger, no adjusted. The initial possession limit continued throughout; a closure date of December 2nd.

I want to notice that the quota has increased considerably from 2001-2002 and then again from 2002-2003. Again, Mid-Atlantic Council has recommended a 1,500 pound possession limit for 2003 Winter II.

CHAIRMAN FREEMAN: Bear in mind this is a trip limit so there is no restrictions on trips per week, but every time you land, it can't be more than 1,500 pounds. Is there a motion from the board? Mr. Augustine.

MR. AUGUSTINE: Move to accept the change to 1,500 pounds --

CHAIRMAN FREEMAN: Trip limit.

MR. AUGUSTINE: -- trip limit --

CHAIRMAN FREEMAN: -- for Winter II in the scup fishery.

MR. AUGUSTINE: -- for Winter II for scup.

CHAIRMAN FREEMAN: Got it. Okay, I need a second. Mr. Rob O'Reilly seconded. Okay, any discussion on the trip limit?

MR. AUGUSTINE: Mr. Chairman, I would just ask if there is anyone here in the audience who would want to respond to that.

CHAIRMAN FREEMAN: Okay, that's a good point. Any public comment on this trip limit commercially? Jim Lovgren. I knew this would happen.

MR. JIM LOVGREN: Bruce, I would just make this quick, but I think if there is any way you can make this a daily trip limit, I think that would be very beneficial so we don't have a repeat of the loligo squid fiasco of a few years ago where guys were landing multiple trips. Although they only went out once, they packed five and six times. So if you could do that, I think that would be very beneficial.

CHAIRMAN FREEMAN: That's a good point. Chris, did we do that in the council? Did we make it a daily? Okay, that is a good point. Pat, would you modify?

MR. AUGUSTINE: Yes, could we amend that motion to include that word "daily."

CHAIRMAN FREEMAN: All right. Okay, Rob, you would agree? All right, good point. Any further discussion? Any objection? Seeing no objection, the board accepts the 1,500 pound daily trip limit. All right, what else do we have? All right, quota discrepancy, planning issues.

-- Scup Quota Discrepancy --

MR. LEWIS: For quite a while now, we have been discussing a quota discrepancy that exists in the summer period scup quota. As a result of a board decision, the board increased the scup quota in I think 2000 -- I apologize; I think I'm correct though -- a reallocation of discards in scup; caused the board-approved summer period quota to be above the federal-approved summer

period quota for scup.

As a result, there has been a discrepancy for the past couple of years. In 2002 that discrepancy was 452,941 pounds. This information was included in a memo that I distributed to the board, I guess, last fall as we continued to try to work with this.

That has changed for 2003 because the board did not fully utilize the summer period scup quota in 2002. And so because we did not fully utilize that scup quota, the discrepancy reduced.

In this case, the discrepancy reduced to 206,763 pounds. So as of 2003, the discrepancy in the summer period between federal and state quota is 206,763 pounds. Now it's important to note that these are preliminary numbers. I don't want anybody to think that these are hard numbers.

The numbers available for 2002 were the weekly quota-monitoring reports. These numbers have not been run through the statistics office up in Gloucester, and so, therefore, will probably be modified as data is finalized.

However, I just wanted to get the gist of things out to the board so they could see what was going on and to give an idea of what steps the board may wish to take with regard to rectifying this.

In a prior memo I indicated that NMFS staff said that they would not be able to make any concessions to this quota discrepancy. They would not be able to increase the federal quota in any way for the summer period.

In that case it would be required that the board be required to make any adjustments. So, with that in mind, I worked out a couple of quick options for 2003. To account for the full discrepancy, we would reduce the summer period quota by the full discrepancy and therefore making the state-specific allocations as they are on the screen right now.

The option also exists to go ahead and account for that discrepancy over two years; therefore, taking half of it for 2003, thereby making the

changes that are on the board right now.

I hope they're visible. I made it as large as I could but there is a lot of information up there right now. If anybody has any specific questions about the change, I'd be happy to entertain that. Gordon.

