

**Proceedings of the Atlantic States Marine  
Fisheries Commission's  
Summer Flounder, Scup, and Black Sea Bass  
Management Board**

**December 6, 2005  
Trump Plaza  
Atlantic City, NJ**

Approved February 22, 2006

## ATTENDANCE

### Board Members

David Pierce, Massachusetts DMF  
Mark Gibson, **Chair**, Rhode Island DEM  
Eric Smith, Connecticut DMR  
Gordon Colvin, NYSDEC  
Pat Augustine, New York Gov. Apte.  
Sen. Brian Culhane  
Bruce Freeman, New Jersey DFG&W  
Erling Berg (NJ)  
Ed Goldman, proxy for Sen. Smith (NJ)

Rick Cole (DE)  
Howard King, Maryland DNR  
Bruno Vasta, (MD)  
AC Carpenter (PRFC)  
Jack Travelstead, Virginia MRC  
Preston Pate, North Carolina, DMF  
Pat Kurkul, NMFS

### Ex-Officio Members

#### ASMFC Staff

Toni Kerns  
Robert Beal  
Vince O'Shea

James Fletcher  
Herb Moore, Jr.  
Kathy Zoch  
Tony Bogan  
Philip Curcio  
Ray Bogan  
John R Huer  
Hal Hagaman  
Dan Furlong  
Jessica Coakley  
Michael Doebly  
Paul Huertel  
Phil Juhring  
Allen Hrehousek  
Bill Shillingfurd  
Kirk Moore  
Brooks Mounseade  
Charles Wertz  
Raoul Vingzent

#### Guest

Bruce B. Smith  
Al Rivton  
Phil Rhule  
Jimmy Rhule  
George Darcy  
Bob Pride  
Dennis Kanyuk  
Gary Wallen  
Don Marawtz  
Tom Siciliano  
Laurie Nolan  
Fentress Munden  
Anne Mooney  
Harry C. Applegate  
Mary Lee Benson  
Carl L. Benson  
Russ Dodge  
Frank Blount

Table of Contents

Welcome and Call to Order .....2  
Public Comment .....2  
NMFS Proposed Rule Update .....2  
2006 TAL Specifications .....3

Index of Motions

to move that the 2006 summer flounder quota be 26 million pounds. This motion was by Mr. Augustine and  
seconded by Mr. Vasta. ....3  
I would change that motion to agree with the 23.59 million pounds for 2006 only, .....11  
Move that the 2006 summer flounder quota be 23.59 million pounds. Motion by myself (Mr. Augustine),  
seconded by Mr. Vasta. ....24

ATLANTIC STATES MARINE  
FISHERIES COMMISSION

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

Trump Plaza Hotel  
Atlantic City, New Jersey  
December 6, 2005

Note: Due to a malfunction in recording equipment, a portion of the minutes are missing.

**Welcome and Call to Order**

The meeting of the Summer Flounder, Scup and Black Sea Bass Board of the Atlantic States Marine Fisheries Commission convened in the Trump Plaza Hotel, Atlantic City, New Jersey, on Tuesday, December 6, 2005, and was called to order at 6:00 o'clock, p.m., by Chairman Mark Gibson.

CHAIRMAN MARK GIBSON: Could I have your attention, please. I'm going to call the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Sea Bass Board into session. I think we have everybody here we need.

The first issue on the agenda is the agenda. It's a fairly simplified one that flows from the Galloway meeting. Are there any comments and/or requests for changes to the agenda? Seeing none, **the agenda stands approved as written.**

**Public Comment**

The next agenda is public comment. This public comment is for issues not relating to what is on the agenda right now which is the 2006 specifications. Is there anyone who wants to address this board on issues other

than that? Jim Fletcher.

MR. JAMES FLETCHER: I continue to ask the question, when is the ASMFC going to comply with Amendment 1 when it knows that there is physical waste of a species, and then, for Pat, if the ASMFC does not address that issue where does the public go rather than having to go to court?

In other words, Amendment 1 says to prevent physical waste from any means. We know currently that in the summer flounder fishery we are wasting anywhere -- take your figures from 8 to 11 million pounds of fish. It is a physical waste of fish of dead fish. Address it, please.

CHAIRMAN GIBSON: Thanks for your comments, Jim. Is anyone else wishing to address the board at this time, issues not on, directly on the agenda? Thank you. Seeing none, proceed to the next item which is the update on National Marine Fisheries Service proposed rule for summer flounder specifications. Pat Kurkul, are you going to speak to this?

**NMFS Proposed Rule Update**

MS. PAT KURKUL: Although I think I'm probably telling you everything you already know, the proposed rule was published on November 17<sup>th</sup>. And I can't remember now when the comments -- through December 2<sup>nd</sup>. We accepted comments through December 2<sup>nd</sup>. And so we're beyond the comment process of that proposed rule.

What we proposed was essentially what we had talked about with both the council and the board and that is after looking at the council's proposal, very closely at the council's proposal for the 26 million pounds over the three years using the constant harvest strategy approach, it's our position

that the regulations very clearly require that the fishing mortality targets be achieved on an annual basis, that the constant harvest strategy did not do that, at least in the first year the fishing mortality would be higher than the target level.

So we rejected that strategy and adopted or made a recommendation, anyway, a proposed TAC at this point of 23.59 million pounds which is consistent with a 50 percent probability of achieving the F in 2006 which, as you know, is the minimum probability that we can use in setting the TACs.

CHAIRMAN GIBSON: Thank you, Pat. Any board questions or comments on that update? Seeing none, we move to Agenda Item 5 which is the tabled motion from our last meeting which requires action. Toni.

### **2006 TAL Specifications**

MS. TONI KERNS:

At the annual meeting the board tabled the following motion

**to move that the 2006 summer flounder quota be 26 million pounds. This motion was by Mr. Augustine and seconded by Mr. Vasta.**

This motion was postponed to this meeting so we need to then have discussions on this and vote on this motion.

In front of you I have re-passed out the memo that was distributed at the annual meeting discussing the TALs. If there are any questions on that I will readdress those questions here today; otherwise, we can go forward with discussions on this motion.

CHAIRMAN GIBSON: Any questions for Toni? Howard King.

MR. HOWARD KING: Perhaps Pat could

answer this. How would this work? If the commission adopted the motion for 26 million pounds in 2006 would the National Marine Fisheries Service close the fishery down when a projected 23.59 million would be caught?

MS. KURKUL: Well, I think there are two important results. One would be that, yes, we in fact would be targeting the 23.59 million pounds and would close the fishery based on whatever quota we set, if it were in fact the 23.59 pounds.

And I think the second issue that's important to keep in mind is the issue of conservation equivalency. If the commission chose the higher level than the fisheries service that would preclude us from being able to adopt conservation equivalency in this fishery.

CHAIRMAN GIBSON: Rick Cole.

MR. RICK COLE: Along that same line, Pat, if in fact from the standpoint of conservation equivalency, if in fact the commission adopted a higher level the service would not have any other alternative but to impose the — I forget what the term we used to label the, it's an 18-inch minimum size, one fish bag limit, it's the default measure. Is that correct?

MS. KURKUL: No, that's not. That's not when we would use the default measure. We would be using the coast-wide measure in that situation. The default measure is when in fact we do agree on conservation equivalency but there is a state that does not set their recreational harvest limits consistent with achieving their targets, in which case we use the default measure. But if we don't have conservation equivalency, we don't have conservation equivalency at all, we have the coast-wide limits.

