

ATLANTIC STATES MARINE FISHERIES COMMISSION

SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS MANAGEMENT BOARD

Williamsburg Lodge

Williamsburg, Virginia

November 19, 2002

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The Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Tidewater Room of the Williamsburg Lodge, Williamsburg, Virginia, November 19, 2002, and was called to order at 7:40 o'clock a.m. by Chairman Preston Pate, Jr.

CHAIRMAN PRESTON PATE, JR: If everybody would please take their seat, we'll convene the meeting of the Summer Flounder, Scup, and Black Sea Bass Management Board meeting. I would like to thank everybody for making an effort to get up a little bit earlier than normal today.

We'll start through what is going to be, I hope, a fairly efficient process of getting through an agenda with quite a few items on it. The need to start early is more volume oriented than it is complications, I hope.

We included in the information that was made available to you prior to the meeting the agenda, and are there any additions that anyone would like to make to the agenda? Seeing none and with consent of the group, we'll consider that approved.

The minutes from the last meeting were also included in your package. Are there any comments on the meeting? With no objection, we'll consider those approved by consent.

This is the opportunity where we'll give the public the clear chance to make any statements to the board that they like and invite them to participate in the meeting throughout the agenda this morning also. Is there anyone from the public who wants to make a comment? Also, I will note for the record that we do have a quorum.

Okay, while Mike is queuing up his computer for his presentation -- it's going to be the Mike Lewis show today, by the way -- Laura asked me to bring to the attention of the commission the

need to stop by the registration plan and pick up the action plan and the 2002 audit that is to be discussed at our full commission meeting on Thursday.

Are you ready, Mike? What Mike is preparing to discuss is Draft Addendum VIII to the plan to be considered today for approval for public hearing.

Addendum VIII will create within the plan a process for responding to the overages in the recreational fishery in such a manner that that fishery is held more accountable with reductions in the preceding year's quota to offset overages, much in the same way, or certainly in principle much in the same way that we do with the commercial landings.

MR. MICHAEL T. LEWIS: Thank you very much, Mr. Chairman. Back in August, the staff and the plan development team were tasked with creating an addendum to address summer flounder overages and the repayment thereof.

It's historically been quite a problem with regard to those overages, and some concern on the part of the public and managers about the impact that these overages are having on the summer flounder fishery.

So what our plan development team did was go ahead and develop a series of options that the board may wish to consider for addressing those overages and repaying them, perhaps. We are all pretty familiar with the issues in the summer flounder fishery.

We all know how the summer flounder fishery works, of course. The recreational fishery receives 40 percent of the total allowable landings for a given year.

But historically it has been managed utilizing a harvest limit that's a soft situation in which there is no mechanism for overage repayment. Conservation equivalency has been implemented since 1999, wherein states are required to implement bag, size, and season restrictions to restrain landings to these state-specific levels.

There have been some problems with this whole system. Recreational landings have exceeded harvest limits since 1996, and the percentages there are from 1996 through 2000, maximizing it at 53 percent.

Any landed in excess of the total allowable landings, of course, raise the exploitation rate above the target. The TAL, the total allowable landings, is set using a desired target exploitation rate.

Any landings in excess of the total allowable landings will raise exploitation rate above the target and thus cause some complications; the long-term side effect being a slower stock recovery, which results in a lower total allowable landings over time.

There has been a lot of concern on the part of in particular the commercial fishery in the industry, who suggest that these overages on the recreational side are having an impact on their ability to land all the fish that they should be able to.

If the recreational fishery had not gone over so much, they would be allowed to have more fish now. We've developed some management options to try to address this. The first is just status quo, just to make sure everybody knows what's on the table.

Fishing effort is adjusted based on success of the previous year's regulations. This is what we've had in place since 1999. State-specific landings are proportional to those landings from 1998, and an approximation of those landings for each state are in the table to the right.

I'm sorry if it's difficult to read; I tried to make it as big as I could. Under the status quo option, there is no provision for direct overage repayment.

State landings are restricted by calculating what reduction in landings, certain bag, size, and season restrictions would have and we go from there. You guys are all, I'm sure, painfully familiar with that whole process.

Option 2 is simply just an establishment of a recreational quota using 1998 as the base year; again, using the same proportions as I included in the Option 1, but just going ahead and having any landings in excess, of what at this point would be a quota, be directly deducted from next year's quota.

Option 3 is very similar in that we would again establish a hard quota in the recreational fishery, but it would use a different base year or average of years. The quota would be proportional

to landings from one year, or a combination of years, and landings in excess of the quota would again be deducted from the following year's quota.

In your document here, labeled Table 2, I believe -- it should be page 9, Dr. Chris Moore with the Mid-Atlantic Council was kind enough to generate a table that you all have seen a couple of times before.

This shows what all the different percentages for each state would be using years, or averages of years, aside from 1998 or aside from and including -- excuse me; at the bottom, you can see where 1998 is. But, still, through the whole thing, you can see what impact these different year combinations might have on your state, to give you an idea of what we're looking at.

Option 4 is to combine the overages or underages from the most recent two or three years to calculate repayment. The need for repayment would be based on the success of regulations from more than one year.

In this case, for example, a state may have been over one year, under the next year, and then over again the following. What would happen was we would add that state's harvest limits for all three years, add their landings for all three years, and see what the difference was.

If the difference indicated that the state had in fact had more landings than were allowed, then an overage penalty could be made and the state would need to repay that overage. If there was an underage, it's possible that the board may wish to include a rollover provision, which could be developed to allow for liberalization in that event.

However, it's very important for me to show you that in my discussion of this particular option, Option 4, which is on page 5, the technical committee addressed the idea of recreational rollovers, rollovers in the quota, rather, from one year to the next.

I just wanted to draw your attention to that to make sure you took the time to look at it and note it before we go ahead and move forward with that at the next meeting, perhaps, after we have public hearings and have an opportunity to perhaps vote one of these options into place.

Basically, the issue comes down to accounting. I think we can all agree that it's not a whole lot of difference in terms of whether you take a fish December 31st or January 1st. However, the way the assessments are done, it's very important from an accounting standpoint.

It causes a great deal of heartache to try to calculate in any rollovers from one year to the next. It's very difficult to calculate total allowable landings and that sort of thing under those circumstances, as they are done in the preceding August.

I would certainly be happy to entertain any questions to that, or we also have our technical committee chair, Steve Doctor, here who I'm sure could address it to better detail.

Option 5 recognizes some of the issues that have been brought up with regard to the MRFSS data and the quality of it. We've had some problems and talked an awful lot about the appropriateness of MRFSS data, how it should be used, what it was designed for.

But regardless of where you stand on that, I think we can all agree that there is certainly some error associated with that data and we have to be careful with how we use it. Generating a state-specific quota using MRFSS without taking that error into consideration is something that I think everybody is concerned about.

So in this option I just looked at the coastwide percent standard errors and put them up here. One possibility would be to have any overage in excess of the coastwide percent would be deducted from a state-specific quota, and I have an example in here on page 6 of the document.

For example, if a coastwide PSE for 2001 was 3.5 percent, if a given state had a harvest limit of say 500,000 pounds, if a state exceeded its harvest limit by 17,833 pounds or less, then no repayment would be required; 17,833 being 3.5 percent of 500,000 pounds.

However, any landings in excess of that, in other words, in excess of 517,833 pounds, would be deducted from the following year's harvest limit. So, again, just trying to find a way to take into consideration the percent standard error.

It seemed inappropriate, because of the way MRFSS is administered and the fact that it really isn't necessarily up to

the state or in the state's control as to how much sampling occurs -- it's more of a funding issue and that sort of thing -- It would be inappropriate to use individual state percent standard errors for calculating this, so we went ahead with coastwide.

Finally, Option 6 is to allocate the commercial quota based on no recreational overages. Now this one may seem a little tough to understand, so I'm going to go through it and please feel free to ask me questions.

What would happen was an initial total allowable landings would be calculated, and that would not be considering recreational overages. So we go ahead and say, okay, if the total allowable landings was hit right on the button in the preceding year, use that figure to calculate total allowable landings for the following year.

Take that initial TAL and take 60 percent out of that and that would form the commercial quota, of course, subtracting any commercial overages from that. But, anyway, you would go ahead and get the 60 percent from the initial total allowable landings to set outside as your commercial quota.

Then a second total allowable landing would be calculated, as it has been for the past number of years, including recreational overages. Therefore, they have an impact on the TAL.

If you take the commercial quota that was generated from that first total allowable landings, that 60 percent of the original TAL, and subtract that from the second one, then whatever is left would be the recreational quota or harvest limit, depending on how you wanted to go about doing it. It could be a hard quota or it could be a harvest limit like it has been.

But what that would result in -- and here's an example up here -- let's say the initial TAL, as it was calculated, was 28 million pounds. The commercial quota, 60 percent, and that would be 16.8 million pounds for the commercial fishery.

Let's say the secondary total allowable landings, including recreational overages, was let's say 26 million pounds. That includes 2 million pounds, for example, for recreational overage.

If you take the total allowable landings, the second one, that

26 million pounds, minus the commercial quota, that would give your recreational quota, which in this case would equal 9.2 million pounds.

The result of this system would actually be a 65/35 percent split in this particular example. It may be different in reality, depending on how we were going to administer it. That's just another way of looking at it. It's something worth looking at, at the very least.

Mr. Chairman, that concludes what I have to put out there for your discussion and I would be happy to entertain any questions at this time.

CHAIRMAN PATE: Gordon Colvin.

MR. GORDON C. COLVIN: Thanks, Mike. I appreciate the work on this. I think it's an excellent job in getting this to this point. I do have one question with respect to Option 5.

I believe you said towards the end of your discussion that that there was a perception that it would be inappropriate to use a state-specific PSE as the basis for an Option 5 type approach. Could you elaborate as to why that's perceived to be inappropriate?

MR. LEWIS: I've been led to believe that not every state, of course, has equal coverage by MRFSS, dockside interviews or telephone surveys, and that variance is not so much a result of state efforts, but rather a function of available funds.

And so it would seem to me and the plan development team that it would not be equitable to use the PSE's from individual states to determine at what level overage repayment will be required, and so I just went to the coastwide. It had more data involved and just probably get better quality.

CHAIRMAN PATE: Pete Jensen.

MR. W. PETE JENSEN: I want to make sure I'm thinking straight about this. Six options, we could select Option 1, status quo, and things would continue as they are. Options 2 through 5 are options where the recreational would have to pay back in some way for any overages. Option 6 seems to me to stand alone as an option that could also be selected so that you could have status quo plus Option 6, for example, as a way of calculating the formulas.

MR. LEWIS: It's important to note -- and I do state it in the document on a couple of occasions -- that many of these options can be used either stand-alone or in combination with others.

We could go ahead and use, for example, Option 6 and then even put in Option 2, which would be more of hard quota direct repayment of any overage. You could do any number of combinations with these things. I just wanted to give you as many options to look at as possible.

It's also important to note that we are just looking at this at this point for public hearing. This is a public hearing draft. It's not going to be voted into place today. This is far too contentious an issue, I think everybody agrees, to go ahead and vote into place without there being an opportunity for public hearing.

So this is just an opportunity for the board to have me maybe fine tune some of these options, throw some additional ones in, take some out, whatever you all are comfortable with. Thank you.

CHAIRMAN PATE: Tom Fote.

MR. TOM FOTE: When I was looking at the PSE figures, I had a little bit of a problem with that because it is up to the state. The state decides how much money it will spend on intercepts, so the state determines that it wants to be more accurate or not accurate on the MRFSS survey.

It is a state issue because some states want to spend more money because we want a more accurate determination of what goes on in that state, and we spend the extra money to get the more intercepts and we have a smaller PSE.

You know, that can work both for and against you. I mean, if we all basically stopped spending the money and raise the PSE level, then we have a wide variance there. So you're actually rewarding for not spending money and you raise the figure up. But I see that as a problem and it needs to be addressed when we talk about it.

The other thing is, if we're going to go this route a recreational, there is always something that has been bothering me over the years; and when we look at law cases on the commercial fishery that basically have gone on and lasted over

two years, the standard thing has been -- there were some cases that were a lot of fish.

One state's quota was in the commercial fishery that was basically illegally taken. But because the case lasted two years, there was no paybacks because NMFS says we can't go back further than one year.

So if we're going to address this overage issue, we should also address that issue at the same time to be fair and equitable about the situation.

CHAIRMAN PATE: David Pierce.