MR. COLVIN: The question I have is where we are in the process at this point. Will the board need to adopt an addendum for the distribution and management of the 2003 summer quota? I seem to recall that the last addendum we did basically made our quota shares permanent, so long as we specified the quota -- and we have -- we don't have to do anything. Is that correct?

MR. LEWIS: That is correct.

MR. COLVIN: So where we are is that earlier table that basically laid out the quota shares at 4.8 million?

MR. LEWIS: That's correct.

MR. COLVIN: So, now, you know, why is this important? The reason that it's important is that in the past the size of the discrepancy has been so large that the federal quota gets used up, has been used up fairly early in the summer period at which point the federal government, NMFS, closes the federal fishery; and federal permit holders, wherever they may be fishing, may no longer land scup for the balance of the summer period which runs through October. That's a long time.

And it has really created inequities between the federal permit holders and the non-federal permit holders in the fishery. It has caused a lot of hostility and hardship, particularly even though at that time of year, in many cases they're fishing in state waters because that's where the scup are.

So, there really has been an issue and a matter of some importance to the board to address the discrepancy. It's intriguing that by not addressing it, the discrepancy has gone down. The quota has gone up, and we're getting to the point where it is less of a problem, frankly.

I think there are two ways of looking at this. One is that we can fix the problem, make it go away permanently by simply reducing our quota by 206,000 pounds, which has a fairly miniscule effect. In New York's case it's 10,000 pounds. I am perfectly willing to make such a motion and do that.

The other option is to say, well, you know, it's only 200,000 pounds difference, so now when NMFS closes, it's going to be pretty late in the summer period, in all probability, so long as the states keep managing their individual quotas. So maybe it will continue to evolve away on its own.

And indeed that might in fact be the case, and some board members might prefer that option. As I said, I'm prepared to make a motion to make this whole thing go away if that is the will of the board. I guess maybe I'll make that motion just as a basis to focus discussion.

MR. AUGUSTINE: Why do it? Why do it if they're only preliminary numbers?

MR. LEWIS: Before anybody makes a motion, I would caution to phrase it very carefully. Do not include any hard numbers. To just say to account for the full quota discrepancy for 2003 at one time, and that way I can make adjustments as data gets better. It's not going to change a whole lot, I don't think.

MR. COLVIN: Yes, but we're at the point where we're adjusting for this six-month post facto period that we discussed yesterday in the bluefish meeting, I think. And, as I recall, is there not also an outstanding issue about the -- have these figures yet been adjusted to account for research set-aside problem?

MR. LEWIS: They have been adjusted for research set-asides that have been approved for 2003. However, any issues involving research set-asides that occurred in -- landings that were allocated to research set-asides but may have been counted in the general landings, the general quota landings have not been accounted for.

I do have a memorandum that indicates that the

percentages are relatively low, but that may be something you want to take into consideration.

MR. COLVIN: Twenty thousand, thirty thousand pounds, I think, something like that, so it's not going to really change things very much.

MR. LEWIS: No, sir.

MR. COLVIN: Let me offer a motion that will focus discussion, if you don't mind, Mr. Chairman.

I would move that the board adjust its final 2003 summer scup quota downward to the final federal quota for the summer period.

CHAIRMAN FREEMAN: Okay, second? Second by Harry Mears. David Pierce.

DR. PIERCE: I can't support this motion for a number of reasons. First of all, the board made a very wise decision a couple of years ago to handle discards differently than the way the federal government was handling discards, discard mortality, specifically.

So we went in a different direction from the councils. And as a consequence of that, we ended up with a higher quota for the summertime, higher than the federal quota. And, we expected that eventually the federal government might come on line but obviously that has not happened.

The service says it cannot make any changes so we're the ones, ASMFC now is the one that must backtrack and reverse the good that we did through that previous addendum that enabled us to treat discards differently.

So, in principle I object to our having to account for the federal inability to do the right thing regarding how discards are treated. However, time has gone by.

And states with federal permit holders who fish in state waters during the summertime now find themselves at a great disadvantage because of the gap, which now is narrower than before, and that's good.