MR. COLE: Okay, thank you. You know that's an important point. I think everybody needs to understand that that's what would be in place in federal waters for recreational fishermen. Thank you.

CHAIRMAN GIBSON: Gordon Colvin.

MR. GORDON C. COLVIN: Yes, I'd like to play this out just a little bit farther, Pat, because I'm not sure that we've traced the scenario to its end point so let me suggest something and then let's see if I'm wrong.

Let's assume for the sake of this discussion that the service decides to finalize the quota as it proposed in the Federal Register and the states decided today to implement a different, higher quota overall.

What you're saying now is that that scenario would preclude the service from approving and implementing a recommendation from the council under the framework for state-by-state conservation equivalency.

The states, nonetheless, could still choose to go ahead under their addendum and implement conservation equivalency and individual states could submit and have approved by ASMFC conservation equivalent options which would be different from the coast-wide standard that would have been adopted by NMFS. At that point isn't it possible that the default kicks in?

MS. KURKUL: Yes, I think you're right, Gordon.

MR. COLVIN: Yes, that's what I was wondering. Okay.

CHAIRMAN GIBSON: Gordon.

MR. COLVIN: Yes, and I had one more follow up, just to be very clear to everyone

on where this gets applied. It would be applicable to any recreational fisherman in the EEZ and enter any federally permitted party or charter boat regardless of where it fished. Thank you.

CHAIRMAN GIBSON: Any other board comments or discussion on this point? Does the maker of the tabled motion wish to speak to it? Pat, you were the maker of the motion. Do you wish to speak to this?

MR. PATRICK AUGUSTINE: No, I still would support and go with a 26 million pound recommendation. If my second agrees I would like to keep that motion on the table.

CHAIRMAN GIBSON: Any board comments on the motion? Gordon.

MR. COLVIN: Just a question and to clarify the record and to also do this for the sake of people who are attending this meeting who were not at the board meeting a month ago and would not necessarily understand the sequence of events.

Mr. Chairman, as I understand it this is not a motion for a three-year constant quota at 26 million pounds and it has no relationship to that proposal. This is a simple motion for a 26 million pound quota for 2006 only without reference to any commitment for future years. Is that correct?

CHAIRMAN GIBSON: That's correct. That's my understanding. Bruce Freeman next.

MR. BRUCE FREEMAN: I personally like the motion but in order for me to vote for this it would have to include provisions for 2007 and 2008. And the reason I say that is back to the original argument that was made several years ago.

We had an annual specification that was challenged in court and the federal court indicated that there needed to be at least a 50 percent probability of reaching the target. Today we actually have a multi-year specification and what we've gone to great extent, both the council with support of the service, is to have that multi-year specification.

And the use of the three-year, 2006, '07 and '08, at this 26 million pounds relative to the analysis that was done by council staff would get us to the same point in the third year as we would if we moved independently for the next three years with moving the quota down considerably for 2006 and then up considerably for 2007 and '08.

And the reason I make those comments is we've heard consistently from industry on this issue is they want consistency in the fishery, consistent catches. They argue that particularly from the recreational party and charter boat and bait sectors they need stability. They need a business plan.

And in my opinion by moving to a quota that is considerably less than this for a three-year period is going to negate all those issues that we changed the plan to try to put in place. And again I would say to the maker of the motion, although I like the motion I would have to vote against it unless there is provisions for comparable quotas for 2007 and '08.

CHAIRMAN GIBSON: I have Dave Pierce next then Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, a point of order. I was the maker of the motion. May I respond?

CHAIRMAN GIBSON: Sure.

MR. AUGUSTINE: Thank you. I understand our previous motion before I made this motion dealt with the three-year issue and I think Dr. Pierce had made an impassioned plea to this board that we go forward with that three-year plan whereby we use that constant harvest.

And after a lengthy debate and points made around the table and I think Ms. Kurkul pointed out that the council plan doesn't allow for that -- I believe that was the essence of what you said, something like that -- in any case it appeared the only way we could get something on the table that might come up to 26 million pounds was to do it on a one-year basis. And that was the reason I would rather not try to address a change in this motion.

CHAIRMAN GIBSON: Okay, Dave Pierce.

DR. DAVID PIERCE: Yes, before I make my point just a comment on what Pat just said. I did not make an impassioned plea in favor of the three-year 26 million. I was in opposition to that.

I did say, however, I believe that if it was for one year I might be able to accept it; but I would accept it with great misgivings because of, well, a number of factors that I'll just quickly highlight.

Obviously we're in a difficult situation. We thought we would have 33 million for next year and now we're looking at 23 million. You know a nightmare scenario, of course, for the commercial and recreational fishermen, certainly for the recreational fishermen.

I'm very sympathetic to their concerns, their specific needs. But, you know, we were

dealt a blow, an unexpected blow by the fact that the assessment showed this very strong retrospective analysis that we didn't expect.

Biomass wasn't where it was supposed to be. We over-estimated where it would be and we underestimated where fishing mortality would be. We're above where we need to be with our fishing mortality and we have to get that under control.

The reason why we have to get it under control is, as indicated in one of these documents before us, we've got four years left to meet the rebuilding target. That doesn't really give us many years.

So if we go with 26 million pounds as our quota for just the first year, never mind the three, just the first year, that gives us a 25 percent probability of meeting our fishing mortality rate target in 2006. I'm very uncomfortable with the probability of 25 percent.

We didn't get what we expected, frankly. Spawning stock biomass is rebuilding. That's clear. We see it in the data, in the tables that have been shown to us, actually the figure given to us by staff. And that document is in front of us as well.

But surprisingly enough, 2003 and 2004 year classes were below average, even though the stock biomass is increasing. So we had expected at least average and maybe some above average year classes so we'd be in great shape and the 33 million could easily be supported, maybe even more.

Well, we have below average year classes. Two thousand and two was above average and now it has gone the wrong way. Who knows what will happen with 2005 when that year class is assessed. And if that turns out to be below average then we really are in

a terrible fix; we will never meet our, I don't think.

I think it's safe to say this, we're not going to meet our rebuilding target on schedule. We'll be far off and then that means that in 2007-2008, maybe even 2009 we'll be faced with even worse, with a worse situation for the commercial and recreational fishermen.

So, obviously this is a tough decision made even more difficult by the fact that the regional administrator has made it very clear that, you know, she, I think she has made it very clear that she's going to go with the 23-some-odd million pound quota for 2006; hence, if we go with the 26 there is a discrepancy.

Gordon or somebody at our last meeting noted the consequences of our being at different numbers with scup and maybe it was for fluke as well. We had to catch up. Eventually we had to get back on the same page and that made for some real interesting scrambling.

We did finally agree to get back on the same page because we could. The resource rebuilt the scup, I believe, so we were able to pay back in a sense what we had borrowed because of that increased biomass, at least it seemed to be increased biomass at the time.

So, I'll listen to what other people have to say regarding this particular motion. As I said at the beginning of my comments, if I support it, it will be with great misgivings. But certainly you know 26 for each year that's something I could not support.

And Option 2 as shown in the document given to us by staff, you know that is attractive, certainly. Yes, we've got the 23.59 Option 2, 2006 quota, 50 percent probability, not 75, but I'll live with 50 for a



while.

Two thousand and seven it goes up. Two thousand and eight-2009, we're back to 30 million pounds. Of course, who knows. We thought we would be at 33 so I'm not comfortable, frankly, with the belief that in 2008 or '09 we'll be at 30 million and greater.