DR. DAVID PIERCE: Yes, thank you, Mike. I think because this is a public hearing document, we should take Option 5 and split it into two separate options, 5A and 5B; 5A being as shown in the document and 5B having the percent standard error for each state, as indicated in Table 4, for example, on page 10.

The reason why I say that is if you notice in Table 4, the coastwide percent standard error is much lower than any other percent standard error for any state in any year. I guess that's just a function of pooling all the data.

But when you do that, you mask the true variability within each state. We have to acknowledge that this is a very imprecise survey; and as a consequence, we need to recognize it and factor it into our decision-making process and not, as I say, mask the true variability by using those very low percent standard errors on a coastwide basis.

We cannot monitor the recreational fishery landings in our state. We just give the recreational fishery a target and we do our best to set strategies to hit that target. We all know how much lack of success we've had with that strategy, but that's just a function of the fact we can't monitor the recreational fishery on a timely basis like we do the commercial fishery.

So let's recognize that, let's go for public comment of the Table 4 data with a 5A option, 5B option, and why not? If we're going to go to public hearing with options that include hard TAC's, my goodness, why not then go with 5A and 5B options.

That would be my suggestion, Mr. Chair. I don't know whether you need a separate motion for that or whether everyone just

might agree. I could make a motion to do that.

CHAIRMAN PATE: Actually, that's probably a good suggestion, David. It would give everybody a clear sense of what type of advantage or disadvantage an improved MRFSS survey within their state could have in situations like this.

Hopefully, when we ultimately fully implement ACCSP, some of these types of problems will be solved, but we're a long ways away from getting states on parity with their MRFSS coverage and having a clear indication of what that means to an individual state within the context of this idea was good. I would like to have that included as an option, unless there is strong objection from the board otherwise.

DR. PIERCE: So you're not looking for a motion?

CHAIRMAN PATE: No, I think we can do that by consent. I had Bruce Freeman next.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman, a couple of things. One, if the board recalls, we've been dealing with the issue of weight versus numbers of fish; and as we've seen over time, the target weights have been exceeded.

One of the reasons is that the numbers really have not gone up that much in the recreational fishery. They've been fairly stable. The average weight continues to increase and as the average weight increases, then the overage in weight becomes an issue.

Most recently, the council has agreed to use numbers rather than weight, and the calculations have been in numbers, and I notice some of these tables, again, are in numbers and others in weight, and we need to come to a standard what we use so far as weights or numbers.

So just heads up to the people preparing the document to make certain that we're using the same quantities, not using weights when other groups are using numbers and visa versa.

One other comment -- and this is discussions that I've had with Chris Moore -- early on in the determination of the recreational harvest, the council had calculated an amount that would track the increase in the resource.

And when that information was provided, when we chose the recreational quotas, both the board and the council didn't like that concept staff had used, and we told council staff not to use it, but it is something that appears now in retrospect that we should have used.

If we had that information at hand, our selection of the quotas, or target quotas, would have been different, in fact more conservative, and in all likelihood would have met the targets.

It seems reasonable to offer a further option where the staff would calculate the amount of resource increase, if in fact there is an increase, and use that in determining the target. It's a technique, again, that the council staff had used.

We rejected it, but it seems that should be resurrected and included as an option, and that can be done. In fact, my most recent conversation with Chris Moore, he said it's not difficult to do at all.

CHAIRMAN PATE: Bruce, can you elaborate a little bit on how including that in this addendum is consistent with the intent of these six options?

MR. FREEMAN: Well, it would be a modification of the first option. Well, it would be in addition. What we've done in setting our targets is we've always looked at where we were and we're two years behind, at least two years behind.

In other words, when we made our calculations let's say for 2000, we're using 1998 information, but in the subsequent two years, the resource was increasing, so we're looking at what we're doing two years back and then making our calculations.

Everything would remain that way two years forward. Well, the resource had increased, so if we use the same size and bag limits, we're always undershooting our target. We should have been more restrictive in setting our targets.

But we have never considered the fact that resource has continued to increase, and we're always undershooting our targets. That calculation can be made, can be presented to both the board and the council in making our quota specifications for the subsequent year.

CHAIRMAN PATE: Well, that would seem to be fundamental to that

very action that this board has to take every year and that is the setting of the quota. Does that have to take place as an addendum to the plan; isn't that just a procedural kind of thing?

MR. FREEMAN: Well, it could be. The difficulty, Pres, is that we've rejected it. In other words, it was originally used. We didn't like it and told them don't do it again; and as a result, we're where we are. Yes, we could.

I mean, we've used it without an amendment or an addendum and then we've rejected it. It could be a modification of 1. In other words, Option 1 would be continue what we're doing at the present time, and Option 1B could be to make that calculation as to the increase of the resource.

The recommendation for the quota will be different. In other words, those two numbers will be different using the two different techniques.

But my suggestion, it could be included as Option 1A or 1B where essentially it could be status quo, but it would be a conscious decision certainly by the board to include that calculation, which now does not occur.

CHAIRMAN PATE: I think Bob is going to respond to the question that I had earlier as to whether or not that needs to be included as an addendum.

MR. ROBERT E. BEAL: Thanks, Mr. Chairman. I don't think it does need to be included as an addendum if the board wants to have that available as a tool. In other words, right now and in the past they have considered doing it that way a number of times and decided not to do it that way.

In other words, they have decided not to take projections of growth of the population into account as they're setting the recreational specs for the next year. Again, they have the ability to do that any year.

If it's included in an addendum and the board wants to set up a system where you have to take into account the change in the population from year to year when you're setting up the specifications, then it does need to be in the addendum.

In other words, if you want to be required to do that each year,

then it has to be included; but if you just want to have that available as a tool, I think you guys already have that available.

MR. FREEMAN: Pres, to that point. I think it would be important, however, if this goes out to public hearing, to have the public aware of that. In other words, that presently it's not used, it could be used, what is the feeling to the public? Should it be used or should it not be used?

And I agree with Bob, we've used it. It's really our option. But since this is a public document, there should be some explanation in there about that technique, whether we want to include it as part of the addendum. But the public should be able to see that it does make a difference and whether in fact it would accept or reject that technique.

CHAIRMAN PATE: Bruce, it would seem to me to be more helpful to the board to include that as an explanation of the options that are available to the commission beyond the scope of what we are trying to accomplish with this addendum.

If you're looking for public feedback as to which option would be preferable, we could get it at that time and use it when we come to the table to set our specifications.

MR. FREEMAN: That would be fine. I'm not fixed on how it should be presented, but I just think the public should be aware of it and should be able to comment. That's my only concern.

CHAIRMAN PATE: And not to sell the public sophistication short by any means, but that's such a highly technical issue that I would question what meaningful feedback we would get from them if we were to take this out as an option for their comment within this addendum.

MR. FREEMAN: Well, I think it's an important consideration. I mean, in retrospect, we could see what the quota would have been if we used this as opposed to what it was.

When the board was originally presented this information, there was a considerable difference. Our concern is that we're overshooting our target and the question is, well, why. I mean, if we have these models and we know what we're doing, why are we always overshooting.

And I think in retrospect, the reason being when our calculations were made, the resource, at least for the last five or six years, continued to increase and we're always underestimating because we're not considering that increase.

That's one of the fundamental flaws and if we want to correct that, that could be done simply by taking that growth increase in the resource into consideration.

These other techniques, these other options, some of them are quite interesting, but other ones could present some major social impacts in that a state in all good faith could set a bag and size limit, and because of the availability of fish, or a certain size fish, could greatly exceed its target in one year; and depending which option you pick, the next year conceivably you could not have a fishery, which I think socially is unacceptable for a particular state.

But the issue is we want to get as close to target as possible. There's no intent to overrun the target and, therefore, what technique do we use to make sure we're on target and not have these onerous pay-back requirements which may actually close the state down. It's an extreme case, but it could happen.

CHAIRMAN PATE: Gordon, did you want to speak to Bruce's point?

MR. COLVIN: Yes, I do. I think Bruce raises an interesting issue and one that I'm sure the board and probably the council would like to explore further, but I don't think it belongs in this addendum.

I agree with the perspective that the chair indicated. It's a separate issue. It doesn't need to be addressed in any addendum. I have personally somewhat of a different recollection of how this whole thing has evolved than Bruce articulated. I'm not saying Bruce is wrong.

I'm saying it's a complicated history we've been through, and I'm personally unable to resolve it clearly in my mind, frankly, without Chris Moore here.

I would suggest as an alternative that we agree that this is an issue we would like to explore, we need to explore it jointly with the council, and perhaps ask for a briefing on the issue by Chris and the monitoring committee at our upcoming joint meeting.

It probably wouldn't take more than about 15 or 20 minutes, and then perhaps we can jointly decide with the council where we want to go with this issue. However, I do see it as an orange to the bowl of apples that's in this addendum, and I don't think we ought to have it in there.

CHAIRMAN PATE: And I agree with that, Colvin, and with the agreement of the board, I will ask that item be put on the agenda for our joint meeting in December in Duck. A.C.

MR. A.C. CARPENTER: I would like to ask a question of Dr. Pierce. By putting in the state-specific tables, isn't that counterproductive, because as I understand how Option 5A would work, the allowance in a given year would be 3.5 percent, say, in 2001 if you use the coastwide allowance.

Anything greater than 3.5 percent, you would have to pay back next year. But using the Table 4, Massachusetts would get a 15 percent tolerance before they had to start paying back.

My inclination would be that, well, I don't have to beef up the MRFSS because the more inaccurate it is, the more slop I get and the move overage I get to -- so unless there is an inverse formula, a penalty for having a number higher than the coastwide average, I think it's kind of counterproductive.

It reminds me a little bit of the argument we went through with the enforcement criteria here a few years ago. The higher your enforcement rate, the higher the ineffective enforcement rate, the bigger the penalty we had to pay, if you recall, and it seems to me that this Option 5, the way that the staff has it probably works better than a state-specific one.

CHAIRMAN PATE: David, could you respond to that question?

DR. PIERCE: Well, A.C., I don't think it's counterproductive. I don't think it should be assumed that states would be unwilling to put money into their monitoring, because by not doing so we can get a bigger percent and thus the management measures we would have to impose down the road would be less severe.

I don't think that's the motivation of any state around this table. If we have the monies to put into increased monitoring, then I think that would happen. We all have difficulties with our state budgets now. Certainly in Massachusetts that's the case.

We've had some very significant cutbacks with more underway. We would love to put more money into the MRFSS program to improve the estimates, but it just can't be done. So, like every other state that has a relatively high percentage, and many of us do in those tables, as I said earlier, it just recognizes the fact that this is a fact of life.

There is a lot of impreciseness with these surveys and recreational fishermen should not be penalized because of that lack of preciseness.

I wish all of the percents were around 3.5 percent for each state, but that's just not the case; and besides, it's just a public hearing option and comments such as yours will likely be made during the public hearing process.

At least we'll give the public an opportunity to deal with individual state variability and maybe to urge each individual state to put more money into their MRFSS sampling so that the percentages could be smaller.

I don't know how this is going to shake out in terms of what public comment we'll get back, but it seems a reasonable public hearing issue.

CHAIRMAN PATE: Gil Pope.

MR. GIL POPE: Thank you very much. I don't know how the rest of the board members feel about this, but I feel that average coastwide percent standard error is pretty low. That 3 percent MRFSS to me seems a bit low.

I don't know how the rest of the board members feel about that, number one. Number two, if you're going to get into the situation where you're going to have paybacks for overages, and you're talking about doing it on the basis of weight after the fact, I don't think that's the right way to go.

I really think that as part of what we put together as a package ought to include the fact that we ought to go back to numbers of fish in the recreational fishery, because the regulations that we have in each state are based on numbers of fish that are allowed to be harvested of a certain size and above, which means that the higher you require the size limit, probably the more weight you're going to get and you're exacerbating the problem.

So if you want to do this correctly, I think that you're going to have to go back to a situation where you can do the commercial in pounds fairly accurately for most of the time. I don't see how you could do a poundage and penalize the recreational fishermen for it and have it being done in pounds.

I think we have to go back to numbers of fish, and if you're going to have overages, calculate it in numbers of fish somehow. I don't know how the rest of the board feels about that, but that's how I do. Thank you.

CHAIRMAN PATE: Thank you, Gil. Eric Schwaab.

MR. ERIC SCHWAAB: Thank you. First of all, I think, Mike, you did a wonderful job in putting this together. It's very concise and well developed. Having said that, it strikes me that the public discourse might be best served if we tease out a couple of separate issues that are in this document in the context of, you know, Issue One is the base year, current base year or some alternative base years -- full stop.

