

Atlantic States Marine Fisheries Commission

**PROCEEDINGS OF THE
SUMMER FLOUNDER, SCUP AND BLACK SEA BASS
MANAGEMENT BOARD**



SHERATON, SOCIETY HILL
PHILADELPHIA, PENNSYLVANIA

December 11, 2001

Approved February 21, 2002

**Summer Flounder, Scup, and Black Sea Bass
Management Board
Motions**

December 11, 2001

Motion to approve Draft Addendum IV for public hearing with the modifications that the Board detailed today.

Motion made by Mr. Augustine, Seconded by Mr. Borden, Motion passes unanimously

Motion to approve the Black Sea Bass Emergency Rule for Quarter 1, 2002 as Drafted by staff.

Motion by Mr. Augustine, Seconded by Mr. Cole. Motion passes

Motion to approve the Draft Addendum V (scup summer commercial period) for public hearing.

Motion made by Mr. Augustine, seconded by Mr. Borden; motion passes with one vote against.

Motion to send a letter, under the signature of the Executive Director, to the State of Virginia detailing the Board's concerns with the 2001 recreational black sea bass management program.

Motion made by Mr. Cole, seconded by Mr. Augustine. Motion

Motion to approve Tom Jordan (NY), Brock Dalton (NJ), and Dandridge Crabbe (PRFC) to the Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

Motion made by Mr. Colvin, seconded by Mr. Freeman.

ATLANTIC STATES MARINE FISHERIES COMMISSION
 1444 Eye Street N. W. 6th Floor
 Washington, D.C. 20005

ASMFC MEETING

DECEMBER 11, 2001

at

Sheraton Society Hill
 One Dock Street
 Philadelphia, PA

TUESDAY, DECEMBER 11, 2001

P R O C E E D I N G S

[8:17 a.m.]

SUMMER FLOUNDER, SCUP AND BLACK SEA BASS

WELCOME/INTRODUCTION

CHAIRMAN PRESTON PATE: If the members will come in, we do have a lot to cover this morning and we need to be a little bit efficient with our time management. And if we get through, we may want to spend some time talking about the joint meeting with the Council tomorrow if anybody has any questions that they would like to pose to the Board only today about our position on the recreational measures or any other of the issues that we'll be discuss jointly tomorrow throughout the day. This would be a good time to do it, assuming we get through our stated agenda this morning.

We will note for the record that we do have a quorum, dispense with the roll call. We have a signup sheet that is going to come around, if you'll please complete that.

We're going to start the discussion this morning with a presentation from Mike Lewis on several items that he has prepared as drafts to the plan for these three species. Mike. David.

DAVID BORDEN: Thank you, Mr. Chairman. At some point during the deliberation if we could we

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get an update on where the federal government stands in terms of promulgating the quotas, like the scup quota --

CHAIRMAN PRESTON PATE: Yes, we'll

try to do that, Dave.

MIKE LEWIS: Thank you very much, Mr.

Chairman. My first presentation is going to be on Addendum VI for the black sea bass fishery. Bob, go ahead. Excuse me while I put papers in order here.

APPROVAL OF AGENDA

CHAIRMAN PRESTON PATE: While Mike is doing that, I overlooked the need to approve the agenda this morning.

PAT AUGUSTINE: So moved.

CHAIRMAN PRESTON PATE: Motion by Mr. Augustine to approve. Second by David Borden.

PUBLIC COMMENT

CHAIRMAN PRESTON PATE: Also, we don't -- we have one public here -- opportunity for public comment will be available throughout the meeting, if anyone wishes to make any comments or ask questions from the ask throughout these deliberations, please feel free to do so.

MIKE LEWIS: Thank you again, Mr.

Chairman. Excuse me for my slight break there. The black sea bass fishery management plan includes a coastwide quota system in effect during each quarter. On the coastwide system, quotas are allocated based on the percentage share of commercial landings for 1988 to 1992. Table up there -- if you look, you can see the percentages for each of the quarters and the durations of them, Quarter I, January 1 through March 31st and so on. I'm sure you are all quite familiar with that. Go ahead, Bob.

Unfortunately, everything can be a little small, but it's okay because you guys have all seen this before. This is the coastwide quarterly quotas and landings for 1998 through 2002. I apologize for the size.

For 2002, the ASMFC adopted a coastwide commercial quota of 3,332,000 pounds. The Mid-Atlantic Council has recommended this same coastwide quota, which is anticipated to be adopted by the Secretary of Commerce in the winter of 2002. This commercial quota was further divided by quarter to reflect 1.29 million pounds; 975,000 pounds; 411,000 pounds and 659,000 pounds for Quarters I through

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Quarter I will be taken care of by emergency rule that we're going to review here in a few moments, and the second is to institute a system by which the management board can set initial possession limits, triggers and adjusted possession limits for the black sea bass fishery during the annual specification process. Go ahead, Bob.

You can see here that we have -- Bob and I have put together some preliminary ideas for what we think might be appropriate for 2002 initial possession limits, triggers and adjusted possession limits. Quarter I has been -- we just put in 7,000 pounds with no trigger. For Quarter II, 1500 pounds with a 75 percent trigger, down to 150 pounds a day or 1,000 pounds per week. Quarter III would begin with an initial possession limit of 500 pounds, a trigger of 75 percent again and then 100 pounds per day or 700 pounds per week.