Well, I've always said that in order for us to get rid of any discrepancy now between the state and federal quota during the summertime, it makes more sense for states with a significant interest in the federal waters fishery, Winter I and Winter II, for example, because this is really a federal permit holder problem, that the quota should come off of Winter I and Winter II to get rid of the overage during the summertime.

Because, if you don't do so, in Massachusetts's case, where we only have state permit holders; that is, most of our scup, the vast majority of our scup is landed by state permit holders -- we have hardly any Winter I and Winter II landings -- that we have to reduce what we consider to be already a relatively low percent share of an annual quota, certainly the summer quota, we have to then reduce our summer quota to account for this discrepancy.

Now, Massachusetts was the state that pushed forward with the strategy that enabled us to change our attitude, to change how we treated discards. We were the state that was responsible for, ironically enough, this now discrepancy between state and summer quota.

With Gordon's motion, this summer we would lose about 100,000 pounds, which for Massachusetts is very significant. We dropped from -- well, with the table that's on the board right now; is this the table that relates to the motion? Are you sure?

MR. LEWIS: Yes.

DR. PIERCE: I don't think so. What about the other table that showed 991,000 pounds from Massachusetts if it comes off in one year? That's the one. That's the table right there.

All right, so going with this approach versus the other approach, taking it off in two years, increments of two years, we lose about 100,000 pounds this summer, and it's big for us. Now Mike is putting his hand up; what do you mean?

MR. LEWIS: Sorry, about 50,000 pounds actually.

DR. PIERCE: Fifty thousand pounds? Well, again, my glasses need to be repaired, I guess. Where are you?

MR. LEWIS: You go from 1,044,177 pounds to 991,969 pounds, which is right around 50.

DR. PIERCE: All right, so that's not as bad. I overreacted, which I tend to do on occasion. Summer scup, I overreact all the time. Anyway, my arguments are still valid. My position is still understandable; however, the amount of a cut that we have to take is not as significant.

Therefore, I would still prefer to take it off in two-year increments, but I can see why states wouldn't mind taking it off in one. Let's see, how can I act for the greater good? All right, I'll tell you what.

In order to be supportive of -- all right, I prefer the alternative motion which is to take it off in two-year increments as opposed to taking it off all at once, so I will oppose this motion.

CHAIRMAN FREEMAN: David, it may be more useful to offer a substitute.

DR. PIERCE: All right, I will offer a substitute motion that we -- let's see, how should we put this -- that we remove the summertime scup quota overage by taking 50 percent in 2003 and 50 percent in 2004.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: The original mover will accept the substitute as an amendment to the original motion.

CHAIRMAN FREEMAN: Okay. Harry.

MR. COLVIN: But Harry has to accept it, too.

MR. MEARS: The seconder cannot accept.

CHAIRMAN FREEMAN: All right, we're back to -- Gerry.

MR. CARVALHO: I agree with David in the most part on this. I like the softer approach. I

know why we did it originally. It will cost Rhode Island 100,000 pounds, if I'm correct -- yes, more than 100,000 pounds, a hundred and some thousand pounds.

If I had my preference, I'd like to just let it ride and hope that it works down to zero, as it appears to be reducing itself on its own. I'd have to vote against this motion.

CHAIRMAN FREEMAN: Well, the difficulty is the friendly substitute is no longer a friendly substitute because it wasn't agreed to.

MR. AUGUSTINE: It didn't have an approval of the second who did not approve the substitute motion, so doesn't it fail, Mr. Chairman?

DR. PIERCE: Was there a second on the substitute motion? Okay, so we're still waiting for a second, Mr. Chairman, on the substitute motion since it's not being accepted as a friendly? All right, that's true.

CHAIRMAN FREEMAN: Gerry seconds the substitute motion. All right, so any further discussion? What we'll do is vote on the substitute. If it passes, it will become the main motion and we'll vote again.

MR. AUGUSTINE: Call the question.

CHAIRMAN FREEMAN: Any further discussion? If none, we're going to vote on the substitute motion. All those in favor, signify by raising your right hand; all those opposed, same sign, one opposition. The motion carries.

The substitute now becomes the main motion. Any discussion on the main motion? Seeing none, all those in favor, signify by raising their right hand; all those opposed, same sign. The motion carries.