I'm not comfortable with that at all and especially if we get a below average year class in 2005. So with that said, Mr. Chairman, I'll listen to what other people have to say regarding this particular motion.

CHAIRMAN GIBSON: Thank you, Dave. Other board comments before I go to the audience. Bruce Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Just to add a little information to what Dr. Pierce has indicated, when the retrospective analysis was done prior to this year -- that was done three years ago -- that analysis indicated that we were too conservative, that indeed the catch of the biomass was greater than what we estimated it to be, that recruitment was greater than what we estimated it to be.

This most recent retrospective analysis indicated the opposite, that indeed recruitment was less than average and the biomass was less than what we expected. What that indicates, that indeed the information varies from retrospective analysis to retrospective analysis.

And the assumptions being made is that the next time this is done, which probably will be three or four years from now, we'll probably see something even different. And my major concern is the unwavering plea we've heard from the community, the recreational community, is stability in the

catch.

We've spent considerable time going to multi-year specifications and now we're arguing for annual catch rates. And as the analysis indicates, we're going to drive this fishery down severely in one year and then we're going to raise it right back up. And if you ask for a disruption in the fishery, this is a way to guarantee that disruption.

We're doing exactly what people asked us not to do and we're going through the administrative actions to make it multi-year specifications and then we seem to be ignoring it once we reached it. And I do have great difficulty understanding why we supported such an action and now we argue against it.

CHAIRMAN GIBSON: Thank you, Bruce. Gordon Colvin and Howard King.

MR. COLVIN: Just a question I wanted to ask generally on the subject of how we think about the affect of the adoption of a quota, whether it's at 23.6 or 26, has anyone constructed a table that indicates how that will actually affect individual states' commercial and recreational allocations?

What's the difference to a state between these two numbers in 2006? And if we went for three years how would that change in '07 and '08? You know I almost wonder how we can make a decision without such a table in front of us. Maybe some of us who have pocket calculators will start to work on doing that themselves.

CHAIRMAN GIBSON: I don't think anything like that exists at this point. I mean I think we all have some sense of what it's going to do to commercial fisheries at home but you'd have to go around the table probably to get feedback on those as well as

the recreational fisheries. Howard King.

MR. KING: Maryland is a pretty small player in the flounder fishery so I'm extremely sensitive to how this impacts other states: New Jersey, New York, North Carolina. But certainly Maryland would be affected. I could not support this motion. It doesn't satisfy any of my objectives.

I thought I could support at 26 million pounds over three years, for the next three years, but I heard I think that the plan does not accommodate that. So could we confirm that, that the plan does or does not permit that.

MR. ROBERT E. BEAL: Howard, could you repeat the question. I'm sorry. I was reading.

MR. HOWARD: I think Dr. Pierce indicated that we were told that the Summer Flounder Plan does not accommodate the setting of 26 million pounds for the next three years. Is that true? Did you say that? Okay, so then the plan -- okay, I guess my question is does the plan permit the setting of 26 million pounds for each of the next three years.

CHAIRMAN GIBSON: Bob is going to address that.

MR. BEAL: Howard, the plan does allow for multi-year specifications but as the regional administrator mentioned earlier the first year of the 26 million pound constant harvest strategy does not meet the 50 percent probability number.

CHAIRMAN GIBSON: Pat, you were next on the list.

MS. KURKUL: Thank you. I was a little confused by Bruce's comments about the

advice on the retrospective pattern changing. In fact, since the retrospective pattern has been recognized the advice has been that we are underestimating fishing mortality and overestimating stock biomass.

That has not changed. And we don't believe that that's going to change in the future either which from our perspective is all the more reason to be more risk adverse in setting the TAL this year.

We, as Dave Pierce pointed out, we don't have very many years left in the rebuilding program here to achieve the rebuilding targets. And we need to be forward looking and making sure that we're not setting ourselves up for a much worse situation in the future by not being risk adverse now.

CHAIRMAN GIBSON: Thanks. Other board comments. Bruno.

MR. BRUNO VASTA: Thank you, Mr. Chairman. I guess really the question that comes up is do we or do we -- do we do or do we not want stability in catch limits over the next couple of years? I'd like to hear that from what the other states think.

CHAIRMAN GIBSON: Pres.

MR. PRESTON P. PATE JR.: Well, Bruno, to your point, we do want stability. That's one of the compelling arguments in support of the three-year constant harvest. I don't have a whole lot more to say today than what I said at the board meeting that we had in Galloway a few weeks ago.

Included in those comments, however, was a point that I certainly don't want to wind up in a situation like we did in 1999 or whenever it was when we had separate quotas established between the service and the Atlantic States Marine Fisheries

Commission.

That was a terrible situation that we all found ourselves in and I was committed to trying to avoid that in the future if we possibly could. I think the passage of the motion that's on the table today would create that situation.

And the best way to avoid finding ourselves in that situation given the seemingly intractable position of the service up until this point is to pass a motion that at least will hold out some hope that they can see the logic, both legally and biologically in respects to building a stock, to adopting themselves a three-year constant harvest strategy which says by the numbers, and we live and die by the numbers, that the stock will continue to rebuild under that strategy and will have a greater than 50 percent probability of meeting the 10-year target.

So whereas I cannot support the motion for a single year of 26 million pounds I could support one that would establish a constant harvest strategy at that same level.

CHAIRMAN GIBSON: Thank you, Pres. A.C.

MR. A.C. CARPENTER: Can somebody remind me what the 2005 quota actually is?

CHAIRMAN GIBSON: Two thousand five? Thirty point three.

MR. CARPENTER: Thank you.

CHAIRMAN GIBSON: Eric Smith.

MR. ERIC SMITH: This is really neat when I'm writing an idea down and the commission chairman says it before I can get my writing down. I just feel all powerful when that happens. The fact is I agree with

Pres.

This motion I can't support and I've seen enough different people say the same thing that I think we ought to try and dispense with it as quickly as possible because I can't see it passing.

I, too, can support a motion that sends the strongest signal to the service that we think on technical grounds and reasons like the conditions that existed when the NRDC versus Daley suit was filed and decided are a lot different because of subsequent actions we've taken and therefore the argument for the constant harvest strategy and how it gets us towards the rebuilding target is more compelling now than maybe we thought a week or a month or two or three months ago.

In effect saying as a commission, service, we understand what you've told us. It's not like we're not listening. But we think this other argument is equally if not more compelling and we would urge you to try and do that.

The bottom line, though, from the federal law point of view and the federal, the council plan part of this, the service is going to get their guidance from the NOAA General Counsel and they're going to do what they have to do.

And whether we say do something different or not they still have to do what they think they have to do to meet the requirement of the law. So the best I could support is something that urges them, you know, RFA handed out a great letter.

I mean it's a very compelling argument. It's 2.5 pages of lots of good reasons in favor of the constant harvest strategy. And they submitted it on December 2<sup>nd</sup> so it's a part of the record under the proposed rule

comment period.

Supporting that notion here by a motion of the commission or this board is not the worst thing that we could do but we have to keep our eyes wide open that the service may very well know what they have to do ironclad and there is nothing we can say contrary to it.

And I don't think whether we vote for what they'd like us to vote for or not is really going to be persuasive. It's going to be between them and deliberations with NOAA General Counsel how much weight they give to that five or four year old legal decision based on a different plan.

So, if they can find their way to embrace the arguments that RFA has in this letter I think I've heard enough commissioners say they would be more comfortable with that than with the 23.6 million quota for 2006. So I guess I'll leave it at that or I'll start to repeat myself. This motion I can't support.