Then finally Quarter IV would be 750 pounds as initial possession limit, Quarter -- excuse me, a trigger of 75 percent, followed by an adjusted possession limit of 100 pounds per day or 700 pounds per week.

It's important to note that these numbers were developed by staff, but in no way is the Board bound to these. These could be changed. This is just a draft for your review, whatever you approve will be included in the draft for public comment. Please go ahead, Bob.

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IV respectively.

However, if you look in your copy of the document, you'll notice those numbers are not exactly what I just said, and that's due to overages in the 2000 fishery. Those are preliminary adjustments for those overages included in the chart.

Okay. The purpose of Addendum VI -- on page 5 of the document -- is to allocate the available quota to the states user groups over the fourth quarter of 2001. Excuse me, typo. Prevent adverse impacts associated with increased discards of legal-sized fish during closures, which would be implemented once a quarterly quota is projected to be taken, help alleviate the financial hardship experienced by fishermen during extended seasonal closures, decrease the administrative burden on state management agencies and decrease the confusion associated with rapidly changing regulations.

We have been doing a lot of emergency rules over the past couple of years and it seemed important to everybody to stop having to manage via emergency rule, it's very confusing for everybody involved and creates quite a bit of work for you and us. Go ahead, Bob.

The function to deal with these problems and address these purposes to establish possession limits for quarters 2, 3 and 4 of the 2002 fishing season.

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Finally, in order to create a system by which the Management Board can create these initial possession limits, triggers and adjusted possession limits during the annual specification setting process, it was important to put a couple of amendments into the current structure. One is to allow the Monitoring Committee to make recommendations, including these initial possession limits, triggers and adjusted trip limits for each quarter as needed when they make their normal recommendations. Again, just the only difference here is just to include those possession limits, triggers and adjusted possession limits.

And finally at the end of the process, after the Board has decided what they want the management scheme to be for the year is to have the states submit proposals of management programs, including these possession limits, triggers and adjusted trip limits to the ASMFC for Board approval.

Mr. Chairman, I'd be happy to entertain any questions, but that concludes my presentation of the addendum.

CHAIRMAN PRESTON PATE: Thank you, Mike. Any questions from the Board? Pat. Could we get the lights back up.

PAT AUGUSTINE: Thank you, Mr.

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Chairman. Question as to the staff's numbers that were selected for each of the quarters. Although you said we're not bound by them, did you use some methodology to come up with those as average numbers? Did you go back and see what the landings were during the previous few years?

MIKE LEWIS: These numbers were chosen just as a -- good idea. Bob, you actually are the one that picked these numbers and I was kind of curious to what you -- how you chose these numbers.

ROBERT BEAL: Actually, Pat, what I did was just look at some of the trip limits we had in place previous years, as well as some of the trigger points and -- David's hanging himself -- and just tried to play around with how long the fishery was open as well as the realization that some of the quotas that we had available for 2002 are going to be a little bit higher than what we had in 2001 in previous years, due to two different things. One is that we have a 10 percent increase in quota, and the other is that we've had -- the quotas were managed a little bit more closely last year and the overages in 2001 were smaller than they had in the previous years. So, there is a little bit more quota available to the fishermen. I tried to weigh all that in there and come up with some reasonable numbers.

But keep in mind that these are -- as

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to be very clear what we want to accomplish with this addendum. I mean, my objective would probably be quite different than Bruce Freeman's objective. I mean, what we have really struggled with the last couple years has been this issue of the guys in the fisheries in the Mid-Atlantic states need the higher trip limits in order to make it profitable and at the northern extreme, you've got a small group that fall into that same category. But most of the fishermen in New England could live with smaller trip limits and they want to avoid the bycatch.

And I guess it seems to me that we ought to probably have some discussion of what the objective is going to be so that there's a common view around the table, that might facilitate us reaching a conclusion on the issue.

CHAIRMAN PRESTON PATE: Probably help to have that statement in the plan, too, once that conclusion is arrived at, so it would be clear to the public in review of this document. Rick Cole.

RICHARD COLE: Dave touched on what I was going to bring up in regards to the different requirements throughout the range of the fishery as far as the size of the trip limits.

But I guess my question would be that given that the proposed rule is already out, that would impact the federally licensed fishermen which are the vast majority of

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Mike said, you know, kind of staff -- potential numbers that could be included in the document, and this is just a document to go out to public hearing. It's not -- you know, we're not making any final decisions today.

CHAIRMAN PRESTON PATE: Dave Borden.

DAVID BORDEN: Thank you, Mr. Chairman. A couple of points. One is I appreciate Bob's comments. But the numbers that have been generated, are they -- is the objective here to basically keep the fishery running through the entire period and that that's what the forecasts are based on, Bob?