Then Issue Two is whether to have some repayment schedule and/or process; and if so, how -- full stop. Then Issue Three is this question of how to set the commercial quota independent of or in conjunction with the recreational overages.

I just wonder if there is any agreement to restructure the document to set those issues out in that way might better form the conversation that's going to happen with the public, and then also position us down the road to make decisions about those issues independently rather than sort of mixed together in the way that they are now.

MR. LEWIS: If that's the board's pleasure, I would be certainly happy to restructure the document any way you guys see fit. Please, by all means, just let me know what you would like me to do, and I can get that done for you.

CHAIRMAN PATE: Eric, since that's more a matter of format than it is substance, what I would like to do is get through the comments on this and come back to that point, and see if we can get some agreement on how the product will look once we send it out, if that's okay. Tom Fote.

MR. FOTE: We in New Jersey spent a lot of extra money putting in intercepts to get more of a handle on what was happening in

the fluke fishery, to get our numbers down. As you notice, our numbers are way down, and we're down the lowest, I think, of any state.

But we basically told the public that's what we're doing. We're going to take money that's well needed in other areas so we can't even do monitoring of certain fisheries to basically do this, and I'm going to now take out to public hearing a document that's going to tell my people because you spent the extra money, you are only going to be allowed 6.5.

Yes, that's going to be very disingenuous and basically counterproductive in my state, and I don't think that belongs in a public hearing document, to tell you that you're rewarded for spending less money and the people that spent more money to get better information are penalized.

That's exactly what you're doing when you basically do state by state, and I don't think we really want to do that in a public hearing document.

The other point that I was thinking of as we were talking about this is overages and underages. Because of this year and we're looking at statistics so far in the waves, it looks like most of the states are going to be under on the recreational fishery.

Thank God we basically did the job right last year. And when we first put the plan in place a number of years ago, two or three years straight the recreational side was under, and we set those bag and size limits because we're projecting what they will basically do.

It's easier in the commercial fishery as we're seeing the season come to an end, to increase and allow more days at sea or bigger trip limits to basically recapture that quota.

But once we've put a recreational limit in place, you basically have to maintain it for that year; and if you've been more restrictive, you're basically saying, well, that's a benefit to the fishery and it grows on.

But if you're going to start taking overages, then we've got to look at the situation that comes because we've make decisions at this table, the right decisions to make sure we go over quota. If we find that we've been overly conservative for two or three years in a row, then maybe there should be some paybacks in

there. If we're going to take on one side of the table, we might as well do it on the other side of the table because we don't have the flexibility in the recreational quota as we do in the commercial.

You can't increase the number of days, you can't increase the trip limits. I was just trying to look at it fair in basically how we do these. Thank you.

CHAIRMAN PATE: David Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman, a couple of quick points. I think Mike did an excellent job of putting together a series of concepts which were not altogether defined at the last time we discussed it, so I really take my hat off to him. A couple of points, though.

I think on page 4 we need a further elaboration at the top of the page there of the consequences of the overages so that the public clearly understands what they are.

The language that's here is excellent, but I think it would be helpful if in fact it included some projections, if you would, by a technical committee of how the overages have retarded the rebuilding program and affected the TAL's for both the commercial and recreational, because there really are consequences.

If there are recreational overages in one year, there is a negative consequence to the recreational fishery the following year. The TAL ends up being lower and the commercial fishery is lower, so they both get penalized by it, and I think the document should reflect that.

So, I like what he has got here, and I would encourage us to further elaborate on it so that the public, when they go to look at this, it doesn't simply become an allocation fight between commercial and recreational fishermen and we focus their attention more on the issue of how this detracts from us reaching our overall objective which will serve their best interest. That's my first suggestion.

The second point is just a generic point. I think we all know this, we never took out to public hearing the concept of a recreational state allocation program, and yet many of the alternatives here do exactly that, incorporate it and refine it

and so forth, and I can't help but look at some of the charts like the Table 3 in the back of the document.

And you look at some of the year-to-year variability's in the landings, and granted it's improved because the sampling intensity has improved over time, but just to give you a stark example, the state of Massachusetts in 1985 went from 88,000.

The next year their landings, projected landings went to 2.5 million. It's inconceivable how that could ever take place. I think all of us could look at our own states and probably pick out another example of that.

I guess my suggestion is that somehow we have to do a better job of characterizing, number one, year-to-year variability in the data, and I think that argues more for a strategy where you do averaging or you average either the penalty -- you take a longer period in terms of the time series and you also make the overage pay-back period longer because of the year-to-year variability in the data.

I think that is it. I'm comfortable with the document basically going forward. I think it's going to generate a lot of discussion. I'm not necessarily optimistic following the public hearings that we're going to be in a position to promulgate one of these.

We may in fact stimulate so much discussion on some of these options, that some additional options come forth that we have to take out to public hearing again after that. Thank you.

CHAIRMAN PATE: Ernie Beckwith.

MR. ERNEST E. BECKWITH, JR.: Thank you, Mr. Chairman. I do agree with some of the comments that Dave made. It should be clear in this document that some of these options that do a mainly state quota system and the public should know that. I'm not quite sure where we left the Option 5. Are we still taking comments and deciding what to do with that?

CHAIRMAN PATE: Yes, we are.

MR. BECKWITH: Then I will make a comment to Option 5. I just want to point out that spending more dollars on MRFSS doesn't necessarily get you a lower PSE. We have beefed up our MRFSS to three times the standard.

If you look at Table 4, you can see Connecticut has some of the highest PSE's. I think that Option 5B should be in there because if we go with just the coastwide option, and that's 4 percent or whatever it does come out to be, and for whatever reason the state of Connecticut is between 15 and 20 percent every single year and what we're judged on is the coastwide of 4 percent, we will be in a pay-back situation more often than other states, and that really doesn't seem fair. I think that Option B should be in there.

CHAIRMAN PATE: Thank you, Ernie. Any more comments from the board on that? Gordon.

MR. COLVIN: I wanted to just build specifically on the first point that David made, and we've discussed this before. But in that expanded discussion that he called for, I think it's very important to make it clear to the recreational public that will be reviewing and commenting on this that because we have made this a state-by-state recreational quota management program, which is what we've done -- and I think we did get public comment on that, Dave, and I know we had extensive debate ourselves about which numbers to pick.

Because we've done that, what now has happened is that one state's overage, if not paid back, if not recompensed, affects the harvest in the next year by other states so that it's not just a commercial/recreational allocation problem that's the result of overages anymore.

It's now recreational/recreational, just in different states. It's very important that the fishermen understand that. They're not coming to these hearings, as they often do, pointing fingers at the other harvesting sector.

It's now their own counterparts in another state that affect what they can do, and it's very important that we get that across to them.

I also just wanted to weigh in pretty quickly on the 5A/5B approach. When I first asked the question of Mike and his response immediately caused me to wonder if we would be perhaps creating a disincentive to expand MRFSS, and the more I thought about it, the more I agreed with Dave Pierce.

I think it belongs there. I think what we're going to find is that in most cases the high PSE's are going to occur in states

that don't catch a lot of fluke, and therefore their percentages of the quota are small.

So we might be looking at a higher percentage based on a PSE of 15 or 20 or whatever on a small allocation of 3 to 5 percent of the overall quota, so it's not a very large number and I think it's appropriate to keep it in there.

I'm wondering, though, if we want to just think about introducing the option so that people can think and comment about it, perhaps even without getting too specific and saying 5C -- we're just looking now at two options.

One is the coastwide PSE, whatever that number is, triggers a payback if you exceed it. Another is a state's PSE, if it's exceeded. Maybe there should just be a number, just a number, 10 percent.

Any state that exceeds its quota by 10 percent pays back the difference, and that's just another thought I would like to put out there and maybe we would like to get some feedback on something like that.

CHAIRMAN PATE: Thank you, Gordon. Gerry.

MR. GERALD CARVALHO: Thank you, Mr. Chairman. I don't know how this comes into play, but in Rhode Island roughly 70 percent of the participants in the recreational fishery are non-residents and they just simply drive.

If one state is shut down, they'll just simply drive back to the state they came from. It just seems to me that if we do it on a state-by-state basis, and Rhode Island being so close to Massachusetts and Connecticut and having so many non-resident participants, that they could literally shut down Rhode Island for Rhode Island residents because of the overage and simply go back to their own state and take advantage of it.

I'm just uncomfortable with the idea that we can narrow down to Rhode Islanders or to a small state like Rhode Island with big neighbors and restrict them their recreational participation. They could be ganged up upon and the recreational fishery would just simply get shut down.

CHAIRMAN PATE: Gordon, would you be willing to put your idea of a third subpart to 5 in the form of a motion? This seems to be

the area of most disagreement on the board and perhaps a motion will get us focused on that decision.

MR. COLVIN: Sure, recognizing that 5A and 5B have been pretty much incorporated?

CHAIRMAN PATE: No. Actually, I would like for the motion to clarify that the present Option 5 is being split up into 5A, 5B, and 5C.

MR. COLVIN: Okay. I would move that there be an Options 5A, B, and C; A being as presented in the draft; Option 5B being using a state-specific PSE, which if exceeded triggers a payback; and Option 5C being a constant coastwide number for each state of, say, 10 to 15 percent -- I'm sorry, say 5 to 15 percent. Let's do that range for public comment period purposes.

CHAIRMAN PATE: Okay, thank you, that's exactly what I needed. Did Tom Fote second that motion? Yes, Tom.

MR. FOTE: Yes, I would support that. I mean, even you looked at the tables for PSE's, New Jersey, which has the lowest, is 6.5, which is above the average, and we do it because MRFSS was designed to do a coastwide. It has a coastwide high percentage.

But when it comes to state by state, no state basically gets to the average, so it's not really an average of what the states are doing. I think that makes more sense and I would support all three of those go out to public hearing.

CHAIRMAN PATE: Okay, thank you. Any more comments on the motion? If not, we'll take a vote. Any sense of the need for caucus? All those in favor of the motion, please signify by raising your right hand, twelve in favor; all opposed, none registered; null votes, none registered; abstentions, none registered. The motion passes.

I had a request from someone in the audience. Yes, sir, if you will just identify yourself for the record, please.

MR. BILLY EGATER: Billy Egater, United Boatmen Recreational Fishermen. When it goes to public comment, you're going to get a lot of static, and I know that. To the public, this is a public resource and not a commercial resource. So whatever the public is giving back, it's giving back to a commercial entity.

One thing recreational has already given back is the difference in size limit. The size limit for recreational is 16-1/2 in most states, I would imagine, and in federal water it's 16-1/2. Commercial is 14. There's another give back that we're giving.

You have a control over the commercial on where they get to with their sizes. It's hard to do recreational. If half the people in this country wanted to go fishing today and had the option to catch one, recreational would go over astronomical the quota. We're just dividing by what everybody else here is giving us as a law, and we're still going over, so there's something definitely wrong.

Option 1, most of the public is going to agree on if it stays status quo. Two to five, you're going to get a lot of static. The way I took Number 6 is that the recreational is going to give a give back and who is getting it? Commercial.

The way it was set up up there, it said it would be turned into a 65/35 split. That's not going to be any good. I had one other thing that this gentleman here said about his state and the MRFSS data. It goes through all the fisheries.

And yesterday I was going to make a comment about the tautog, how I think it was the same gentleman said that -- the fellow sitting next to him said that blackfish aren't highly migratory. No, it's the recreation who is the highly migratory. We, as the recreational fishermen, go to wherever fishing is the best.

In blackfish's case, most of the people from the south are going to the north. The same thing in fluke. wherever the best fishing is at the time, the recreation is going to go there, and it doesn't reflect on the state actually that caught it.

In New Jersey's case, if everybody went to Rhode Island, the surveys are done in New Jersey and New Jersey is all of a sudden getting the brunt of the numbers, and it doesn't reflect evenly. So in the recreational way, there's enough give backs already in the recreational side. Thank you.

CHAIRMAN PATE: Thank you. Any more comments from the board? David.

DR. PIERCE: I can't recall why we have limited this to summer flounder and why scup and black sea bass are not included as well. Can staff or anyone else let me know why that's the case?

CHAIRMAN PATE: Well, I can't recall either, David, other than the fact that the overages in the summer flounder was such a chronic and pressing issue for us. Not to say that it didn't occur in the other two species either, but it just didn't get elevated at the same level that fluke did.