CHAIRMAN GIBSON: Pat Augustine then I need to go to the audience.

MR. AUGUSTINE: Thank you, Mr. Chairman. I believe that we had a clarification of the possibility of whether the regional administrator could actually support a constant harvest approach and whether or not the FMP on the council side would accommodate that without a plan amendment. Am I right or not? We need a plan amendment on the council side in order for you to consider legally this constant harvest approach?

MS. KURKUL: Yes, it's our position that the current FMP does not allow for the constant harvest strategy so yes.

MR. AUGUSTINE: A follow on, Mr.

Chairman. With that in mind and again I would like to repeat just for a moment what Eric said, this is an outstanding presentation that RFA put on the table and it does address the issue from a different point of view but it's obvious that we have no mechanism within our purview to do this 26 million pounds.

And I find myself caught between a rock and a hard place because on the one hand I see the recreational and commercial fishermen struggling. Beyond that, in the state of New York we see another double whammy coming at us and I would like to take a moment to address that before I would like to address my motion.

We find ourselves with the newest quota coming at us a double whammy in that not only are we supposedly some 30 percent over in 2005, one of three states in the last four or five years who have probably the most restrictive measures in all the states whereby our neighbors consistently are under by 20-30-40 percent with their quota setting with liberalized bag limits, seasons and sizes and yet we're doing everything in our power to find ourselves in a situation we're on top of.

The conservation we now have to be faced with for 2006 is 30 percent decreased plus the 25 percent decrease in quota. The state of New York is looking at about a 50 or 55 percent reduction -- and we talk about economic impact.

And I understand the fishery situation. I'm taking into full account the comment that Mr. Freeman made. You know retrospective analysis is what it is. Maybe it's good; maybe it isn't.

But, the perception is that the more conservative we are, at least in the states of

New York and Connecticut -- and I believe Massachusetts may be in a similar situation - - it appears that at the end of the day the states who are not being affected by looking at an overage, they end up saying, well, we understand your concern; we understand you have a problem but so be it. That's the way it is.

In the meantime we go home and try to lick our wounds and satisfy our people and try to convince them that, hey, look, it's a plan and we have to agree with it and we abide by it to the best of our ability, knowing full well from an economic point of view we're putting an awful lot of people in jeopardy in terms of their jobs, their livelihoods and their businesses.

And we hear it on an ongoing basis. And the whole thing points to one thing. Charlie Wertz came up to the microphone several times there and I'll only dwell on this just for a few seconds, the issue is very clear: this allocation, allocation, allocation. It is time for us to go back and look at Amendment 15. Maybe it's time to look at scup, black sea bass and summer flounder.

We are not going to solve this problem today. I'm convinced that 26 million is going to fail miserably. I've held out for that as long as I've could. I've heard comments from some very knowledgeable folks around the table, including our chairman for ASMFC, so if my seconder would agree with me,

**I would change that motion to agree with the 23.59 million pounds for 2006 only, unless you want to go for three years.**

MR. VASTA: No, even though -- excuse me, Mr. Chairman, may I comment as the seconder?

CHAIRMAN GIBSON: Yes, the seconder,

please.

MR. VASTA: Thank you, sir. Even though I would really like to have more consistency across the board I'll go along with what Mr. Augustine has said.

CHAIRMAN GIBSON: Pat, you're amending your motion?

MR. AUGUSTINE: Yes, I'd like to amend my own motion. I'll make it a friendly motion to myself. It's very painful. It is very painful. But that's correct.

CHAIRMAN GIBSON: I sense with that I can't go quite to the audience yet. I have a bunch of board hands up again. Eric Smith.

MR. SMITH: A motion by a man who can't argue with himself. That's great. I actually, this is the position I voted for the last couple of times. And I find myself still saying -- I guess I want to ask for a clarification first to be sure of that last question and answer with Pat.

What Pat said was the current plan does not allow constant harvest strategy. And I think what really we've been saying is the current plan does allow for multi-year specifications but the NOAA interpretation of the current plan is that each year you set the specs and they have to have a 50 percent probability of meeting the fishing mortality target.

So you can have a multi-year strategy and that leads me to why I was supporting what Pres said before. There are differences in the plan today versus the plan as it existed at the time of the suit.

And rather than this motion I would prefer a signal from the commission saying, service try real hard to in the proposed rule context and the comments of RFA and maybe

somebody else who offered those kind of comments, to see your way to the three-year constant harvest strategy because overall it gets you to your target and maybe there are enough differences in the -- we didn't have multi-year specs at the time of the suit, for example.

Now they may not be able to do that. I know it's a reach. It really is a reach because Pat has been pretty good about telegraphing, you know, this is what the attorneys tell us; this is what the plan says, we have to do this. And I mean if that's still their position then they're going to have to do what they proposed in the proposed rule and we're all talking to ourselves.

But I came down here at the tail end of a snowstorm like everybody else did to try and offer advice from the commission point of view to the way we'd like to see the world exist in the context of fluke, not just what NOAA General Counsel feels we have to do under the plan. So I prefer the approach that Pres took rather than this motion. Unfortunately that's the motion we have on the floor.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: Yes, regarding the motion of 23.59 or the 26 for that matter, I'd be in a much better position to know in which direction to go if I was provided some additional information and that could come from Chris Moore.

Notably, what was the recreational take in 2005 projected? I note that in the document we'll be reviewing tomorrow, summer flounder recreational management measures for 2006, there are data for 2005.

And I've been waiting to see if we would have an overage of the recreational harvest,

the target for 2005, because clearly if there was an overage then that would really provide more incentive for the lower number because that would suggest the mortality may be even higher.

I notice that 2005 just through Wave 4 we are, almost every state is way, way below the 2005 target. The only state that had an overage was Connecticut with 17 which isn't that bad; New York with a relatively low 10 percent and then everybody else is negative considerable amounts with one exception, Massachusetts -- that's all right.

And then I note that from another table, 2005 the harvest limit was 11.98 and then landings again through Wave 4, 9.65. So it's important for us to know if Chris will be in a position tomorrow to tell us what he thinks we'll have through Wave 5. And will that Wave 5 information get us to the harvest limit or beyond it?

CHAIRMAN GIBSON: He's shaking his head no Wave 5.

DR. PIERCE: Okay, so we have no Wave 5 information. All right, that's unfortunate since Wave 5 is of course helpful, especially with regard to some of the states. All right, well, thank you.

CHAIRMAN GIBSON: Ed Goldman and then we need some audience comments.

MR. EDWARD GOLDMAN: Thank you, Mr. Chairman. I'd just like to build on what Eric said originally about this whole thing about NOAA's counsel and everything. And I think I can't be in favor of this motion. I have to lean toward the multi year.

I believe if we agree with the counsel and come up with the same number they do I

think that sends a message to NOAA General Counsel and the federal government that, you know, this is a good plan and this will work.

And for all the reasons stated above I can't really go by this one. One last quick thing. I think if we go with the 23.59 million pounds it kind of ignores the economic chaos that we're going to be you know causing all the states. I can't be in favor of this. Thank you.

CHAIRMAN GIBSON: Mr. Bogan.

MR. RAY BOGAN: Thanks, Mr. Chairman. Ray Bogan on behalf of the United Boatmen. My understanding is there is a public process that NMFS is undergoing right now that should still be open and NMFS asked for comments up until December 2<sup>nd</sup> with regard to 23.59 million pounds.