ROBERT BEAL: Yeah, I mean it's -- I tried to do the same balancing act that the Board always has to do, between keeping the fishery open as long as possible, providing for the gear types that need, you know, higher daily trip limits at the beginning, but ultimately what we've heard from fishermen throughout this emergency rule and amendment addendum process is that we need to keep the fishery open, keep the markets open as long as we can, and keep products supplied to those markets.

So, you know, that may not be the objective that the Board wants to achieve. I'm not sure.

DAVID BORDEN: Well, and that I think gets to the point that I want to raise, that I think we all have

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them New York south, I would say, how could we not create confusion and dissent amongst fishermen if we had -- by having two different trip limits.

In other words, if the federal trip limit is 7,000; 2,000; 2,000 and 2,000, as it's recommended in the proposed rule, how would that interact with some kind of different trip limit that may come out of this particular process? I guess that's my concern and my question.

MIKE LEWIS: I do know that the federal numbers were chosen as a way to give us some room in order to make whatever changes we need to make for these kinds of rules, but I don't know how you want to address that. And again, we can certainly change these initial possession limits if you'd be more comfortable as a group with going with 2,000 to start off with and then knock it down to be adjusted later on. That's certainly an option.

RICHARD COLE: Again, my point is that I don't think we ought to have different trip limits in the federal plan and in the state plan. There's so much controversy involved in this fishery already that this would further create problems in my view. So, I'd like to see us remain consistent somehow.

CHAIRMAN PRESTON PATE: Jack, did you have something to say on that point?

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JOHN DUNNIGAN: Yes, thank you, Mr.

Chairman. Now, this isn't really going to be that much different from the way it had been during 2001. The trip limits are different. They're not necessarily inconsistent with each other. And since they end up being administered as possession limits by the states, it's one of those situations where the most restrictive rule is the one that the fishermen end up having to follow.

And as long as we're not trying to allow a greater landing in the EEZ than the federal government would otherwise allow, I don't think that there is an inconsistency that's going to cause us a difficulty here.

I mean Rick's right, in the best of all worlds, having things absolutely identical is the better way to go, but the National Marine Fisheries Service has indicated to us in the past they just don't have the flexibility, even though they might want to go in this direction, to do it. And frankly, they've relied on the state to take the lead in this instance.

So, it's consistent with our past practice and I don't think that there's -- although it's not the best optimal situation, I don't think that there's a real problem.

CO-CHAIR RICHARD COLE: Gil.

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percent and the news gets to you, it's now 100.

So, if I had any recommendations here myself, number one I'd like to see some closures -- opening and closure dates here with last year's figures so we have some idea as to how it actually was prosecuted, number one; and number two, some lower trigger limits here to give us more catch-up time for late reporting, especially on such a vast -- if we're going to do it on a coastwide basis. Thank you.

CHAIRMAN PRESTON PATE: Thank you, Gil. David Pierce, you had your hand up earlier.

DAVID PIERCE: Yeah, to Gil's point. The limits, Gil, if I recall correctly, for 2001 during the different quarters were 9,000. That was on January 1. So, we're proposing now 7,000. I guess that's what's going to happen anyway, 7,000. And then for the second quarter we began at 1500, so it's the same. Then for the third quarter, if we began at 1,000 and we're proposing in this amendment addendum to make it 750. And then for the fourth quarter it was 2,000 and we're proposing in this addendum to go to 750 pounds.

So, that's the way it broke out 2001 at the beginning of each quarter. I haven't got the dates when we shifted down to the lower limits. The staff would have to provide that.

With regard to the numbers -- these

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GIL POPE: Thank you. I would have

loved to have seen last year's figures, figures before, as to what the initial trip limits were, how long the fishery was open, when did it close, if they had a trigger what the trigger mechanism might have been, so that we can get some idea as to whether 7,000 pounds is going to last -- if it's supposed to last say -- say it's supposed to last five months, it only lasts for three, and we want to have the fishery -- as one of our goals, to have it open as long as possible.

Then what I would like to see for us to help and decide as to what's the best course here is to have -- well, how did this go last year? How did this go the year before with this same trip limit? Is the increase in quota going to be enough to keep the season open longer or are we going to have to cut back maybe on some of the initial possession limits and maybe have a different trigger mechanism, maybe have some different adjusted possession limits. And these would have been things that I would look to see in some of the analysis as to how maybe Bob did some of his analysis for this current Table 3 that we have here.

The trigger is not applicable for 7,000 pounds, but we have found -- and I mentioned this many times before -- that when you have a trigger at 75 percent that most of the time it's long gone before -- by the time you hit 75

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trip limits pertain to the proposed quarterly quotas. NMFS, I believe, has proposed that they implement the quarterly quota that both ASMFC and the Council agreed to a few months ago. So, it's likely therefore that we won't have a different federal and state quota for black sea bass, at least that's my understanding. And the Federal Register announcement described in the proposal -- the Service doesn't appear to offer up any reservations regarding the different quotas. So, at least it appears we have some common ground for 2002 state and federal quotas. I'd just add that for everyone's information.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: Thank you, Mr. Chairman. With your indulgence, can I ask David a question? David, have you got the trigger values for those trip limits from last year? I unfortunately didn't bring that file.

CHAIRMAN PRESTON PATE: Mike has them.