DR. PIERCE: Yes, I don't have the data before me that would indicate the nature of the severity of the problem with the scup and with black sea bass. I know that at least with scup, in some cases there have been some significant overages in one or a few states.

I'm not prepared to make any motion regarding including scup and black sea bass in this strategy. Perhaps the best approach is to bring it forward to public hearing specifically for summer flounder, and then see if it works and then apply it to scup and black sea bass if there is a need.

But perhaps in the interim, it would be advisable to have staff just dig a little bit deeper on this and advise us regarding whether we should move forward sooner than later to offer up similar strategies for scup and black sea bass.

CHAIRMAN PATE: Well, I'm sure this will be a test case to see how successful we're going to be in bringing this monster under control. Tom.

MR. FOTE: Well, when it comes to scup, the way the quota is basically set up now is one or two years basically, and it does not do a fair allocation of what history says that the scup fishery does; whereas, in summer flounder we are really constrained about what we can do on a lawsuit, and so we have to be extremely conservative because of the requirements of the plan; whereas, in scup this year, and as Pat Augustine and I made a motion, we could have been in a much higher quota.

We as a board and the council decided not to do that and we wanted to be conservative. So there's a little difference when you're talking about a scup fishery that could have been -- if we listened to the science, the science said 50 and 80 million pounds, and none of us felt comfortable there.

The fishery was not overfished and we wanted to be more restrictive, and basically a fishery that had been shut out of the recreational sector because we have collapsed it as a bycatch fishery. It's a whole different ballgame when it comes

to a scup fishery than it is with a summer flounder fishery.
Thank you.

CHAIRMAN PATE: Gordon.

MR. COLVIN: Thank you, Mr. Chairman. I think it was my motion originally that sent us down the course towards this addendum on fluke, and I can address my own thinking in not including scup and sea bass at the time.

Part of it is for the reason that Tom gave. The fact is that the assessments on which the scup and sea bass quotas are based are themselves pretty sketchy, as we all know, and in fact they're really not assessments.

We're working off a relative abundance indices drawn from the trawl survey. So given that we start from a pretty shaky basis for setting the quota in the first instance and then that we have so many fewer years of experience managing a recreational quota for these fisheries, with I'm sure much higher PSE's individually on a coastwide basis, it didn't seem that we were ready to take this step for anything except perhaps fluke and see how we do there before we move on.

I think the other thing is that we only just started this state-by-state madness with scup this year, and so we have no idea how it's going to work out. I guess we'll get some sense on how bad the madness is in about -- well, by the end of this week when the Monitoring Committee meets, and then we can go from there.

But let's face it, we don't have anywhere near enough experience or information to move ahead with scup and sea bass. I think we may have to go there eventually, but let's take fluke first because we really have a much better sense that we know what we're doing.

CHAIRMAN PATE: Thank you, Gordon. That's my opinion, also.
A.C.

MR. CARPENTER: This has nothing to do with scup, so if you want to finish that.

CHAIRMAN PATE: I think we are through with that.

MR. CARPENTER: Okay. To Option Number 4, I would think that we should eliminate the rollover provision there from the document;

or if you are going to include it, include it as a separate 4B or 4A or something.

We don't allow underages to be rolled forward in the commercial fishery, and the technical committee has pointed out some potential problems with it. I do think the idea of using the last two or three years worth of landings data to calculate what the overage or underage should be may help to normalize this thing a bit. And if necessary, I would be willing to put that in the form of a motion.

CHAIRMAN PATE: Please do so.

MR. CARPENTER: I move to remove the credit carrying forward provision of Option 4 from the public hearing document.

CHAIRMAN PATE: Is there a second? Second by Roy Miller. Discussion? David.

MR. BORDEN: Thank you, Mr. Chairman. I'm going to have to vote against the motion. I understand the logic that A.C. is putting forth here, but I guess my view is that it's very important to have this discussion at public hearing.

And the reason for that is that all of us have had lots of experience with state quota systems; and at least in Rhode Island, we are constantly being confronted by constituents that are saying you're managing this fishery in a too conservative manner, and there is no benefit in doing that.

In other words, the word basically goes out to the constituency that you have to catch not only all of your quota, but if you really want to err, you err and you go over your quota and then pay it back the following year, which I don't think is a message we necessarily want to send to the constituency.

I would comfortable breaking -- if A.C. wanted to perfect this motion, and basically had a 4A and a 4B, and one of those options was to generate that type of discussion, that type of discussion that Mike has put in here, I think that's very healthy for the constituents to have the benefit of that type of discussion at a public hearing.

I think we're all going to hear it from our constituents. There is no benefit in ever being under a quota. Don't manage conservatively. You have to go over your quota. Otherwise

you're penalized for it. So I would have to vote against it unless A.C. revises his motion.

CHAIRMAN PATE: Mr. Carpenter, you have a challenge.

MR. CARPENTER: I think if it's broken into two issues, it effectively gives us the same -- the intent of my motion is to separate it, so I would accept that as a friendly perfection to the motion.

CHAIRMAN PATE: Is that okay to the seconder? Mr. Miller acknowledges that it is, so we'll do that. A.C., we're having some technical problems. Can you read your motion into the record, please?

MR. CARPENTER: No, I'm not sure I can now that it's perfected.

CHAIRMAN PATE: Will you try to read your motion into the record?

MR. CARPENTER: It would be to separate Option 4 into a 4A and 4B. 4A would end after the second sentence. 4B would include the third sentence with the explanation of the technical committee's concern about the rollover provision. Does that help?

CHAIRMAN PATE: Roy.

MR. ROY MILLER: Mr. Chairman, with regard to David's suggestion, can anyone direct me to any other species where we allow credit for underages or is this a new concept?

CHAIRMAN PATE: It's a new concept that grew primarily out of the problem that we're having with the regulating of the commercial landings of summer flounder. It's been an issue that's been before this group, and particularly our planning group, of representatives of this board now for some time. I'm not aware of it.

MR. MILLER: I just want to urge caution, recognizing that it is a new concept. It's going to carry over, perhaps, into other species as well. I'm thinking of striped bass in particular where the commercial sector has remarked for years that they never get credit for underages, but they have overages detracted from subsequent years, and I think it establishes a precedent. It's also counter to the message that we've used previously,

namely you get no credit for underages and you have to pay back for overages.

CHAIRMAN PATE: Tom.

MR. FOTE: Roy, it's not a new concept. The National Marine Fisheries Service, which it's a joint plan with the National Marine Fisheries Service, basically does that with bluefin tuna. I can basically right now do the transfer of 60 million pounds from the recreational to the commercial fishery to open up the giant fishery.

We do this when we basically manage species state-by-state quota or sector-by-sector quota, and it's proven effective to the benefit of the commercial fishermen in the giant fishery because we in the recreational fishery have not used our quota, so we've transferred it over numerous times and that's basically been done. We have set this precedent.

Striped bass is a little different. We're not doing state by state. This is going to wind up being state by state; and if you're going to tell the people in the state by state that you can get rewarded up to a 10 percent overage, but you get nothing rewarded for a 10 percent underage, then we should have a percentage somewhere in that whether we're going to do overage or underage where you get rewarded for basically doing the right thing. And it's not a new idea. We've done it in certain other fisheries before. Thank you.

CHAIRMAN PATE: Pete.

MR. JENSEN: I guess now that the issue is raised, Mike, I don't understand why the overage carried forward is only in Option 4 and not in the other options that essentially are just a different method of calculating whether you're over or under, and so it escapes me as to why it's only in Number 4. Is there a reason why it's only in Number 4 and not in 2 or 3?

MR. LEWIS: That's a good question, Pete. I have to admit that, no, I didn't really -- the short answer is no. There is no particular reason and it certainly could be included.

MR. JENSEN: So I guess, Mr. Chairman, the issue is whether we adopt this as a possible policy change in all of the options that have to do with being over or under or only one.

CHAIRMAN PATE: Bob.

MR. BEAL: I think this is kind of part of what Eric Schwaab was getting to earlier. If we restructure the document and we separate it into different issues, one of the issues is underages and overages and how do we handle those and, you know, they're all separate decision points that the board is going to have to go through at their next meeting.

CHAIRMAN PATE: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, another point. Tom and I just had a quick sidebar. In bluefish, when the estimate for the recreational is estimated to be under, we basically automatically are able to transfer X amount of pounds to the commercial, and that's a part of the plan.

And it just seems to me that appears to be the direction we're going here, and it's the right thing to do. I do agree that maybe this should be in all three of the other options.

CHAIRMAN PATE: Well, the big difference is that is transferring within the same year and what has confounded the idea of doing the rollover is from year to year, not within the same season.

I was answering Roy's question earlier within the context of what this body has responsibilities for managing. Remembering now that there is some slight precedent with the way that the National Marine Fisheries Service manages bluefin tuna, but I think their decisions to rollover quota from one year to the next are in the harpoon category only. Now, Pat, do you know enough about that -- they don't do it with the full quota. It's just the harpoon. Tom.

MR. FOTE: We have just transferred recreational quota, which is not harpoon, to the general category.

CHAIRMAN PATE: That's different, Tom. You're transferring from one category to another within the year. You're not carrying over the quota from one year to the next, which is what this would ask you to do, what this motion would ask you to do.

MR. FOTE: But we do it on bluefish. We're only estimating what the recreational catch that year is and saying -- we're taking the target and saying they're not going to catch that fishery because they haven't done it the previous year, and then we're allocating that resource over to the commercial fishery. So we're basically even estimating on not what's caught that year

and transferring, but we're estimating that catch because we do it before the year even opens up, we transfer that quota over.

And what happens in any year that the recreational sector actually met its quota, which could happen because that's the way we were supposed to have set the bag and size limit, then we would have this 6 million pound overage if they actually went out and kept the fish instead of releasing the fish that year.

CHAIRMAN PATE: Dan Furlong.

MR. DAN FURLONG: Dan Furlong with the Mid-Atlantic Council. I have to go back to the concept of the federal plan. The plan was very specific in terms of our rebuilding schedule. If you have an F rate as the driving force, then you are restricted within that year to that quota.

So if you do have an underage in the current year, you really can't carry it forward into the next year because the F rate would establish a quota that if you carried over something from the prior year would exceed it, and you would be out of sync with the plan. It just wouldn't be approved.

Now Tom's points about transfer on bluefish, it is, as you said, still within the same fishing year. It's not a problem going from sector to sector within the same current year.

But if you have an experience where there is an underage in the current year and you would like to take credit the subsequent year, when you have that F rate applied for whatever the stock assessment is to give you a quota, then you can't exceed that quota in the subsequent year.

That's just contrary to the federal plan and it's out. You won't be able to use that device. I think it's healthy to take it to public hearing. I think it should be discussed, but there is a rationale that says why you can't do it and the public needs to be educated on that.

CHAIRMAN PATE: Okay, thank you, Dan. David.

MR. BORDEN: Thank you, Mr. Chairman. The discussion for the past five or six minutes has highlighted exactly the point that I made before is that this is the reason we need this type of issue in the document, to have this type of discussion with the public.

The other point I would make is that in terms of bluefin tuna and swordfish, the way that fishery has worked or the way the quota has worked there is that basically ICCAT comes up with a formulation, establishes an F, basically gives each country a quota share on an annual basis, but they're not held to that quota share except on a multi-year basis.

So there is in fact a rollover. If we under catch our bluefin tuna quota, we can roll a certain portion of that over the following year. The same type of mechanism exists with swordfish.

So, to me, I think there has been somewhat of a precedent set. The bluefish example is a very different type of system and I think Dan's characterization is totally correct.

CHAIRMAN PATE: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, a follow up to Dan's comment. He is suggesting then that as long as the stock is not rebuilt, it's not possible, from a perception or from a legal point of view, to actually do this rollover.

But that being the case, could we not word this option so that the public gets the sense or feeling that at the time that the stock is declared rebuilt, that this rollover option could go into effect?

I think we have to give them something to hang on to. We get beat up at all our meetings in New York regularly because we've been under for the last couple of years on our quota share. So if that could be considered, I would appreciate it.

CHAIRMAN PATE: Harry.

MR. HARRY MEARS: I believe where we're heading here certainly puts us in a catch-22 situation. While I believe public comment is certainly beneficial on any issue how we manage the resource, putting this option out for consideration when we know up front it poses immediate problems from the gate, I don't think is necessarily the best constructive way to solicit public comment on the type of management decisions, which ultimately need to be made.