That's at least what I read in the Register. And therefore what I assume they are doing is taking comment and determining whether or not 23.59 million pounds is the correct thing or some other alternative is.

That being the case and the fact that the public process is supposed to still be open -- although that's not what I'm hearing and it's not what I've heard -- I'm going to suggest, obviously we're totally against this.

There is what I consider to be at best an irresponsible socio-economic study that is incorporated into the public document put out by NMFS. It's insulting. I know they don't care about that.

It is absolutely insulting to tell people who have lost their businesses -- we can years ago and told you, folks, this is going to impact businesses. Pat, the maker of this

motion can tell you businesses that are gone now. There are folks already gone.

And yet the public document that suggests 23.59 million pounds suggests that there will be a de minimis impact on these businesses. You as commissioners know that is false, despite the fact that NMFS cavalierly put that into that document.

And please consider that in the context of making this decision because they say their decision and their recommendation for 23.59 million pounds will have little socio-economic impact. I would respectfully hope that somebody tries to defeat Pat's motion with regard to 23.59 million pounds.

This should be a motion for a running average of 26 million pounds much like the council voted upon and approved. Twenty-six million pounds over that three-year period brings you to where you need to be.

I've seen the analysis. You folks have seen the comparable analysis between the 23.59 up over a three-year period compared to the 26 over three years. And where you get with 26 constant harvest, which you folks respectfully are allowed to do, is you get to where you want to be. You rebuild this fishery.

The concern the folks have expressed, oh, gosh, we're going to be sued by the environmentalists or something like that. Folks the environmentalists aren't the folks raising the Cain right now; it's NMFS raising the Cain.

The environmentalists I believe would if, for example, you went to 33 million pounds which you had voted to do I suspect they would raise Cain. They may even raise Cain if indeed if you stayed at 33.3 million pounds which is what we support, status

quo.

That's not the case. We want to see that. We recognize that that's highly unlikely and therefore 26 million pounds constant harvest you folks have the authority to do it. It's the responsible thing to do.

And respectfully that, as we discussed every meeting we've been to, this is why I think that you folks, I would hope, would take an independent look at this, see why the council voted on it, look at what the Monitoring Committee concluded, and why it supported that position and why ultimately the council voted on it.

And please consider the fact that ultimately there was a completely inadequate and insulting assessment of the economic impact of this regulation. And that is something which I think as a commission you do have the right to consider when considering a constant harvest, the ultimate impact.

Some folks of asked, hey, New Jersey may not even have an impact; if it goes to 23.59 million pounds it may not even hurt you. Two things about that. If indeed we don't have any further restriction that doesn't mean we don't have to fight for every other fisherman because unlike the federal government which refuses to acknowledge the impact of this thing, we see the impact on fellow fishermen.

We don't accept it. We don't find it fair. We've got to fight against it. That's why we're not going to down without a fight. And, likewise, in this instance you folks have so often given us the opportunity to explain the impact.

We've submitted substantial documentation to you. Phil has additional documentation which we can submit to you which reiterates

the decrease in New York landings in 2004-2003. And yet that has been disregarded completely. It has been thrown out. It is never once mentioned in this context.

You folks we ask, please not only use the fact that you understand the economic impact which will be incurred as a result of the most extreme action, that's 23.59 million pounds, but, secondly what you have an opportunity to do and that is to accommodate a rebuilding program which is going to get you to where you need to be when this thing is supposed to be rebuilt and also at the same time consider the ultimate economic and social impact which the service has completely disregarded and which you folks have an opportunity to make a wrong right. Please consider that and please do it with 26 million over three years. Thank you.

CHAIRMAN GIBSON: Tony Bogan.

MR. TONY BOGAN: Thank you, Mr. Chairman. Tony Bogan, United Boatmen, a couple of things. Actually Ray already touched on one of the things that I wanted to talk about and Phil was nice enough to give me his copy since I forgot mine of the proposed rule.

I'm going to reiterate it anyway because I feel it's worth (end of Side A of tape.) Away at this for, well, since the '80s when the original for-hire survey was done. I'm sorry, it was a survey of party and charter boats.

That's where this boilerplate paragraph that you always see about economic impact or in this case lack thereof of the changing regulations or quotas on the party and charter boat sector, that study was done back in the '80s.



There was less than a 30 percent response rate to this survey which according to all the statisticians that we've talked to, including ones that were doing work from the Mid-Atlantic Council and, damn, now I forgot the university that just redid this study -- I'm sure Chris would remember who it was but he's not behind me here -- said that anything less than a 50 percent response rate should not even be used yet this has been used for more than a decade and a half.

There is a new survey that was just recently done but I don't believe that the statistical analysis is finished yet which is probably why it's not being used. Here is the paragraph that is getting all the party and charter boat guys so fired up and has been for years.

It says, "While it is likely that proposed management measures would restrict the recreational fishery for 2006 and that these measures may cause some decrease in recreational satisfaction, there is no indication that any of these measures may lead to a decline in the demand for party/charter boat trips. The market demand for this sector is relatively stable."

Well, I'm glad to hear that NMFS has decided to tell me how stable my business is or is not even though they haven't actually asked me. "Currently neither behavioral nor demand data are available to estimate how sensitive party and charter boat anglers might be to proposed fishing regulations."

Well, that's a contradiction right in and of itself. I mean back to back sentences. There is no impact, market demand is stable; yet, there is no behavioral or demand data available to estimate how sensitive our anglers are.

So they don't have any data to support how

our customers would react to restrictions yet they go ahead and say that there won't be any impact to our businesses. I mean, that's the biggest contradiction. That's kind of like military intelligence -- a contradiction in terms.

And it ends to say that "It is likely that party/charter anglers will target other species when faced with potential reductions in the amount of summer flounder, scup and black sea bass that they're allowed to catch."

Well, one need look no further than that sentence and the reason I'm getting to this, Mr. Chairman, is because I want to see that this motion is not supported and that the constant harvest strategy would be supported so we would obviously need one of the commissioners to make a motion to that effect.

Party and charter boat anglers would simply target other species. Well, if all of our anglers were willing to go for sea bass do you really think there would be bluefish or fluke or porgy or croaker boats out there? No, of course not.

If everybody could fish for one thing and be happy, everybody would be fishing for one thing. We wouldn't go through the effort of building boats that could go 100 miles offshore as opposed to bay.

There would be no diversity. Everybody happy with the 12 inch fluke? We all go 12-inch fluking. So that has got to be one of the most ignorant statements I have ever read in a federally-produced document. There might be some out there that can top it but I haven't found it yet.

And I take it as a personal insult that someone who has no concept of how my business let alone an industry is run could

turn around and try and tell me how my business will or will not be impacted by a decision that they make. The reason I got so fired up about this is because I looked at it and said, you know, there is something that hasn't changed in decades.

I mean I think it's close to 20 years ago that survey was done. It's at least 15 that this boilerplate paragraph is coming from. So, I don't expect anything else to change coming from the service at this point.

They obviously, you know, unfortunately, they move at the speed of government not at the speed of life and we've all dealt with that in one way or another. That's why I was hoping the commission which does have the latitude that the service may or may not think that they have would do something different.

Another thing to keep in mind is one of the things that we brought up back at the August meeting when the council voted for the three-year constant harvest strategy, it was mentioned that, well, this actually limits us in the long run because based on the projections by the third year we would be back up to around 30 or so million pounds or 29 or 30 million pounds and yet if we passed the three-year constant harvest strategy it would only be 26.