MIKE LEWIS: I have them right here, yeah. For the first quarter, it went down to 4500 pounds per trip.

DAVID BORDEN: For the quotas -- the trigger percents.

MIKE LEWIS: Excuse me. That I do not think I know.

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CHAIRMAN PRESTON PATE: I thought they were 75 percent.

DAVID BORDEN: 75 percent on each one of them? We don't need to delay the meeting. If somebody could just get those and just announce what they were, I think it would help the evaluation.

CHAIRMAN PRESTON PATE: We'll get those. Rick,

RICHARD COLE: What do we have to do here this morning? We don't have to necessarily agree on a set trip limit for this public information document, do we?

CHAIRMAN PRESTON PATE: No, we don't.

RICHARD COLE: Is that correct, Jack?

CHAIRMAN PRESTON PATE: Well -- correction. There needs to be something in the document to give the public an indication of what we're trying to do. This does not have to be an agreement on what the final plan will reflect.

RICHARD COLE: It would seem reasonable to me that the document ought to have a number of options, and one could be the option that staff has brought forward and of course another obvious option would be the current proposed trip limits in the Federal Register. And any other combination we decide upon here today.

But we don't have to sit here today

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only in New Jersey but other states that these very low catch limits are essentially changing the entire complexity of the fishery.

And as the resource continues to increase, it's going to create more of a problem for bycatch, but it's also -- we need to be aware that we could simply change the entire composition of the fishery. If we're going to do that, we should be aware of it. We should make that decision consciously, not subconsciously.

And I think the best way to approach this is to have several alternatives, take it to public hearing, and let the industry -- the public comment and then bring those comments back for us to make a decision.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: Thank you, Mr. Chairman. In the document, going back to the point that I raised before -- in the document, page 5 in the second paragraph, it kind of speaks to the point that I was raising before, is that my view here is that if you look at that third line, my view is that we want to cut down on the period of time that the fishery is closed, each period is closed.

Now, there's a consequence of doing that, and this goes back to the point that Bruce just made, is that -- I mean, we're on the horns of this dilemma where you've

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and argue about exactly what the trip limit should be. And I don't think it's necessary for us to formulate a preferred alternative either at this point. Am I correct?

CHAIRMAN PRESTON PATE: Yes, you are correct, and it may be more productive to go back to David Borden's earlier question about what we're trying to achieve, come to some consensus on what the goal is in setting up these trip limits and state in the document the goals and objectives and present the information that's in Table 3 as one option for achieving those, and that be the framework for achieving the goals and making it clear that the numbers that are within that framework can be adjusted based on public input. Because there are any number of permutations of this table that you could create. Bruce.

BRUCE FREEMAN: Thank you, Mr. Chairman. I would agree with the comments that there need to be a number of alternatives. The reason I say that is our experience over the last several years of trying to overcome some of the difficulties in the sea bass fishery what we've seen by reducing these catch limits, particularly in the second, third and fourth quarters, in order to avoid bycatch problems is we've greatly affected the directed fishery. Essentially many instances without knowledge we're eliminating that fishery. And we've heard a number of comments from sea bass fishermen not

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got two different fisheries that have two different requirements, his fishery and our fishery; and yet I think the testimony from the fishing community over the past year, at least the Rhode Island testimony that I heard, was that we have to do whatever we have to do in order to reduce the period of time that the fishery is closed.

Because what's happening now is you just get a big slug of fish early on in the period, the price goes down to irrelevant amounts and what then subsequently happens, the fishery is closed. And when it's closed, all of a sudden the dealers do what they should be doing, they go off into the world market and they find other products that they substitute into the market.

So, to me, the way we should strike the balance -- and it really is a balancing act -- is to look at the Table 3 on page 4 -- and I think what we ought to do is to broaden that discussion that shows up on page 5 and reflect those points that I just made and set up the Table 3 in a format that basically indicates what would happen under various types of alternatives.

The balance, I think, is we'll allow some higher trip limit early on in the period to specifically advantage the Mid-Atlantic fleet, but have a lower percentage later -- that triggers the reduced trip limits later on, is 75

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percent. If we wait till 75 percent, what's going to happen is you have a two-week delay in the reporting period and even if you make fairly accurate forecasts, the chances are you're going to run right up to the quota and then trigger a closure.

So, I think the way we should change this is leave the numbers in the initial possession -- well, let me back up. I have no objection to Rick's suggestion of putting in the Mid-Atlantic trip limits as an alternative for public hearing purposes, but then in terms of the Commission alternative, I would think we'd start off with those initial trip limits and then show in the document the different trigger values and what those potential impacts might be, so that the public has the opportunity to debate the point and know what we're trying to get at.

CHAIRMAN PRESTON PATE: Mike, where are we in the timing of this process? What are the dates on completing the --

MIKE LEWIS: I think we have a little bit of room here. Later today, after we're done with this discussion, we also have an emergency rule for black sea bass that will set the possession limits for Quarter I. As you'll recall, we did table that during our meeting in August, and so we currently don't have any possession limits for black sea bass.

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is a need.

CHAIRMAN PRESTON PATE: Thanks.

Ernie.