My recommendation would be to describe the situation and how there has been discussions on rollover of unused quota from one

period to the next and explain why technically it cannot be done and identify it as an alternative considered but not presented. That way, you are alerting the public that management is aware of the issue, but at the current time, it cannot be looked upon as a feasible alternative.

CHAIRMAN PATE: Eric.

MR. SCHWAAB: I guess when I read this, I saw something a little different. The way I interpreted it was that a state's performance would be evaluated against something that would amount to a two or three year running average as opposed to a carrying forward of an overage or an underage.

I wonder if it couldn't be recharacterized in that way and that would allow a dampening of some of these ups and downs with some of the inherent error in data collection as well as allowing for the states to react to the lag time that is inherent in the managing of the recreational data compared to, for example, the commercial data.

I wonder, Mike, if you have a reaction to that as to whether it could just simply be characterized as, you know, again, evaluating against some three-year running average as opposed to that of moving forward an overage or an underage?

MR. LEWIS: I certainly can. I can try, if you have any ideas on how you would like me to recharacterize it. I tried to get relatively close to that idea in terms of just looking at it over the two- or three-year average and see whether or not you're over or under what you should have been and by how much and used that to get an idea of what your repayment should be.

If you can give me any specific ideas on how you think you might like me to change what is currently there, I would be happy to do it.

MR. SCHWAAB: Well, I guess the real question is, is that what you were trying to get at; and if so, I'm not sure we'll be able to accomplish that wordsmithing here today. It's just a question of whether that was the intent and, to me, there's a distinction -- maybe there's not to others -- a distinction between what I just described and just simply carrying forward, in an additive or subtractive way, an overage or underage.

CHAIRMAN PATE: This has all gotten very convoluted and the tail is starting to wag the dog. David Borden.

MR. BORDEN: I would just like to go on record agreeing with Eric and the chair.

CHAIRMAN PATE: I wasn't recognizing you to speak. I was going to ask you a question. I was trying to get your attention so I could ask you a question.

MR. BORDEN: Well, I would like to withdraw my compliment to the chair.

CHAIRMAN PATE: It's been pointed out that the discussion or the issue of rollover is fundamental to many more, if not all, of the other options, and we've gotten hung up on that as a basic concept of this whole addendum.

Would it be helpful if we tabled or withdrew the current motion and dealt with whether or not that concept should be included within the context of this document? I know that you stated your preference that it should be, but maybe if we could get some clear consensus on whether it should or not be, we could move forward with how to make it so.

MR. BORDEN: I'll repeat what I said before, is that I agree with Eric's original suggestion, which was to basically break the document into the issues. I think if you do that and one of the issues is the issue of a rollover, underages and overages, then there are some variations of ways that you could treat that, one of which is what he just said, where you could have multi-year calculations of penalties, based on like a three-year average, which to some extent it wouldn't end up being a rollover.

It's just you would get the benefit if in fact you were under type of thing. So I think if you break the document into the major issues, the way he suggested, one of which would be rollovers and underages, and then had this type of discussion under it, I would be very comfortable with it.

CHAIRMAN PATE: Okay, thank you. I wasn't trying to be ugly to you. I think this is all some very healthy conversation or discussion to have about this document. I guess I and Mike had the idea of coming into the meeting today, that we might be able to reach some closure on this subject and have this proposal adopted for public hearing, but it doesn't look like we're going to get there today.

The idea of restructuring it and more clearly identifying these issues as separate, but related to each other, I think is going to be important for making sure that the public understands as much as they can about what we're trying to achieve.

I would like to go ahead and continue this discussion for a while longer, act on A.C.'s motion, and then conclude it with the understanding that we will redraft or restructure the document and bring it back to the board for its next full meeting.

I'm not inclined to try to do it at our joint meeting with the council, just because of the time limitations that we have when we meet in Duck. A.C.

MR. CARPENTER: Mr. Chairman, in light of that discussion, I think it would be proper for me to withdraw the motion, if the seconder agrees.

MR. MILLER: Thank you, I was going to withdraw my second.

CHAIRMAN PATE: I will allow that. I think it will make it a lot easier for us to work with the document for your consideration at the next meeting. Tom.

MR. FOTE: If I remember right, we're going along this course and the council is not because the plan doesn't allow for the paybacks at all. So we're going in a new direction, as the commission has done all along over the years, and basically looking at a new way of managing fisheries and then maybe the council will come along.

But that's why I'm a little confused here. We were looking at all kinds of options that can make a plan work. The reason the council wasn't going along is because it wasn't allowed through the plan; and if I'm wrong, somebody refresh my memory.

So with doing that, we should look at all the options. Now, we'll wind up we have to get this plan assimilated between the council and the commission, but let's look for all the options and put them on the table.

CHAIRMAN PATE: Mike has a comment to make about the intent of the original motion that we need to get cleared up.

MR. LEWIS: Thank you, Mr. Chairman. I just wanted to point out

that given the changes to the timing that we're creating by not passing this for public hearing, or approving it for public hearing at this point, is if the board had the intention of actually having this in place for 2003, it seems highly unlikely if we're going to wait until February to even approve it for public hearing.

It's going to be very difficult to have it in place so it could actually have an impact on what happens to the creation of the quota in 2004 and any overages that may occur in 2003. We could still work it out possibly, but I just wanted to point out the fact that it might be a little more difficult.

CHAIRMAN PATE: And, honestly, I had forgotten the original motion that had gotten us headed down this path, but I, for the last several weeks, have perceived this is something that, if approved, would apply to the 2004 fishing season.

Since we're so close to the beginning of the 2003, it's certainly unwise to expect the public to fully embrace what we're trying to do on such short notice. So if it's agreeable to everyone, I would like to proceed with the goal of having these in place for 2004. I see no disagreement with that, so the record will show that by consent we will have that as the goal for this task. David Borden.

MR. BORDEN: Thanks, Mr. Chairman. Just so that I clearly understand this, the actions in 2003 will be the basis for the calculations in 2004; is that correct?

CHAIRMAN PATE: Yes, that's correct. Gordon.

MR. COLVIN: Factoring together everything I think I know, I'm inclined to agree with the chairman's idea of scheduling. I say that because, again, I made the original motion, and it was specific to wanting to have it in place for 2003.

That anticipated the prospect that there might be some significant problems that occurred this year that ought to be addressed, rather than go to a seventh consecutive year of large-scale recreational exceedances.

However, what I think I know is that on a coastwide basis, based on early word out of Mid-Atlantic Council staff, we're not facing that situation. Now, as I said, I'll know more by the end of the week when the Monitoring Committee meets.

I would want to keep open the slight possibility that if in fact there are significant problems somewhere, that we might want to accelerate the process, Mr. Chairman. I would just hope that we can keep open that slight possibility that we would accelerate the process at our joint meeting if in fact we learned of problems that warranted it. I don't think we're going to, but I think that I wouldn't want to close that window entirely.

CHAIRMAN PATE: That's a good suggestion, Gordon, and we'll work with that idea in mind; and from what I've seen in our state at least, it looks like we're way under what our harvest was last year, so it may not be the sense of urgency that we had originally. We will keep that option in mind when we meet in Duck. Pete.

MR. JENSEN: Just an understanding. Does this mean that the staff is not going to take to undertake to revise this document, and we're going to have a longer delay or is the staff going to go ahead and revise it in accordance with the discussions we have had today and bring it back as soon as possible?

CHAIRMAN PATE: The latter of that, yes. In fact, the hope is that it will be available to you prior to our joint meeting in Duck; and if it becomes necessary to discuss it in more detail at that point, we can do so. Gil.

MR. POPE: Thank you. Then it will become a document of issues and then options, issues and then options. So, in other words, I viewed the rollover as an issue that should be Issue 1 and then under that have options. That's kind of the way that I'm looking at this; right?

CHAIRMAN PATE: That's correct.

MR. POPE: The other thing, Tom Fote said something that really struck me just a minute ago that the public views this in a certain way, the public has certain things that it wants to see out of a fishery, we respond to that, and then we come up with these plans that we want, and then we do our calculations, we let our scientists go to work on it or biologists and so on, so that seems to be the process that goes; and if we have an idea of rollovers and it butts up against the scientific formula or something that says, no, you can't do that, it just seems to be funny that it seems like a backwards thing that we should be saying this what we want and how can we figure out to do it scientifically. Thank you.

CHAIRMAN PATE: Okay, we need to wrap this up. We've still got quite a few items to get through on the agenda. David, you have one quick comment.

DR. PIERCE: I think we should wrap it up. With regard to the last option, though, I would like to make a point. Mike did acknowledge at the very beginning of his presentation that Option 6 was a bit difficult to understand, and it is.

It took me a while to read it and reread it before I understood it and just a suggestion for improvement. Be very specific with regard to the option. Indicate that it represents an overage, recreational overage of 2 million pounds, and then give another example with an overage of 1 million pounds. I think that will make it a lot clearer to the public as to what we're trying to accomplish with this option.

CHAIRMAN PATE: Okay, thank you very much. I know all this discussion is going to be real helpful to the staff for trying to get something meaningful put together on this. The next item on the agenda is the technical committee report, Steve Doctor.

MR. STEVE DOCTOR: Thank you, Mr. Chairman. On October 23rd the technical committee met with the goal of developing criteria for evaluation of state conservation equivalency proposals.

In both the summer flounder and scup management plans, there is a recreational harvest limit which has been subdivided to state harvest limits. The states are responsible for creating bag and creel limits and seasonal closures which will attain these harvest limits.

The technical committee must review the proposed regulations submitted by the states and evaluate the potential to restrict the harvest within the states to the board-approved harvest limits.

It is a high priority of the management board and the technical committee that these harvest limits are attained and not exceeded.

After much discussion, the technical committee decided that the method for evaluating the proposals for conservation equivalency shall remain the same as last year with the following caveats:

It is the consensus of the committee that the quality of the data improves as data is taken from larger geographical areas

because the sample size increases and the error level diminishes as the sample size increases.

For example, coastwide data is better than regional data and regional data is better than state data. Because the concept of conservation equivalency in regulatory decisions are applied on a state level, the state level is the highest level that the data can be practically subdivided and retain the desired precision.

For this reason, the technical committee recommends that in lieu of regional coastal regulations, that the state level regulation be the lowest level of division for regulation. Splits into modes and areas below state level will increase the risk that the regulations will not achieve the desired harvest levels and increase the probability of underages or overages.

In the case of scup, regional tables have been used for regulation in recent years. It is recommended that regional tables continue to be used for management.

There was also consensus opinion that a uniform size limit for scup with different creel and seasonal closures, if needed by the states, would eliminate one of the variables which would make retrospective analysis of regulatory effects available in the future.

Again, in the case of scup, splits below the state level are not in the best interest of effective harvest regulation. The technical committee had further discussions on the use of MRFSS data and alternate data that states could use to improve the likelihood of reaching and not exceeding the harvest limits.

The MRFSS dataset is designed to provide estimates of harvest of fish at the coastal and state level. It was not designed to make estimates of the size composition of the harvest, and this leads to potential problems from the data used for size and creel tables.

Because it was not designed for this task, it does not mean that it cannot be used for this purpose. If sample sizes are large enough, it is the opinion of the technical committee that it can be used for this task quite effectively.

To supplement potential inadequacies in the MRFSS data, the technical committee agreed to evaluate proposals which use data

obtained by the states for size and creel tables if the data can be proven to better reflect the catch composition of that state.

Also, if the state size and creel tables do not have sufficient intercepts to produce viable sized creel tables, the table of a neighboring state will be considered subject to technical committee review for use.

There was an agreement that percentage of harvest by wave, as used in the scup plan last year, is a viable alternative to the weibull distribution and is a compelling reason to use this alternative.

There are indications that the timing of harvest has changed as the size of harvestable fish has increased in recent years. This analysis is confused by seasonal closures, so the consensus was to continue using the reference period of 1994 to '98 for summer flounder unless compelling evidence of a shift in seasonal harvest distribution can be proven and the effects of seasonal closures can be quantified.

The effective recruitment for short-term seasonal closures was discussed. There can be many recruitment effects, state to state, area to area, and temporal, all of which may vary in intensity.

The one recruitment effect which can be ameliorated by regulations is the recovered harvest from closures of short time periods. It is therefore recommended that intraseasonal closures be of a duration of no less than two weeks.

If a state needs a closure of less than the total of two weeks to obtain the harvest goal, it would be allowed. It is the opinion of the technical committee that one or more day closures per week over several weeks would not reach the target reduction.