Well, the way I look at it is those are the same projections that said we'd be at 33 million next year and we're talking about 23.5. So projections are just that; they're a projection, kind of like MRFSS.

Even though it's treated as verbatim fact if you look at the definition that MRFSS gives you it's an estimate. Look up estimate in the dictionary, look up projection in the dictionary.

That same prediction told me 33 million next year. Now I'm staring at a motion for less than 24. So just because it's projected we could be somewhere, you know what? Bruce brought up a really good point. Stability does mean something.

Another question that was asked was, oh, you know, what is the impact going to be? What's the difference in impact between 26 and 23.6? Well, 26 is going to hurt no matter who it is. It's going to hurt. If you're in a state that has to reduce it's going to hurt. I mean it doesn't make a damn bit of difference what the number is.

But obviously if I can lessen the impact on people that are in the same business as my family is in and for fellow fishermen and the ability of other fishermen in other states to be able to enjoy the same things that I might be able to enjoy and I can lessen that negative impact by a 26 three-year constant harvest strategy, I can only speak for myself but I'd sure as hell be willing to give us a little bit later to not be out of business now.

That's something that the council that I sit on and that this commission has had a hard time understanding in the past. It was questioned in what I could only call a questionable article that was published in the most recent Fisheries Focus issue from the ASMFC by the executive director about who the people in the public represent.

And I feel it's appropriate to say this before I step away from the mic because I just said Tony Bogan, United Boatmen, rest assured the party and charter boat captains that you deal, hear, speak to, send in written comments, I would never pretend to speak for all of the people that fish on party and charter boats but I can tell you right now I never speak for myself.

None of the captains that are sitting out here speak for what they want because I don't know one of them that could care less what the size limit, the season or the bag limit is as long as it's what the customers want.

That's all we care about is what our people tell us they want to do. We don't. If I could sell one fluke at 22 inches, don't you think I would do it? Of course I would. It's irrelevant to me. It's the people that count.

So while I would never assume to speak for 100 percent of my customers I can say that I speak for the majority of our customers, as does every other party and charter boat captain in here.

And when you add up the numbers of how many people that represents, that unheard majority, a big chunk of them come from the few hundred thousand anglers that come out on party and charter boats just from New York and New Jersey alone. Thank you.

And again, Mr. Chairman, I would hope that this motion would not be supported and that one of the commissioners would be able to make a motion for what the council already passed and hopefully we can approve it tonight. Thank you.

CHAIRMAN GIBSON: Thank you, Tony. I'm going to take — Herb Moore, did you want to speak? And then the board needs to dispense with this motion.

MR. HERBERT MOORE: Herb Moore, Council for the Recreational Fishing Alliance. Thank you, Mr. Chairman. Thank you members of the board. We are strongly opposed to the motion that's on the table, urge its defeat.

We would urge the board to follow the advice of the Monitoring Committee, follow

the recommendation of the council, and adopt the constant harvest strategy of 26 million pounds over the next three years.

We feel it's fair. We feel it's equitable. I'd just like to note that we feel very strongly that the case that NOAA General Counsel is relying on for their proposed rule is not controlling in this case.

It was decided five years ago in 2000 under a very different set of facts and circumstances. I also note for the board that the court said a lot in that case. It was a lot more than just that a total allowable landings must have at least a 50 percent probability of achieving the target.

The court also noted, the court struck down the agency's 1999 summer flounder quota because it determined, "that it so completely diverged from any realistic meaning of the Fishery Act that it could not survive scrutiny."

The court decided that the 1999 TAL did not reflect, "a reasonable and permissible construction of the Magnuson Act." This isn't the case here. We've got a totally different set of facts and circumstances.

The constant harvest strategy has been approved by the Monitoring Committee. It has been recommended by the council. Over three years on average it will have greater than a 50 percent probability of achieving the target. And most of all by 2010 we reach the target biomass level of 204 million pounds, a very different set of facts and circumstances.

Perhaps the most important aspect which Ray and Tony discussed is you've got an option on the table that will mean a lot less significant social and economic damage to the recreational sector and I'm sure the

commercial sector would agree that it would be less damage to them as well.

The court in NRDC v. Daley also noted the 1999 federal regulation which states “where two alternatives achieve similar conservation goals the alternative that minimizes the adverse economic impacts on fishing communities would be the preferred alternative.”

There is no question that there is two alternatives before NMFS and before the board that would achieve similar conservation goals yet one, the 26 million pound total allowable landings over three years, the constant harvest strategy, would result in significantly less social and economic harm on fishing communities.

So, again, we’re strongly opposed to this motion and we strongly encourage the board to propose and adopt a motion to follow the advice of the Monitoring Committee, follow the lead of the council for a 26 million pound constant harvest strategy. Thank you.

CHAIRMAN GIBSON: One more from the audience and I have Gordon and Eric.

UNIDENTIFIED: Thank you, Mr. Chairman. I’d like to first of all urge the commission to strike down this motion and put up a motion for 26 million pounds for three years. I just want to read one line from the case that we’re talking about, the NRDC case. I’ll quote: “When two different plans achieve similar conservation measures, the service takes into consideration adverse economic consequences.”

I will submit that this is that exact situation. You have two plans that will both reach the target biomass by 2010. The one, Alternative 1 minimizes the adverse impacts on the fishing communities which is another

mandate in the Magnuson Act that must be followed by the service. All right.

Alternative 2 does not minimize these impacts. Thus, we submit that under the mandate of National Standard 8 the service is obligated to select Alternative 1. And thus we would ask the commission to forward that motion and strongly state that this is, that the economic impacts, this is the idea opportunity to take into account those economic impacts.

I’d also like to reiterate something that Mr. Bogan pointed out, Mr. Tony Bogan, with regard to the statement that there is no indication that any measures may lead to a decline in demand for party/charter boat trips yet two sentences down the service says that there is no data — essentially I’m paraphrasing here — that neither behavioral nor demand data are available to estimate how sensitive party/charter anglers might be to these regulations.

To boldly assert that there are no economic impacts and then to say that there is no data to support such a conclusion is the utmost in audacity. Thank you.

CHAIRMAN GIBSON: Okay, back to the board, Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman, and I beg your indulgence for a couple of minutes because I’ve got to talk my way through some issues that concern me that I think are important in addressing the merits of this issue.

I am in complete agreement with what Chairman Pate said at the outset of this discussion with respect to the question of the, and frankly what several of the commenters have said with respect to the question of the applicability of prior

litigation and policy deliberations on a three-year versus a one-year strategy.

I do not feel that the current status of this management program, where it is, both the interstate program and the federal program, requires us to reject a three-year constant harvest strategy. To the contrary, I think it is in play on that basis for reasons that have been set forth here and I don't really think that that whole issue needs any more discussion.

What I think the question falls on is whether or not we can do it but whether or not we should do it, whether or not in the long run it's the best thing for everyone and that's where I'm having trouble.

I think we have to accept if we're going to accept the reasoning behind our arguments that we can do this, can be consistent with federal policy and judicial guidance. I think we have to accept as part of that the notion that under no circumstances were we to go to a multi-year constant harvest could we reasonably expect the National Marine Fisheries Service to set a quota above 26 million pounds.

I don't think you can have it both ways. If you're going to go that way you've got to accept that; otherwise, then you are rejecting the 50 percent obligation, the 50 percent probability obligation.