MR. MEARS: I abstained.

--Compliance Efficiency--

CHAIRMAN FREEMAN: Two abstentions. It still passes. Compliance efficiency. Bob.

MR. BEAL: This is the same issue that we briefly discussed at the Striped Bass Management Board yesterday pertaining to compliance efficiency and potentially developing an addendum to deal with delays in implementation.

Again, what we need from this management board is a recommendation whether summer flounder, scup and black sea bass are a priority species for the development of an addendum. I think, quite frankly, these are the three species that initiated this whole discussion that the policy board requested input back from each of the management boards.

So I think in the interest of time here, unless I hear otherwise, as I develop the list of recommendations for the policy board for them to review in June, these species will be put as a high priority for the development.

And this may be actually the species to develop a case study on and see if this works or not. I think unless I hear anything that's different, I will go head with that plan.

-- Election of Vice-Chair --

CHAIRMAN FREEMAN: Any objection to Bob's statement? Seeing none, that's the way we'll move. We need a vice-chair. Is there a motion for vice-chair? Gordon.

MR. COLVIN: This will teach him. I nominate Dave Borden as the vice-chairman of the board.

CHAIRMAN FREEMAN: Good selection. I need a second to that.

MR. AUGUSTINE: Seconded. I can't second the motion.

CHAIRMAN FREEMAN: No, you can't second it.

MR. COLVIN: In all seriousness, I do understand that David is aware that this motion was going to be made even though he is not here at the moment.

CHAIRMAN FREEMAN: All right, second:

MR. FRED FRILLICI: Second.

MR. AUGUSTINE: And I can move to close the nominations.

CHAIRMAN FREEMAN: Okay, we have a second. With no objection, Mr. Borden is vice-chair. What else do we have? Is that it? Okay, Mike, the advisory thing.

-- Advisory Panel Nominations--

MR. LEWIS: Okay, distributed right now are your current advisory panel nominations; Lauren Griffith, a party boat captain from Connecticut, and Jed Horwitt, a recreational fisherman from Connecticut.

Both nominations represent new seats to the AP. We need a motion to approve these individuals for inclusion on the Summer Flounder, Scup, Black Sea Bass Advisory Panel.

CHAIRMAN FREEMAN: Okay, Mr. Augustine, motion.

MR. AUGUSTINE: Thank you, Mr. Chairman. May we make that motion to accept them.

CHAIRMAN FREEMAN: Second for the advisors? Seconded by Gil Pope. Any objection? No objection, we'll include those advisors.

David, let me get to you in a minute, but what I want is Mike to describe the process for the timing for the public hearings --

MR. LEWIS: Addendum VIII we just approved for public hearing this morning, and I just want to get an idea for the schedule and any states that might be interested in having a public hearing.

I think our next opportunity for a meeting week is in June. Unless we want to go forward with an out-of-meeting week meeting of the board, I think it probably would work to occur in June but that's entirely up to you.

But in the meantime, can I get an indication of which states would be interested in a public hearing. Again, this is for Addendum VIII, which includes the summer flounder payback, recreational payback provisions. I've got currently Delaware, New Jersey, New York, Massachusetts.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: I would point out that because we're on scup, some of our board members have left, and I'm sure there is going to be interest in states like Virginia for this, North Carolina.

CHAIRMAN FREEMAN: I can't believe there wouldn't be every state that would be interested.

MR. LEWIS: I'm pretty much going to assume that every state is going to want to have a public hearing. I will be in contact with all state directors and other commissioners to try to figure out a schedule and get my travel plans assured.

CHAIRMAN FREEMAN: Okay, that concludes the agenda. Any other items? David, you had your hand up.

DR. PIERCE: I thought we were missing an advisor from the advisory panel from Massachusetts, but it occurred to me that he represents Massachusetts on the council committee for advisors, so that input is provided in that forum or through that forum.

-- Other Business/Adjourn --

CHAIRMAN FREEMAN: All right, you're satisfied. Any other business? Seeing none, the meeting is adjourned.

(Whereupon, the meeting adjourned at 12:35 o'clock p.m., February 25, 2003.)