Realizing that the increased size limit has possibly shifted harvest away from shore-bound anglers to offshore anglers, though analysis has not been done, the technical committee was asked by a member to evaluate a split bag limit of one smaller fish and several larger fish.

The technical committee felt that the tools to evaluate such proposals do not exist at this time. The committee feels that increased time to review individual state proposals prior to table review will strongly increase the likelihood of proper

review of proposals.

The committee strongly recommends that all state proposals are submitted to the technical committee before submission to the board for approval. The goal of the committee continues to be using the best data available to help each state produce viable management options, which will come as close as possible to meeting the harvest limits.

By the elimination of splits by modes within states, we believe this goal can be obtained while allowing each state the flexibility of conservation equivalency. Thank you.

CHAIRMAN PATE: Thank you, Steve. Any questions of Steve? Gordon.

MR. COLVIN: I don't have any questions, but I want to thank the technical committee for this work. I think this another one of my motions, Mr. Chairman, that asked for this kind of guidance, and I very much appreciate receiving a clear consensus viewpoint of the technical committee on these complex issues.

It's very helpful, and, Steve, I thank you and your committee for producing it for us. Mr. Chairman, what's our intention with respect to these recommendations? Is a motion in order to accept these recommendations and direct their use in the development of proposals for 2003?

MR. LEWIS: Well, for example, Gordon, the short answer is I don't think it's necessary at this point to make a motion to accept the recommendations.

The issue that stands before us, of course, for example, with scup is that the addendum that was in place to allow for conservation equivalency in the scup fishery sunset at the end of this year.

And so should the board decide they want to go forward with conservation equivalency in scup for 2003, an entirely new addendum would be required. And so when the board or should the board direct staff to generate said addendum, you can just make sure that it's fairly clearly that if you want to go ahead and take the recommendation of the tech committee, in this case with regard to mode splits, for example, to not have those included as an option in the addendum itself.

MR. COLVIN: And with respect to fluke?

MR. LEWIS: Let me confer with Steve on this.

CHAIRMAN PATE: Gordon, if you are inclined to make a motion, please do so.

MR. COLVIN: Mr. Chairman, I move that the board accept the recommendations of the technical committee and direct staff to apply these recommendations as necessary in the development of addenda or directions to the states with respect to the development of their 2003 fluke and scup proposals.

CHAIRMAN PATE: Second to the motion?

MR. BORDEN: Second.

CHAIRMAN PATE: Second by David Borden. Discussion? David Pierce.

DR. PIERCE: I am tempted to support the motion. However, there is one very important aspect of these recommendations from the technical committee that troubles me, and that's the one regarding modes.

I think we all recognize that the state of Massachusetts has for a few years now raised a very important issue regarding party and charter boat recreational fishing for scup versus other forms of recreational fishing for scup, and at previous meetings this board has allowed separate treatment of those particular modes for a number of very good reasons.

So if this motion was to pass, the treatment of the party and charter boats for scup would now be no longer there, and we would get a recommendation from the technical committee that would resurface many of the issues and problems that we've had with the party and charter boat fishery in Massachusetts, and I don't want to go there.

I think it's premature for us to come to a conclusion that indeed we cannot treat that party and charter boat fishery for scup separately. This is the first I've seen of this document. It was just passed out this morning.

I have not had an opportunity to review where we've been and how we got to where we are now on this particular issue. I think it would be a great disservice to the charter and party boat fishery for scup in Massachusetts or elsewhere, but obviously

I'm speaking on behalf of Massachusetts, to immediately at this meeting instruct the technical committee not to provide us, this board, with a specific recommendation for that mode at our next meeting when we discuss what the limits will be.

So I would move to amend the motion, Mr. Chairman, to strike the guidance, to not include the guidance that pertains to the splitting of modes. Maybe a motion is not necessary if the maker of the motion wouldn't --

MR. COLVIN: No.

DR. PIERCE: Okay, I figured not, Gordon. But be mindful of the fact that this is going to reopen a lot of old wounds and lead to some debate that will be a rehash of much of the debate we've already had.

I thought this issue was already dealt with effectively at previous board meetings, actions taken by this committee to allow the separate treatment.

For us to say that suddenly the data are not precise enough for us to deal with the individual modes is a bit inconsistent with some previous actions that we've taken on other species, tautog, for example. We all know this information is relatively imprecise; catch-curve information, for example, and calculating a mortality for tautog in the recreational fishery. This is not advisable.

CHAIRMAN PATE: Thank you, David. I have the same concerns from the North Carolina perspective; not so much within modes, but as within the state where we have such a clear split in our recreational landings of summer flounder between Cape Hatteras north and Cape Hatteras south.

We have virtually none south of Cape Hatteras and 96 percent of the landings occurring north of there. So not being able to use that information for our management purposes will be a handicap, I think. Ernie.

MR. BECKWITH: Thank you, Mr. Chairman. I just want to follow up on what Dave was saying, and then I have another question I want to ask.

I can't recall how we dealt with allowing a split of modes in the scup fishery. Was that by addendum or was that by motion? I really need to know what the past process was.

MR. LEWIS: That was Addendum VII, which was the scup; the first time that we ever got around to actually allowing conservation equivalency in scup. Dr. Pierce is correct in that there was a lot of discussion with regard to the possibility of allowing mode splits.

The criteria that was used last year was a 30 percent standard error by mode in the scup fishery. If you had more than 30 percent standard error in each mode, you were not allowed to separate your fishery by mode.

However, that was the only criteria that was involved. What the tech committee is trying to say is that is probably an insufficient criteria to use to determine whether or not it will have the desired effect on the actual fishing effort.

The tech committee doesn't feel confident in their ability to evaluate the effectiveness of proposed regulations for a mode split as a result of the precision of the data.

MR. BECKWITH: Thanks, Mike. And as you mentioned it, it is coming back to me. So we have an addendum that says we can split mode, and then we've got a recommendation from the tech committee that we shouldn't do that.

That sort of leaves us in never, never Land until we can finally -- The way I see it, I think it's a very critical issue for a lot of states. It was back in Connecticut this year and fortunately we didn't meet the PSE, so we couldn't do it.

But it's an issue that isn't going away, and we really need to know where we're going with this thing. I'm uncomfortable that we have an addendum that says we can do it, and yet now we're going down the road that says we can't do it, which is fine, but I think if that's where we're going to end up, we need to probably put that into an addendum or change the plan.

MR. LEWIS: It's important to note -- and I tried to make it clear a little earlier -- that the addendum that was in place, Addendum VII that I referred to a moment ago that allowed conservation equivalency in scup, sunsets at the end of 2002.

Therefore, should the board decide they want to go forward with conservation equivalency in 2003, an entirely new addendum will be required, and so what the technical committee is trying to do here is to make the board aware of their reservations with

regard to including a provision for mode splits in the scup fishery should the board decide to go forward with allowing conservation equivalency and therefore write a new addendum for 2003.

So to directly address your comment, Ernie, there is not an addendum in place for 2003 allowing conservation equivalency in scup. Again, it no longer exists in the context of 2003.

MR. BECKWITH: Thank you, Mike, that's very helpful. I now understand where we are. The second thing I wanted to do was to ask a question. In Steve's handout on page 3, paragraph 3, it says here it is not recommended that an intraseason closure be of a duration of less than two weeks.

That just means in-season, an in-season closure? Then if that's correct, then the next sentence it says but if a state needs a closure of less than two weeks to attain a harvest, it would be allowed. I mean, that's contradictory, isn't it?

MR. DOCTOR: What that paragraph tries to address is in past years people were trying to make closures of like one day a week over a month period. What it's saying is like if you were going to have an intraseason closure, say, that a state needed three weeks of closure or six weeks of closure over a summer period, that each period be broken into no less than two weeks.

But if their overall reduction was, say, they only needed ten days, then a seasonal closure of less than two weeks would be permitted. If the overall closure they needed was less than two weeks, then it would be permitted, the total closure.

CHAIRMAN PATE: But it would still have to be ten continuous days?

MR. DOCTOR: Continuous days, correct.

CHAIRMAN PATE: Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman, a quick question for the technical members here. Is the discomfort with the mode splits a function of the high PSE value? If we had a lower PSE value, would they change their position on this or could you elaborate on that?

MR. DOCTOR: Well, it's the stated goal of the management board

and the technical committee that harvest limits not be exceeded and it was the opinion of the technical committee when the data is broken into smaller and smaller areas, that the variability does go up and that the likelihood of an underage or overage increases as the data gets broken into smaller and smaller pieces.

MR. BORDEN: Okay, I understand that. But on my question, if we had set, and just use scup as the example, instead of having 30 percent PSE, if we had 20 percent PSE or 10 percent PSE, would the technical advice be different?

MR. DOCTOR: That was not really evaluated.

CHAIRMAN PATE: Dave Pierce.

DR. PIERCE: There is no surprise here regarding the fact that if you go to regional approach, the sample size increases. Therefore, the error diminishes. We talked about that earlier this morning with regard to fluke, and we actually went with an option that includes the 15 percent PSE instead of the regionalwide 3.4 percent.

So we know this is a fact; it's no surprise here. We've discussed this already at previous board meetings, we've discussed it during the development of the addendum that resulted in our agreeing that we should split the modes.

I see no reason for us to be suddenly motivated to do something differently. I'll say again that I'm very uncomfortable with receiving this document at this point in time without having gotten it beforehand to refresh my memory about a lot of the issues that relate to the splitting of the modes.

I don't think the technical committee has done an adequate job describing the nature of their concerns. For example, in the text it says, in the first paragraph on the second page I guess it is, that the splits into modes in areas below the state level will only increase the risk that regulations will not achieve desired harvest levels.

All right, well, what's the nature of that increased risk? How much increased risk? And increase the probability of overages and underages; well, how much of the probability will increase?

To me, this is still very soft and I'm very uncomfortable with

it, and that's why I made the motion that I did, which is not on the board. I made the motion. I don't know if anybody seconded it. Perhaps no one did because it wasn't on the board, but I would like to make sure that it is. What is the situation, Mr. Chairman, regarding the motion that I made?

CHAIRMAN PATE: I don't recall which motion you made.

DR. PIERCE: I made a motion to amend the motion that is on the screen, and that amendment was to strike the recommendation that we not split the recreational measures into modes.

CHAIRMAN PATE: I'm sorry, David --

DR. PIERCE: In other words, the technical committee is saying don't use modes, charter and party boat versus hand line, for example, and I'm saying that it still should be allowed, that we need that guidance from the technical committee as to what the individual measures should be by mode.

I move to amend to strike the recommendation that we not split the recreational -- yes, that would be it. We need to continue with the approach that we have used up until this time, specifically the approach that we used for the year 2002.

CHAIRMAN PATE: Is there a second to that?

MR. BECKWITH: I'll second it.

CHAIRMAN PATE: Second by Ernie Beckwith. If this passes, I don't know where that leaves us in the context of the broader recommendation from the technical committee.

This is just one small component of it and I've got a feeling we're getting ready to get ourselves wrapped around the axle on this real tight. Gordon.

MR. COLVIN: Again, there is a policy issue here and a technical issue here. The policy is does the board believe that so long as we have either state-by-state or regional management programs in place, that it's appropriate from a policy perspective to regulate different modes of the recreational fishery differently.

That's a policy question; and in the past, at least, there has been some support from the board as policy matters to do that,

or at least to give, in the case of fluke and scup last year, to give the states the option to make that policy call.

And I think most of us would believe that if we're going to do a state-by-state quota management program, that we want to give the states the flexibility to make those policy judgments.

And so it's appropriate and that was the board's decision last year, certainly with respect to scup, and it's been our approach with respect to fluke for several years now. But that's not the issue that's really before us here.

The issue that's before us here is a technical issue, not a policy issue, and it boils down to can we meaningfully evaluate state proposals that are based on regulating different modes differently and have assurance that the outcome of that evaluation is real?

The technical committee is telling us, no, we can't. I think it gets back to the question that David Borden asked, and maybe there is a different approach to the issue that would resolve the problem.

I don't think -- I am not at all comfortable with the amendment to the motion because it basically says ignore the technical advice. You know, technical committee, you will evaluate these mode-specific proposals even though you've told us that the evaluation is meaningless.

I don't think we should be sending that advice. I think that's a bad decision on the part of the board. But what we could do is go back to the technical committee and say we want to have mode splits or we want to have that option.

So tell us, if you could, what exactly do we need to produce in terms of mode-specific data that would enable to you to do the job you need to do, and I would be comfortable with that kind of direction to the technical committee. I am not comfortable with this motion.