So given that, that's what you're stuck at. You're not going to be above 26 million pounds for whatever period of time you decide to go to, whether it's three years or four. That means you forego the opportunity to increase the quota in subsequent years which exists now, at least on paper, all other things being equal.

Now, will all other things be equal? We

don't know. But we do know that, again if you follow my line of reasoning, it ain't going to be any higher; that opportunity is gone. So, what does that give you?

The difference between 26 million and 23.6 million is 2.4 million pounds, 60 percent allocated to the commercial fishery. That's 1.44 million pounds divided among states. If you're a 10 percent state that's 140,000 pounds. So, think about that. In one year it's 1.4 million pounds. And then you're stuck with that for three more years or two more years.

Whereas, alternatively, an opportunity exists which may or may not ever manifest itself -- there are no certainties -- to see higher quotas over the next couple of years that would not exist if you went with constant harvest. So what are you giving up in your one? You can all do the math. You all know what your quota shares are of 1.44 million.

Recreationally I refer you to Table 11 in the material behind Tab 3 that was prepared by the Monitoring Committee. The reality is that six states, six members of this board, six states, it doesn't make any difference to you whether the quota is 23.59 or 26 next year.

But if you go to 26 you forego the opportunity to have a higher quota in the following years. Ironically, New York is one of the three states that it does matter to.

And one of the things that is puzzling me and I wish I knew the answer, is that if our quota next year required a 23 percent reduction versus a 30.3 percent reduction what difference will that make at the end of the day in terms of what our actual size limit is, what our actual creel limit is, and what our actual season is?

I don't know. I wish I did. It may not be a large difference. But I do know this, I would have no opportunity to see that become, the target become higher in '07 and '08 if we went with the three-year strategy, no opportunity to relax whatever stringent regulations we went with next year were we to go with conservation equivalency.

And I think it would come as a surprise to no one here to hear that tomorrow you're going to hear me speak very forcefully against conservation equivalency -- again. But this is a tough call.

It is literally -- the call is to whether or not the impact, the difference between 23.6 and 26 and continuing that impact over three years is really worth what we're going to gain from it. And I hope that this discussion and this debate from this board will focus on that question.

Is the short term gain worth the long term sacrifice? It's not clear to me that it is and it's not clear to me that it's not. It's clearly worthy of debate. Thank you.

CHAIRMAN GIBSON: Gordon, I think you exactly hit the issue in my view. I have Eric Smith next.

MR. SMITH: That was so persuasive I'm not sure how I feel now. I'll tell you what I was about to do and at the end of it maybe I'll do it and maybe I won't. I had, during the public debate I kind of had a partial role reversal in my thought process because it all of a sudden dawned on me we aren't recommending a comment to the service.

The comment period is done. We're setting our quota for the coming year. And we can't have two different ones. You know that is one of the things that no one should dispute. My viewpoint is -- and I can't meet

the recreational industry where they want us to be.

I don't buy into that whole argument. But I do meet them part of the way and therefore I have what I wrote down in my notes is a rather round hilled compromise but that's where I was.

I could support a substitute motion that said something like the summer flounder quota will be not greater than 26 million pounds for '06, '07 and '08 but if the service publishes 23.59 as a final rule for 2006 the commission will automatically concur.

That gets me to the point of sending them a signal of where we think it ought to be and it gives them an opportunity to consider that. But they've got to do, as I said before, they have to do what they have to do.

And if that means they have to publish 23.59, to me it's more important that we both have quotas that are set at the same level. So that's, you know, I tried to strike something in the middle to try and put in there where I think we ought to be, where we could be versus where we should be if they do what they've already telegraphed.

Then I heard Gordon's comments and I realized that's kind of what was driving my vote the last two meetings when we've had that, is that difference big enough -- so I guess -- to be worth it -- finish that sentence. So I guess I need to hear a little bit more debate on whether people are persuaded by Gordon's point before I muddy the waters with a substitute motion. Thanks.

CHAIRMAN GIBSON: Thank you. I had Pat Kurkul next and Pres.

MS. KURKUL: Thanks. I want to, I

support the motion. And people seem to be talking about the alternative to the motion is the three-year 26 million pounds. And it's almost always true that a constant harvest strategy disadvantages the participants in the fishery over the long term.

And so effectively what you do with a constant harvest strategy is accept a small short-term benefit in exchange for, and forego longer term benefits. But I'd like to play this out even a little bit differently, the scenario out even a little bit differently than Gordon did and I think that's effectively what he was saying.

If the commission goes with 26 million pounds over three years and the federal quota is set at the 23.5 million pounds in 2006, then what that means is by the end of the three-year period at the federal level we could conceivably be considering quotas in the 29 to 31 million pound range if these projections hold true and the commission will be stuck at the 26 million pounds.

And realistically is that going to happen? And personally I don't think it is. So, well, so that's the one point. And the second thing that I wanted to talk about was I think we're focusing far too much on whether we can or can't set legally what we can or cannot do under the federal plan in 2006 and forgetting the biological arguments here.

We have a situation where we do have overfishing again in this fishery. And if the quota were to be set at 26 million pounds overfishing would continue and we would not be achieving our fishing mortality targets or we'd have a very, very low probability of achieving our fishing mortality targets.

We have a fishery where we have a retrospective pattern and we need to be more

cautious as a result of that. And we have a fishery that is not rebuilding nearly as quickly as we thought it would.

It is rebuilding. And we're still moving in all the right directions, it's just not moving as quickly as we thought it would. So there are also biological reasons for looking at the 23.5 million pounds versus the 26 million pounds.

CHAIRMAN GIBSON: Thank you, Pat. Pres Pate.

MR. PATE: I was just trying to decide whether or not to pass on the opportunity to comment yet again. I was a little bit surprised at Gordon's comments that he made just now were devoid of the principle that he expressed so well at our last board meeting and at the council meeting earlier today and that principle being one of a partnership with National Marine Fisheries Service as opposed to having to accept what NMFS comes up with as a final conclusion.

And I understand exactly what Pat just said and what Gordon just said, but I think we're also faced with a fundamental decision over what role the council plays in matters such as this and what role the commission plays in matters such as this.

I've devoted three days to this meeting and if my comments and my input into the process have no effect on the outcome of this debate and we are stuck with the decision that NMFS is making based on their interpretation of the law and their interpretation of the plan, then I don't know how well those three days of my time have been spent.

And I hate for those principles to get to the point where they override the commitment that we have to the biological considerations

which Pat so aptly just pointed out to us yet again.

Those are very important and there are some risks associated with the constant harvest strategy. And, as I said at the last meeting, I'm still having a hard time wrestling with the balance of those biological considerations, the risk associated with that strategy, and the principles involved in the role that we play in what ostensibly is supposed to be a partnership in managing this fishery. And I'm having a little bit difficult time in recognizing the benefits of that partnership at this point. Thank you.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. In view of the statement from the regional administrator I just had a question, looking at this memorandum from the ASMFC when the regional administrator spoke in support of 23.59 I noticed that by 2010 that gets us to 192 million and the target is 204 so I'm just wondering why the service would support a number that doesn't get us to the rebuild target or it doesn't appear to.

MS. KURKUL: Response, Mr. Chairman.

CHAIRMAN GIBSON: Please respond.

MS. KURKUL: I'm not supporting Option 2; I'm supporting 23.59 million pounds in 2006. I mean, you're talking about a four-year strategy and I'm not supporting that four-year strategy. I'm supporting this number for this year.

EXECUTIVE DIRECTOR O'SHEA: So would that mean then that maybe in out years we'd have to pick a 75 percent probability to reach the target?