ERNEST BECKWITH: Thank you, Mr. Chairman. I'm still having difficulty trying to fully understand the problem. Obviously of the problems is quite apparent as we've had overages and had to take emergency action to deal with some of these overages by changing the quarterly possession limits. But I'm not sure is there another problem here? Is there a systems problem?

It seems to indicate in the draft addendum that we're changing the system here. I'm having difficulty trying to compare what we're proposing here as to the system we used in the past. Was the system in the past that we just got together jointly with the Council and set the possession limits for the quarters for the whole year, and now we're proposing to do it somewhat differently?

MIKE LEWIS: Okay. What we have been doing is set the possession limits with the Council but then the problem has been the enactment of emergency rules throughout the year in order to set triggers at adjusted possession limits or to slow down the catch rate. And that was just to make sure that the season was able to stay open for as long as possible.

What we're proposing here is to -- as

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What we will do with emergency rule is get Quarter I squared away, which will give us the rest of Quarter I to get this addendum all set up and get it approved. At that point then we'll set Quarter II possession limits and for the rest of the year. So, we do have until the end of Quarter I, I believe, to get this finalized.

CHAIRMAN PRESTON PATE: So, we could modify this draft and include the options that several are recommending and bring it back to the Board at the next meeting?

MIKE LEWIS: We could do that, so long as the states have enough time to implement what we do finally decide on.

CHAIRMAN PRESTON PATE: Jack.

JOHN DUNNIGAN: You could make the decision today that you wanted the draft revised and instruct the staff to do so, and then you could run it back through the Board members informally before issuing it, so you wouldn't require another Board meeting to actually approve the draft for public hearing. You could do that today and then vote on the final through --

CHAIRMAN PRESTON PATE: It was the need for that other meeting for approving the draft that I was questioning.

JOHN DUNNIGAN: I don't think there

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opposed to using emergency rules every quarter is to develop a system wherein we can set these triggers and adjusted possession limits during the annual specification setting process. What we're doing is trying to streamline what we've been doing anyway and have it be done at the beginning of the year as opposed to every quarter.

ERNEST BECKWITH: Why couldn't we do that with the old process when we met jointly with the Council? Why couldn't we establish triggers at that point?

MIKE LEWIS: Because the plan does not currently provide for that, does not allow us to set triggers against the possession limits as it stands now.

ERNEST BECKWITH: That's an important point and it really wasn't clear in this document. I think that needs to be stated clearly.

MIKE LEWIS: I'd be happy to readdress that in the text.

CHAIRMAN PRESTON PATE: Jack.

JOHN DUNNIGAN: And it's not just a question of what the plan allows because the Regional Office has indicated to us that they couldn't even live with the change to the plan, because of the limitations on their resources and anything like this is going to have to be done independently by the states.

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They're willing to accommodate that. So, it isn't just a question of what the plan allows. It's also a question of what the National Marine Fisheries Service thinks that they can actually implement themselves. And this is beyond their capabilities, they tell us.

ERNEST BECKWITH: Mike, if I could just follow up. Assuming this addendum is going to be adopted, what happens if we're down the road in '02 and we find out that the initial possession limits and the triggers and the default possession limits just aren't going to work? How would we change it at that point? We'd have to do emergency action?

MIKE LEWIS: Yes.

JOHN DUNNIGAN: Yes, unless we write some other process into this document, which we could do.

CHAIRMAN PRESTON PATE: Bruce.

BRUCE FREEMAN: I have another suggestion for an alternative, but the discussion seems to be going in another direction, so I don't want to interrupt that discussion. But if that's concluded, I'd like to offer another concept.

CHAIRMAN PRESTON PATE: Okay. We'll come back to that. Gordon.

GORDON COLVIN: No.

CHAIRMAN PRESTON PATE: Any more

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clarity, I wasn't proposing changing the process. I just was proposing that the statement of problem should be clearer. That's all.

CHAIRMAN PRESTON PATE: Is staff clear on what we need to do with these changes? Gil.

GIL POPE: Okay. So that if it's going to be an ongoing process that we're going to continue to use, I think we ought to rename it, stop calling it an emergency, because that was a big problem from before, for me anyway.

CHAIRMAN PRESTON PATE: Pat.

PAT AUGUSTINE: Thank you, Mr. Chairman. One of the points that came up by the fishermen at our bycatch meeting was with the yoyo-ing of the quota and the closing of the seasons. It was creating major, major marketing problems and that as indicated our buyers were going offshore to replace our product with other products and our fishermen were losing that market share.

So when we write this up, I think it has to be abundantly clear in the document that we want to keep the season open, year-round if possible, without major detriment, but even if the bag limit as they indicated had to be reduced to apply, but they still had market share they wouldn't have to go back and recreate, and it was a method of reducing

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comments on the need to modify the draft to include various options and the effects of the triggers as suggested by Mr. Borden? Jack.

JOHN DUNNIGAN: Is it the consensus around the Board that you want us to write into the next draft then something to address Ernie's concern here about giving the Board some flexibility short of another addendum or an emergency action? I see some heads wagging no. So, let's make sure we understand that.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: Well, to address the question, I have some difficulty with the process that doesn't involve us coming together making a decision on an emergency basis. That's our process. What we seem to be talking about is crafting an exception to it and I'm very uncomfortable with it. I'm not aware of a precedent off the top of my head.