CHAIRMAN PATE: Before we have any more comments from the board, I would like to point out that there is a parallel effort that other staff of the commission is undertaking to looking at conservation equivalency in a broader context than just this one single plan, and I will ask Bob Beal to speak to that in a little bit more detail and where we are with regards to the

timing of that discussion.

MR. BEAL: Thank you, Mr. Chairman. As everyone is aware, there's a number of concerns with conservation equivalency on these three species as well as with a lot of other commission species.

So a group was formed, a technical level group with some managers, some scientists, and some middle level folks, to deal with conservation equivalency on the whole, across all the species that the commission deals with.

The first meeting of this group is going to be December 3rd and 4th down in Florida. That's going to be kind of step one and they're going to deal with all the issues. You know, everything is fair game to that group; mode splits and what sideboards, if any, should the commission put on conservation equivalency across all species or specific to any species.

It's anticipated that the work out of that group is going to take a few meetings to get a final product. Hopefully, at our annual meeting next year we'll have something for the Policy Board or full commission, whoever is in existence at that time, to sign off on that document.

CHAIRMAN PATE: Given that effort and the sense of disagreement within this group, I'm wondering if these motions aren't premature.

We can certainly go ahead and act on them one way or another and apply them to this year, but the idea of how conservation equivalency is going to be structured, limited, and used will be more thoroughly discussed by this work group and maybe more thoughtfully decided upon after they have concluded their task. Gordon.

MR. COLVIN: I just need to appreciate the timing issue a little better, Mr. Chairman, in order to understand that. We're going to have to start developing our recreational proposals for fluke, scup, and sea bass in about two and a half to three weeks, and are we going to have clear guidance from the commission's larger conservation equivalency policy setting in that timeframe?

MR. BEAL: No, they'll just have one meeting and it's going to be the first in a series, so you won't have a product.

MR. COLVIN: I still think we've got to give ourselves and our technical committee and our staff some direction with respect to 2003, Mr. Chairman.

CHAIRMAN PATE: Okay, I'm going to take a few more comments and then we're going to start voting. We're running out of time. David Borden.

MR. BORDEN: Thank you, Mr. Chairman. It seems to me with all the planning issues before us, one option is simply to approve the original motion with the exception of the splits, direct, as Gordon had suggested, that the technical committee give us guidance at the joint meeting with the Mid-Atlantic Council specifically on the issues that he identified, and afford states like Massachusetts or Connecticut or any other state that thinks that there should be mode splits, to forward their perspectives to the technical committee at the time that they provide us with that guidance.

And what that would put us in the position of doing is essentially we would have adopted the policy with the exception of the mode splits, and that we would add to the agenda for that meeting and finalize a position, and all of this would be done in the next three weeks, so that in fact we could meet the timeframe that Gordon just outlined.

CHAIRMAN PATE: Does his motion need to be perfected to accomplish that?

MR. BORDEN: Yes, I think the original motion would have to be slightly perfected to include that.

CHAIRMAN PATE: Okay, I want to go ahead and deal with the motion to amend before we get any further deeper into the details of the original motion. So, Tom, I'll take one quick comment and then we've got to do this.

MR. FOTE: When we're discussing modes, and one of the questions I had asked of the technical committee was how we deal with summer flounder in the bays and the coasts because they're different, and it says no tools are available.

I think the question we asked was what tools were necessary and how would a state do that, and that's another part of this mode question because basically I keep asking that of the Delaware Bay and always the same question gets asked of Maryland.

In the Chesapeake Bay, you can't catch a legal-sized summer flounder because the size limit is so big. How do we address this and basically -- they might not like the answer, where it's a two-week season and a small bag limit because you're going to be able to catch a lot of fish. We need to be able to have that tool available. That's one of the questions I asked.

CHAIRMAN PATE: Okay, thanks. Briefly, Eric.

MR. SCHWAAB: I've been trying to get in for a little while. I'll wait until after you deal with the move to amend because my comment is to the main motion, if I'll have that opportunity.

CHAIRMAN PATE: Yes, I'll make sure you do. All those in favor of the motion to amend, please signify by raising your right hand, one in favor; all opposed, ten opposed; null votes, none registered; abstentions, one abstention. The motion to amend fails. This brings us back to the discussion on the original motion. Mr. Schwaab.

MR. SCHWAAB: Thank you, Mr. Chairman. I have some concerns with this, which is why I couldn't in the broader context for several of the reasons that have been mentioned. Our issue is broader than mode splits.

It deals specifically with some of these sub-state level options as well as potential other options that might be used; for example, split bag limits and that sort of thing.

The document, to me, is a little bit confusing because it goes close to categorically excluding certain of those practices, and yet it acknowledges specifically the opportunity and the validity of the substitution of alternative state level data to perhaps justify some of these things.

And from that perspective, I'm a little bit confused. And just to use one example in the case of summer flounder, we've spent the last year collecting over 6,000 pieces of data that we expect to use to evaluate whether some sub-state level split in minimum sizes might be appropriate for summer flounder.

I would not want and couldn't support a motion at this point, or an action of the board at this point that would preclude putting that before the technical committee and asking them to evaluate it on its technical merits.

CHAIRMAN PATE: Thank you, Eric. If there are no more comments

of a different point within the context of that motion, I would like to vote on it. All those in favor of the motion, please signify by raising your right hand -- I'm sorry, we'll give you a minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN PATE: I'm sorry, I overlooked the idea that you put forth earlier on perfecting this motion. I'm trying to move us along and skipped that. I apologize.

MR. BORDEN: Mr. Chairman, I haven't totally perfected the language here, so I'll be open to any improvements by the wordsmiths around the table. I would suggest that we add a sentence that says: "The board further requests the technical committee to examine the issue of mode splits and advise the board at the December meeting as to how and when they should be allowed.

CHAIRMAN PATE: Can we include area splits in that?

MR. BORDEN: That's fine with me, Mr. Chairman.

CHAIRMAN PATE: Gordon.

MR. COLVIN: I'm going to tinker with it just a little bit, but I think we're getting close.

CHAIRMAN PATE: Okay, Steve has a comment on that idea.

MR. DOCTOR: The technical committee is well aware of the board's desire to split into modes, and basically what the technical committee is saying is that we have looked at the mode splits, and we have tried to find ways to evaluate them. And as a consensus, we have not been able to come up with a set of criteria to effectively evaluate mode splits.

CHAIRMAN PATE: Would the same conclusion apply to area splits?

MR. DOCTOR: Yes, sir.

CHAIRMAN PATE: David.

MR. BORDEN: Let me go back and restate what my original intent was when I originally suggested this, and that is you have a number of states that are interested in making this mechanism

work sitting around the table, Massachusetts in particular.

So what I would envision is there may be representatives on some staff that are not technical committee members, and therefore this would afford those states the opportunity to go back and perfect a proposal that the technical committee could look at that they might not have been exposed to before.

It would just be one last opportunity, if you will, to try to make this accommodate the interests around the table and make this type of system work.

CHAIRMAN PATE: Dave Pierce.

DR. PIERCE: Yes, I agree with David, especially because Steve said that the technical committee could not arrive at a consensus. Obviously, they didn't vote.

I'm sure there were some committee members that felt it could be done or should be done. I mean, I'm uncomfortable, again, with the summary of what happened at that technical committee meeting. First time looking at it, my technical committee member's opinion on this hasn't been conveyed to me.

This motion, as suggested by David, I believe would address my concerns because it does request some further examination. I would like the technical committee to revisit this issue and give us some further advice at our next meeting.

CHAIRMAN PATE: Gordon, do you accept these changes?

MR. COLVIN: Well, I think that last sentence could use just a little bit more tweaking, and I'm troubled by the response that just came back from the chairman of the technical committee.

I don't want to ask them the same question again and simply get the same answer in three weeks. So before I do something, if I could ask Steve a question -- Steve, I understand that the technical committee believes that the data does not exist at the present time to develop mode-specific or geographic-specific management measures within a state that can be effectively evaluated.

I understand that and I think that's how I read the report. My question goes to the next level, which is can the technical committee provide states with advice on what kind of datasets

they would need to develop and produce that could get us to the point where such management programs could be effectively evaluated. Did you get to that in your discussion?

MR. DOCTOR: Let me see if I can meet you halfway here. The problem is when these proposals get submitted to the technical committee, we're asked to say yes or no, will this meet the harvest restrictions?

What the technical committee is saying is that the level of uncertainty, when you break into these modes, is such that it runs the risk of overage or underage.

One way that we can look at these mode splits is look -- most of the mode splits that come up and have been applied in the past is that we can look at the past performance of the mode splits. We have a few years in here, so we can do that.

That's one way the technical committee may be able to look at it. When I gave the presentation a little bit ago, I said the technical committee sat down and tried to do exact criteria just like the board is asking for, what is required to do these mode splits?

And nobody liked mode splits. There was no dissenting opinion on the mode splits. The technical committee was completely unanimous that it's impossible to evaluate the effect of mode splits.

But what they did agree on, and the technical committee is to the point of unity and they've reviewed enough of these proposals now, that if a state wants to do a mode split, your technical committee representative knows what data is needed to do it.

Submit the proposal, we'll look at it, and we'll give an evaluation, but the technical committee is not going to put their neck out and say whether or not it's going to meet your harvest restriction.

We're telling you up front that the mode splits make it impossible to determine whether or not you're going to meet the harvest restriction. But we will look at the proposal and we'll give our guidance as far as we think it might make it, we think it might not make it. So if you want to go ahead and do mode splits, submit them.

The technical committee knows what criteria is needed, they know what data is needed, and we can progress from there. I hope that's some help.

CHAIRMAN PATE: And that's status quo.

MR. DOCTOR: Yes, status quo.

CHAIRMAN PATE: Eric.

MR. SCHWAAB: So I don't understand what this motion does if -- I just want to be clear on what exactly this is saying that we have to do or not do.

CHAIRMAN PATE: Pete.

MR JENSEN: Mr. Chairman, in view of your original opinion that a motion was not needed and it is now apparent that we don't know how to do a motion on this, I would make a motion to table.

CHAIRMAN PATE: We have a motion to table and a second. Second by Pat Augustine. Pete, table until when?

MR. JENSEN: The December meeting -- well, I guess time indefinite really, to give the technical committee time to digest this discussion and perhaps revise their guidance. In the meantime, I think it's out there for guidance, but it doesn't have the imputer of the management board saying it must be this.

CHAIRMAN PATE: Okay, thank you. A second to the motion by Pat Augustine. Is that correct, Mr. Augustine? All those in favor of the motion to table, please signify by raising your right hand, eight in favor; all opposed, four opposed; null votes, none registered; abstentions, none registered.

The original motion is tabled until the technical committee has a chance to further digest the sentiment and discussion of today's meeting. Mr. Colvin.

MR. COLVIN: Thank you, Mr. Chairman. Here's where I think we are -- and I thank the chairman of the technical committee for his candor. The technical committee has advised us how they're going to be able to evaluate our proposals -- done.

We asked for that advice and we got it. We haven't accepted it

Explicitly, but, nonetheless, I think it's very clear how state proposals are going to be reviewed and the kind of advice that's going to come back from the technical committee. I think this discussion this morning has clarified that.

What remains to be addressed specifically, I guess, according to what Mike Lewis said earlier, is a 2003 scup addendum. Is that right? I mean, that has to be done. We can't not do anything and we'll have to begin that, I guess, following the upcoming joint meeting, or at that time; and I'm wondering, do we want to give the staff any guidance at this point on how to start?

For instance, it is not a foregone conclusion that we would necessarily continue a state-by-state approach to recreational scup management, and so there is the first big decision to be made.

I don't know, like most people, I want to see the numbers before I get too far down the path, but, nonetheless, you know, at some point we've got to give some guidance to staff here.

CHAIRMAN PATE: Mike Lewis has a comment on that, Gordon.

MR. LEWIS: Thank you, Mr. Chairman. Gordon, you're correct and the same time -- you're correct in that a new addendum will need to be developed before we can go forward with conservation equivalency with scup.

And, of course, the board can also choose to go with coastwide for summer flounder. That's also an option. We don't necessarily have to continue with conservation equivalency with summer flounder.

This could all be academic, depending on what numbers we see. so I just want to point out that possibility. The timing of how it worked out last year was the board directed staff to develop the addendum at the December meeting.

Because of the way that things worked out, I was able to get the addendum together and approved prior to when the proposals were due, so the states knew under what criteria their proposals would be evaluated.