MS. KURKUL: You would have to -- if these projections continued to be, continued to hold then it would have to be more than 50 percent in the out years. Whether that's Option 1 or Option 3 or something else, but it would need to be more than 50 percent, right.

EXECUTIVE DIRECTOR O'SHEA: Thank you.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: I would like to respond to some of the comments that the regional administrator had made relative to the constant harvest strategy and the point was that it is very possible -- and I think that Gordon alluded to this as well -- if we use a three-year constant harvest number that in the second and third years we may have the opportunity to harvest significantly more.

That may well be. I have no problem with that. My concern is that at the end of the three years if we find that we're conservative and the quota could be larger then we would bracket that quota up for another two or three years and hold it at that.

In some years we may be under and in some years we may be over it, but the point is to have some constant in this fishery. The record has been an up and down situation. One year we suppress the catch; the next year we increase it then we suppress it and increase it.

Being in contact with the fishermen at the state level what we find is a situation that fishermen have no, the average fisherman simply has no knowledge of what we're trying to do and how we're trying to do it. All they see is that every year we have a very different system where it's either we greatly increase the catch or greatly decrease



it.

And as a result we have an impact on their opportunity and also the economic portion of it is that part of the fishery it supports, the bait and tackle and food and transportation and all the other aspects that go with supporting the recreational or commercial fishery and the supplies to both fisheries.

I really don't see any problem with the fact that in some years we could have a much greater harvest because of some retrospective analysis. The whole essence of what I've heard the constituency ask for in public hearing after public hearing going back for five or six years is some consistency where they can depend on what the catch will be.

And simply to say, well, if we reduce the catch or increase the catch over several multi years there is something wrong with that. I would argue that's exactly what we want, some consistency.

And I have no difficulty, although depending how you interpret the federal law you may be able to do it, you may not but I think some common sense needs to get into this. We get so technical in our arguments we forget who we're trying to serve.

We're trying to protect the resource and we're trying to protect and serve the people that harvest that resource, the general public. And in this whole discussion we seem to lose track of what we're trying to accomplish and we seem to argue technical details.

And I really think that we're missing representing the people and the resource the way we should. We're just getting so bogged down in details we're losing concept of the big picture.

CHAIRMAN GIBSON: Thank you, Bruce. Gordon Colvin.

MR. COLVIN: Bruce, I couldn't agree more about the desire to see some consistency but I'll say this to you, it would be a lot easier for me to accept consistency if I had: a. New Jersey's commercial quota share and, b. a recreational limit of 16.5 inches and a creel limit of eight.

That's the difficulty. The difficulty is that consistency at very restrictive limits with no opportunity to liberalize them for three years is what's causing me angst about a multi-year strategy.

CHAIRMAN GIBSON: Thanks, Gordon. Before I go to Bruno I think we're going to have to dispense with this motion pretty soon because in the event that it fails I'm anticipating there will be another one which we'll have to debate and act on as well so Bruno.

MR. VASTA: Thank you, Mr. Chairman. In hearing all of these eloquent discussions on the various options I now am going to go kind of recapitulate in things what I was saying. I think really what we had originally proposed with Pat and I was the 26 million and we were talking about it from the standpoint of one year and then we heard about.

It would seem to me that you have to take into consideration that if you go with an Option 1 with 26 million over three years you've giving up the possibility, as Gordon had pointed out, that if you went with Option 2 that you might get more. And if you did, let the fish swim.

That would help us achieve that higher value. I mean if you want to bring back that

rebuilding, the stock itself, you might have a chance to do it that way. So I'm having second misgivings about this option on the board here but I don't think it's appropriate for me to make the change to it.

CHAIRMAN GIBSON: Thank you, Bruno. Are we ready to dispense with this motion? Do you need time to caucus? Okay, thirty seconds to caucus. Is the board ready to vote? Is the board ready? Pat, would you read the motion for us.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'm going to be forever immortalized in pain after this. Thank you. **Move that the 2006 summer flounder quota be 23.59 million pounds. Motion by myself (Mr. Augustine), seconded by Mr. Vasta.**

CHAIRMAN GIBSON: Thank you. Ready for the question? All those in favor please signify by raising your right hand; all those opposed. The motion passes. Oh, sorry, abstentions; null votes. The motion passes with 6 to 4. Pat, you had a comment.

MR. AUGUSTINE: I'd like to make a point. As I said earlier in my comments I made, damn painful. This is very, very painful. Okay, okay, okay. But it is where it is. And if you look at the other options we have in the state of New York, we are truly against the wall.

What's left is to look at the next option which would probably be, in the best interest of New York would be to go with four fish at 17 with an open season. And I'm not sure now is the time to make that motion. I think that's for our conversation tomorrow, but I at least wanted to mention that on the record.

We are in pain in terms of our fishermen,

commercially and recreationally. This is two years in a row because of this allocation issue where we have been put down badly. I'm not sure how much more our fishermen can give up. And we are stuck with the law and so on, whatever the interpretation is.

And I do think that, I sure hope you other states will look seriously at this allocation issue that we just kind of pooh-poohed off earlier today and that we get our feet dug into the turf and let's address these issues as quickly as we can.

I cannot imagine sitting here trying to represent the state of New York or any of our fishermen for the next two or three years getting beat up because of plans that will not or FMPs that will not allow us to get our fair share. Thank you.

CHAIRMAN GIBSON: Gordon Colvin.

MR. COLVIN: Yes, I appreciate Pat bringing this up and it's really food for thought for tomorrow and maybe it is something we can reflect on overnight. I think, as I said earlier -- no surprise to anybody -- we'll advocate a coast-wide approach as opposed to state by state quotas next year.

And make no mistake about it, the numbers that we're looking at are an artifact of allocation. And you know that is the reality. And the consequences of our actions with respect to allocation are something we have to revisit in some way, shape or form periodically.

And those consequences will be manifest in tomorrow's decision. One other option that we may have -- and I just want to plant the seed and let folks think about it and I don't know how it might work out -- is this.

Dave Pierce alluded to an important point earlier and that is at the end of the day when the Wave 5 numbers come in we may be in a, the perspective of where we are may be a little different than it is today.

And one possibility is that when we look at the bottom line on a coast-wide basis (tape shut off mistakenly) under this year's harvest and close to the allowable harvest at 23.59. One option that might exist is for the states to agree to status quo for 2005, every state keeps its regulations. I just want folks to think about that under that set of circumstances.

CHAIRMAN GIBSON: Thank you, Gordon. We have one more item on the agenda. I think Toni had some other business.

MS. KERNS: This is just a travel authorization information for board members that do not fall under the Mid-Atlantic Council. I have travel vouchers here.

If you already have vouchers at home, then the authorization number is 05150 and the per diem is \$47 per day. That breaks down to \$9 for breakfast \$11 for lunch and \$27 for dinner. And the mileage rate is still \$.48.5 per mile. Tomorrow's meeting starts at 8:30 a.m. It's in this room -- 8:30 a.m.

MR. CARPENTER: What was the number again?

MS. KERNS: The -- 05150 and I also have some vouchers here filled out if you need one.

CHAIRMAN GIBSON: Thank you, Toni. Is there any other business to come before this board? Seeing none we stand adjourned and thank you all for a very difficult issue

that you had to plot through.

(Whereupon, the Summer Flounder, Scup, and Black Sea Bass Management Board meeting adjourned on Tuesday, December 6, 2005, at 8:00 o'clock, p.m.)