CHAIRMAN PRESTON PATE: So, your suggestion is we leave the process as it is and utilize our emergency response mechanisms if the information that's in the table is not working at the end of the quarter --

GORDON COLVIN: The same as we do for everything else.

CHAIRMAN PRESTON PATE: Ernie.

ERNEST BECKWITH: Pres, just for

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bycatch, which is what we're trying to accomplish among other things. Thank you.

CHAIRMAN PRESTON PATE: Gil, to that point.

GIL POPE: Yes, to that point. One of the things that was happening was that we would find -- with the big three -- I call it the big three, fluke, scup and sea bass, is that when two are closed all the fishermen would fish on just sea bass. And prices would go nowhere and be caught up in a hurry.

Then all of a sudden sea bass would close, scup would reopen for a little while, everybody went scup fishing, everybody. So, it flooded the market with these big giant influxes of this one species that just happened to be left open. When fluke was the only one, everybody went fluking. If scup was the only one that was left, everybody went scupping.

So, it's not just for the sake of the sea bass. What I'm talking about, when we're working with all three, those are the three major inshore fisheries as it turns out, especially for the smaller operations. So, if none of them close -- or if we can get it to where they're closed for shorter periods of time, you won't have people concentrating as much on one and trying to balance it and you'll get a better price for everything. And it just seems like it makes more sense to the

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fishermen to not have these big giant -- all of a sudden something's open and there's just a huge influx in this product.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: I know where time constrained, Mr. Chairman, but I can't resist making the observation that part of this is a fact that we have locked in these percentages that remain fixed and what happens is you have a rebuilding population and a redistributing up and down the coast, and the result is that you're locked into a fairly small percentage of quotas aren't growing.

In other words, the spatial distribution of the fish has changed dramatically. You've got sea bass up in the Gulf of Maine where they haven't been in 20 years, so you've got all large fisheries that never had a closure, these resources suddenly having access to the resource.

And I think one of the things that we should think about long-term, we can't do it with this amendment, is whether or not we should change those percentages or another strategy would be to basically take the increase in quota and distribute it differently than just uniformly applying it.

The advantage, I would quickly point out to the southern and Mid-Atlantic states, of doing that is possibly we could have higher trip limits later on during the

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But I think by allowing some minimum bycatch -- and again I would suggest we formulate some alternative to include any increases and put aside into that incidental and bycatch category that would allow for -- I think overcome some of the problems we face.

CHAIRMAN PRESTON PATE: Dave Pierce.

DAVID PIERCE: Quarter II, starting out at 1500 pounds, trigger 75 percent, then dropping it down to the adjusted possession limit of 150 pounds per day, 1,000 pounds per week. I need to echo a concern that was raised last year about this particular strategy -- which I understand why the strategy is in place, and on the face of it, it seems to make sense, but last year we indicated that because we're managing on a quarterly quota approach, in Massachusetts anyways the sea bass don't really get into our waters until May 1st.

So, last year our inshore fishermen said that by the time the fish reached our waters, the 1500 pound limit had dropped to 150 pounds per day. That did away with their directed fishery. They were quite upset about that, as you might expect. They sued the Commonwealth. I think I've already briefed the Commission on that lawsuit. It took up a considerable amount of my time as I attempted to defend the Commission's action in our state court. The decision was in favor of the Commonwealth only because the plaintiffs were told

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periods where the fish are in those areas to -- so that they would get more benefits out of it. But I think we've got to think with an open mind about some different strategies here.

CHAIRMAN PRESTON PATE: Bruce.

BRUCE FREEMAN: Thank you, Mr. Chairman. As I indicated earlier on, I wanted to offer a suggestion, and Dave really led into it. Recently we had a summer flounder bycatch -- several weeks ago; and one of the options that was looked at is as we see an increase in the resource take a large portion of that or at least some portion of it and allow for some minimum catch level to occur throughout the coast. And that would allow states, be they large or small, some minimum catch, which would keep those markets open. And if there is a remainder, increase the directed fishery.

This would -- kind of an in-between thing is to allow the incidental catches to occur, and I believe they will increase over what they are now as the resource increases, and then with the directed fishery at least it would be open part of that quarter, perhaps a larger part. But I agree with the comments that Gil and David made is that we cannot predict what's going to happen in this fishery because we've seen a closure in the fluke fishery or the scup fishery a tremendous impact on sea bass. Or vice versa; this closes, the other fisheries have a tremendous impact.

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that they sued the wrong group. And they were advised basically to sue the Atlantic States Marine Fisheries Commission regarding this strategy.

So, I just want to make the Commission aware of the fact that it's likely that their attorney will be investigating ways to re-examine their concerns -- his clients' concerns, perhaps find another target, because they can't sue the Commonwealth of Massachusetts again. They lost on that attempt. But they may attempt to pursue this in some other court, federal court. I don't know. I just wanted to give you some advanced warning that this was their very strongly stated position that they lost their directed fishery for black sea bass, and frankly they did. The fishery that was operating on 2,000 pounds as a possession limit the previous year or so was suddenly limited to 150 pounds per day.