I think it's probably important to wait until after the technical and monitoring committee has had an opportunity to meet, make their recommendations to the board and council in

December before the board makes a decision to go with directing staff towards developing another conservation equivalency for scup. Thank you.

CHAIRMAN PATE: I failed to note at the beginning of the meeting that we did have an amendment to the agenda, and that is that Item Number 9, the 2002 FMP Review, has been dropped. Staff was not able to prepare that document prior to the meeting.

It's not time sensitive anyway, so we'll go on with that. We have remaining the planning group report and the compliance review, neither of which are action items, so I'm going to ask Mike to move forward with -- we've got two minutes. If you're worth your salt, you can get it in, real quick.

MR. LEWIS: Well, I'm going to try to be worth my salt here. I'm not entirely sure if everybody has gotten a copy of the planning group memo. It did go out in your briefing book and we do have additional copies available here at this time. If anybody would like one, please raise your hand and we can get one to you.

The planning group met on September 26, 2002. I'm not entirely sure if everybody is aware of what this group was. It was generated last year as just kind of a very informal group to help with some prioritization and tasking, just for staff, to try to help staff get a handle on all the various and sundry issues that were swirling about our heads last year.

This year was no less difficult, no less contentious, and so the board chair and the Mid-Atlantic Council chair and staff decided that it might be appropriate to go ahead and get that together again.

Before I move forward with the recommendations from that group, it's very important that everybody notes that this is not a deliberative group. This is not a group making any decisions in any way, shape, or form.

It is more making recommendations to the board in terms of how to concentrate effort, both on the part of the staff and the part of the management board, to try to accomplish the goals that the board has set, so it's not trying to alter any goals.

It's just trying to address things and help staff and the board move forward with the desires. I'm going to go ahead and dive right in as fast as I can here.

Quota rollovers for unused commercial allocation, we have already touched on ad nauseum here. The technical committee has certainly discussed quota rollovers on a number of occasions. I've got a page and a half here of technical committee discussion that I have read into the record on at least two occasions, historically.

I just wanted to note that the 2002 planning group addressed this issue again; and based on technical committee recommendations, suggested that quota rollovers between winter periods in the scup fishery be permitted; for example, Winter 1 to Winter 2.

The group did not think that rolling quota within a year between the summer period would be appropriate as a result of the different fishermen and gears being used between the winter and the summer periods.

They did discuss the rollovers between years. No real clear consensus was reached except that the tech committee certainly had and believes that a rolling over between years would cause a great deal of issues in terms of accounting, setting the total allowable landings, and run the risk of exceeding the target exploitation rate.

So it's important from a technical standpoint that the rollovers within years are understood by the board and that they're probably not a good idea from a technical standpoint.

Recreational overages. Again, with summer flounder we have addressed this issue here. It's been addressed for summer flounder in this memo. I do note the motion that Gordon had made at our last meeting which resulted in Addendum VIII having been developed.

I think we have touched on the sufficiently that I don't really need to go over it any more at this point, although I certainly can if anybody has any questions once I'm done running through this real quick.

Again, it's important to note that should the board decide they want to go ahead with this issue with scup, they could decide to task staff with developing similar options for scup in terms of recreational overage repayment.

Multi-year management program. There's been a lot of talk about

that, trying to make it a little simpler from an administrative burden standpoint from year to year, as well as for fishermen to understand what is happening and not need to change all of the recreational regulations on a year-to-year basis.

The staff, both for Mid-Atlantic Council and the commission, have discussed that, and the NRCC is currently evaluating the feasibility of a multi-year management program. I do not currently have any recommendations from that group at this time with regard to that issue.

Summer flounder, a recalculation of biological reference points. We've had a couple of motions over the past couple of years that have redirected or directed the staff to try to develop some different options for biological reference points.

There is a motion to establish a target rate in the range of 0.26 to 0.4 and a threshold range of 0.4 to 0.6. An addendum to accomplish that task has not yet been drafted, but there are some pretty clear reasons behind it.

Last year, during the Monitoring Committee discussions, there was also a meeting of the Statistical and Science Committee that tried to get a working group together in order to generate different ways of calculating biological reference points and they were unable to come to consensus.

They decided at that point that the current biological reference points, as developed by Mark Ducera, were the most appropriate at this time. In addition, the 35th SARC, which just occurred this summer, also evaluated reference points and whether or not there was a need to go ahead and change those in the plan.

And at this time, the current threshold of F 0.26 was identified as making the most sense. No better estimate was available at that time, and so the SARC did not recommend an alteration of the biological reference point for summer flounder.

Revision of the base year for summer flounder. From a conservation equivalency standpoint, the board has asked on a number of occasions for the monitoring committee to address this.

They have and that has been included in previous monitoring committee and technical reports, as well as in Addendum VIII. That Table 2 is actually the result of the technical committee

evaluation of that particular issue, talking about the different effects that different base years would have.

However, it's important to note that interest has been shown to go early, go 1980 or 1981 through 2000. However, I just want to point out that the MRFSS data for the earlier years is really -- Pre-MRFSS information, rather, is not applicable because the fluke measurements were not done on a species-specific basis.

It was fluke in general, flatfish in general, so that includes winter flounder, witch flounder, yellow tail, all those in one big group, and summer flounder is not separated out by species, therefore, making it inappropriate for any kind of allocation issue.

Excuse me, I apologize, I skipped ahead one. In trying to do this really quickly, I did skip ahead, the allocation of the commercial quota. That was the issue of using pre-MRFSS data for getting recreational allocation and changing recreational allocation was what I was referring to in how the pre-MRFSS data is really inappropriate for that as a result of the lack of species-specific information. I apologize for the confusion there. I'm just trying to rip through this as quickly as possible.

Going back to the issue that I did skip with Option 2, Revision of Base Year for Summer Flounder, the tech committee does believe that the current base year is the most appropriate, that it reflects the regulations that were in place, the landings that were in place -- the last year that there was a coastwide regulations for summer flounder in the recreational fishery.

It's also being the latest so that it reflects the current fishery as close as possible. Mind you, things have certainly changed since then, but it does reflect as close to the current status as possible by using that later date, so going any further back is probably inappropriate.

Development of Addendum XIV to summer flounder, scup, and black sea bass. A motion originally made on August 8, 2001, and readdressed August 6, 2002, tasked staff to begin development of a plan amendment to the summer flounder fishery; at the very least, to address adoption of a mechanism to prevent overharvest of the recreational quota from impacting the commercial quota and vice versa, and an adoption of revised separate MSY-based values for target and threshold fishing mortality rates and biomass levels.

The first issue I think is in the process of being addressed and the planning group believes that it is being addressed through Addendum VIII in trying to use that to address the issue of having the recreational harvest overages impacting the commercial quota.

That is their recommendation, to allow and see if Addendum VIII can address that sufficiently before moving ahead with the development of Addendum XIV.

In addition, for B, the adoption of revised separate MSY-based values for target and threshold fishing mortality rates and biomass levels, it's believed that last year's SSC and technical committee reviews, as well as the SARC review of biological reference points, addresses that adequately and suggests that in fact that it would be inappropriate at this time to change biological reference points for summer flounder.

Black sea bass, the discussion of the development of a tagging study to collect data needed for stock assessment, that is currently underway. The current SARC schedule is to review black sea bass assessment in the fall of 2003.

I'm not entirely sure if that's going to move forward or if it's going to be pushed back again as a result of the tagging study that is underway.

It did start this spring and it will continue this fall, but it's anticipated that perhaps a year from the inception of the study will be required to get any real meaningful data that can be used in the stock assessment out of that, and so it may be required to go ahead and push that assessment back again. We'll have to see how that works out and we'll certainly make sure we communicate any results to you as soon as possible.

Scup, to examine the assessment approach, setting targets and thresholds. The scup assessment did go through the SARC in June of this year. The SARC determined that while the stock is not overfished, a stock status with respect to overfishing cannot currently be evaluated due to major uncertainties in estimating total catch.

Estimates of commercial and recreational discards were identified as the major impediments to development of the analytical stock assessment. There have been countless discussions on this issue.

We're still trying to resolve how we can go about getting some of the information that we do need. There has been discussion with folks up at Woods Hole in terms of trying to sort out exactly what we need and how we can go about getting it.

A proposal was put into Woods Hole this year. Unfortunately, it did not get accepted, and there were some issues associated with it, the details of which I really don't have time to go into right now. But, unfortunately, that problem is not going to be rectified in the immediacy.

The tech committee and the folks up at Woods Hole are going to continue working on ways to get the necessary data so we can hopefully get a meaningful stock assessment for scup as soon as possible.

I don't have any further information in terms of exactly how that's going to be done or the timing of how that's going to be done right now, and I will certainly share that with you, again, as soon as I possibly can.

The resolution of state and federal quota discrepancy. As we know, there is a matter of the discrepancy between the board and the National Marine Fisheries Service in the scup summer period. That has been tabled by the board in August 2002 for discussion in December of 2002, and I won't spend any time on that right now. I'm just letting you know that we certainly are aware of it and intend to discuss it in December.

There is a state - Rhode Island has expressed an interest in giving the states an option of opening their summer period fishery on April 15th rather than May 1; the suggestion reflecting the fact that scup are often available to the floating fish trap fishery prior to the beginning of the current summer period.

Any fish landed before May 1 are currently counted against the Winter 1 period quota, which is often closed by that point in the season.

Both planning groups agreed to the concept, provided it was implemented in every state at the same time so as to prevent the floating fish trap fishery from having an unfair competitive advantage.

We are currently evaluating what management measure would be

necessary to effect this change in both state and federal waters and will communicate that information to the board as soon as we have sorted it out.

We have development of Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass FMP. That was tasked on October 6, 2002. Some issues identified by the working group, where referred to elsewhere as the planning group -- and, again, this is the group that got together last year, October 1 of last year -- include quota rollovers for unused commercial quota, April 15th start the summer period, recreational overages, multi-year management, development of a robust stock assessment, resolution of state and federal quota discrepancy, and commercial quota allocation.

The 2002 planning group recommends that Amendment 15 to the Summer Flounder, Scup, Black Sea Bass FMP not be developed at this time as the above scup management issues were being addressed through other avenues.

I can go through and discuss each of those individually should the board decide to, but I think that time is certainly an issue at this point, and I can do so at a later time.

CHAIRMAN PATE: You did good, thank you. Thank you, Mike, for that very concise -- yes, you got your salt this month -- concise discussion. Tom, I'll take one or two quick comments and then we've got to quit this.

MR. FOTE: I just want a clarification from the chairman, not on this, but something else, so I'll just wait until after you're finished with this discussion.

CHAIRMAN PATE: Okay, thank you. Actually, I would rather not take any discussion on this right now. In addition to that, we have Item Number 8, the 2002 Compliance Review, that we haven't gotten to yet; but since that's not an action item, we'll hold that over until the next meeting of the board. Tom, real quick.

MR. FOTE: Yes, Mr. Chairman. I would like you to give me some direction on how long you think this meeting is going to last on the 11th. The reason I'm asking for that direction is because I'm going to try to make my travel plans since I will not be attending the Mid-Atlantic Council, but just for the commission.

So are you envisioning this board meeting starting at 8:00

o'clock in the morning and going on until wee hours of the night, so I should plan to come in the night before and stay over that night? That's what I'm trying to figure out here and asking for your direction.

CHAIRMAN PATE: Okay, Mike will speak to that.

MR. LEWIS: Thanks very much, Mr. Chairman. I just was given a draft of the Mid-Atlantic Council meeting agenda. Wednesday, December 11th, has been targeted as the summer flounder, scup, and black sea bass day.

The intention is for the board and council to convene at 8:30 to begin summer flounder for 2003 recreational management measures and continue until 12:00, take an hour for lunch, start again at 1:00 for scup, and then go to 3:00 o'clock, and at 3:00 o'clock take up black sea bass. The intent is to get all three in one day.

CHAIRMAN PATE: Most likely it's going to be a long day.

MR. LEWIS: But the intent is to do Wednesday, to do a marathon session and get them all done in one fell swoop.

MR. FOTE: The reason I'm asking this, Mr. Chairman, is because the flights in and out of Norfolk are really very short. So basically if we can't catch a 5:30 flight, then I have to stay over again the extra night. That's all, I'm just asking for a little direction here.

CHAIRMAN PATE: Okay, thank you. Meeting adjourned.

(Whereupon, the meeting was adjourned at 10:15 o'clock a.m., November 19, 2002.)