In a sense, what happened during that period of time starting May 1st was the allowing of black sea bass in other fisheries where black sea bass was taken as a bycatch. That's really where the emphasis was last year in May, inadvertently so, but that's the way it ended up being. So, that's my heads-up on that particular issue.

Another way to deal with the second quarter that probably wouldn't be acceptable to most Board members, would be to deal with that specific concern by saying

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something like in the second quarter, start off at the 150 pounds per day, 1,000 pounds per week, and then say something like if 25 percent of the quarterly quota is not taken by May 1st, then we increase the limit to 1500 pounds. When it hits 75 percent, it drops down to 150/1,000. That would be one way to deal with those specific concerns of those inshore fishermen.

I realize this is a specific concern in one state, Massachusetts, and I'm not going to push this, because I don't think it would pass, I don't think the Board would be receptive, but it is a legitimate concern by our industry and if indeed this goes forward the way it's outlined here, after public hearings and an eventual Board decision, clearly Massachusetts the Division is going to have to figure out once again how to work with a weekly limit, how to make sure that we effectively monitor and enforce it, so the fishermen can at least have a directed fishery on one day -- because that's what it would basically come out to be, go out there and catch the 1,000 pounds in one day.

And frankly, because of the abundance of black sea bass, as indicated by David Borden, they'll have absolutely no problem doing that. Black sea bass this past spring was extremely abundant, fishermen were catching very large amounts in the cod fishery and they had to release alive in excellent condition very large amounts of black sea bass.

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early winter or February or March with that particular document. And recall that there are many complex alternatives in that particular document that could very well change the whole way we manage the commercial fishery. So, let's don't go too far afield here. Let's just focus on these trip limits here today and try to move forward.

CHAIRMAN PRESTON PATE: Good suggestion. Any questions of the staff of the information that's on the screen? Pat.

PAT AUGUSTINE: Thank you, Mr. Chairman. Looking at this chart compared to 2002, I get down to the third quarter, the quota is going to increase but we're going to drop to 700 pounds a week and the trigger at 40. That quarter was only open for five days after the trigger date. And if I understand it, that quarter went until September. So, less than a couple of weeks, and I guess I have a conflict in my brain as to saying why are we -- (inaudible) -- less than in this particular case versus what happened this past year. It would seem to me that the 700 pounds would be increased significantly, be at least 1,000 pounds a week, if not a little higher, or extend the third quarter.

As far as the fourth quarter is concerned, that seemed to stretch out quite nicely, but we're again going to 2,000 pounds a week down to 700 pounds a week.

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And I witnessed that myself through sea sampling that I did on board some of our inshore boats.

So, what I've just said will probably come up again during the public hearing, but I wanted to make sure staff and the Board were aware of those specific concerns.

CHAIRMAN PRESTON PATE: Thank you, Dave. Mike, would you explain what's on the screen.

MIKE LEWIS: Thank you, Mr. Chairman. Up there is 2001 Quarters I through IV with the initial trip limits, the trigger percentages, the trigger data and the adjusted trip limit and then the final closure date.

So, just to address Dave's question earlier, there was a 75 percent trigger for the first quarter -- it went down to cut it in half -- cut the trip limit -- possession limit to half down to 4500 pounds. Quarter II was 1500, at 40 percent it went down to 1,000 pounds per week. For Quarter III, it was around 1,000 pounds, then at 40 percent it went down to 1,000 pound per week. And then for Quarter IV, it was 2,000 pounds per week throughout the entire quarter. Thank you.

CHAIRMAN PRESTON PATE: Rick.

RICHARD COLE: Before we get too far afield here, I would just remind our Board members that we've got Amendment 13 coming forward and we plan to go to hearing in

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It just seems to me that there's more fish, we're going to have more bycatch, we're going to have a shorter season.

So, I quite frankly don't agree with the numbers in the adjusted possession limit on a weekly basis. I agree with what Rick said, maybe we have to put that other chart in -- Jack said that they're going to have staff develop -- 2,000 pounds a week, or whatever those numbers are that we agree to. Thank you.

CHAIRMAN PRESTON PATE: Thank you, Pat. Are there any more comments on this? I'd like to work on a recognition of consensus that the Board has asked the staff to move forward with a modification of the draft to include the options available for -- under Table 3, and the effects of having different trip limits and trigger percentages to be reviewed by the Board for approval for the public hearing document. If there's no objection to that, then that's the way we will proceed --

(No response audible.)

CHAIRMAN PRESTON PATE: Any more discussions or questions on this document?

(No response audible.)

CHAIRMAN PRESTON PATE: If not, we'll move on to the next agenda item. Mike, you want to do -- Jack.

JOHN DUNNIGAN: Mr. Chairman, you did

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not approve this document for public hearing.

CHAIRMAN PRESTON PATE: We did not.

JOHN DUNNIGAN: This would have to come back to another meeting of the Board.

CHAIRMAN PRESTON PATE: Or do it informally, as you were suggesting.

JOHN DUNNIGAN: What I was suggesting was basically the usual staff discretion in editing the final draft of the document.

CHAIRMAN PRESTON PATE: Okay.

JOHN DUNNIGAN: And I don't know whether -- how the Board feels about this based upon what you said. Are you approving this subject to staff editorials to go to public hearing or are you saying you want to see this come back for another look-see before you approve it for public hearing?

CHAIRMAN PRESTON PATE: What's the pleasure of the Board?

PAT AUGUSTINE: Move to approve the changes that Jack just described.

CHAIRMAN PRESTON PATE: We have a motion by Mr. Augustine to approve the document with the understanding that it will be -- Table will be modified and reviewed by the Board members. Second by David Borden. Bruce.

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long, so that -- and the point is not necessarily as part of that exercise to advocate something that the public just can lean onto, but to point out the range of options so that the public gets broad exposure to both of the concepts -- (inaudible) --

CHAIRMAN PRESTON PATE: Ernie.

ERNEST BECKWITH: Yeah, just to go along with what Dave said, I think it's got to be clear in the document what we're asking public comment on. And again, one is the process. We're going with a process where now -- we're going to have the ability to establish triggers. You want them to be aware of that, so we can get comments on whether they think we should have triggers or not.

Two, we are also saying that we're going to have the flexibility to set trip limits and here are some options of various trip limits and our comments on -- excuse me -- comments on the range of those options. So, it should be clear in the document what we're asking public comment on.

JERRY CARVAHLO: I would like to see some figures to show what it would consume or what it would take to have a no closed season at a minimum daily possession limit. I mean, that's the extreme. People would have an idea of what it would take to maintain that.

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BRUCE FREEMAN: Thank you, Mr.

Chairman. I'm not clear as to modification of the table. I understood several alternatives to be listed, one of which would be the Council's position of the 7,000/2/2/2 for the other quarters. I need clarification. What exactly is going to be included in this table, because I don't understand --

CHAIRMAN PRESTON PATE: Dave Borden.

DAVID BORDEN: Yeah, just quickly to repeat what I said before, which was I would think we could add the Council position in and then we'd have the -- pretty much the status quo the way it's reflected now. And then put in a couple of alternatives that kind of frame what the extremes are, and point out the fact that there are compromises to be struck between high trip limits and the trigger value and how long the fishery is open.

And the way to do that is with the type of table that the staff already put up here. I think you can -- the staff can probably do a couple of iterations of that table based on the landing rates from the last couple years and say well, if you had 2,000 pounds and everything was the same from last year, this is how long it would last, this is when the trigger would be implemented.

If you started off with 500 pounds, as an example, with the following trigger, it would go this

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And we're having the same problem with scup and fluke. One of the things that keep coming up in every one of these meetings is that the closed season closes the greatest amount of time to the greatest amount of people, the consumer, the suppliers, the support people of the fisheries.

Jim O'Malley made a point. He says that if perpetuate an open season on these fisheries, we have a de facto reallocation of the resource from a targeted species to a bycatch species or a small boat fishery and so forth. And there's some truth to that.

And that is the lingering question that we all have to answer. What do we want for the future? Can we sustain a fishery that's targeted? Is it in the best interest of the people? How much of that do we protect? Or do we go completely to the other side of the pendulum. They're important questions.

I used the example of Rhode Island about the quahog fishery. We presently employ probably 200 full-time small boat fishermen. In effect, we could harvest that resource with three conveyor boats, but we don't. We chose to go the other direction. And I think that's the big question that we're going to have to ask and answer as we go on. What is the balance going to be?

CHAIRMAN PRESTON PATE: Thank you,

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Jerry. Gordon.

GORDON COLVIN: I just wanted to make it clear in my mind at least that the alternatives the staff will develop will include specific alternative thresholds, probably spanning the range of 40 to 75 percent with at least one somewhere in the middle around 60 or so. And so I'm not sure that our deliberations specifically reflect that.

MIKE LEWIS: Gordon, the way I understand it, we will develop a number of different scenarios of Table 3, including different initial possession limits, different trigger limits and difficult adjusted possession limits and an attempt to project the approximate duration of the season, as best we can, using historical data.

GORDON COLVIN: I appreciate that. I was going to make an observation. I heard that suggestion come from David and Jerry and it certainly would be very helpful, but quite frankly, you guys need a better crystal ball than you've got to be able to do that. And I think that's not possible, personally. I really don't.

CHAIRMAN PRESTON PATE: Okay. Let's call the vote on the motion. Everyone has had a chance to read what's on the screen.

All those in favor, --

BRUCE FREEMAN: Pres, for

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passes. While we're on black sea bass, let's move to Item 6 in the agenda, which is the emergency rule for the first quarter of 2002. Mike.

REVIEW AND APPROVAL OF EMERGENCY RULE

FOR 2002 QUARTER I BLACK SEA BASS FISHERY

MIKE LEWIS: Thank you very much, Mr. Chairman. Bob, would you go to the next -- thank you. For 2002, the ASMFC has adopted a coastwide commercial quota of 3,332,000 pounds. The Council has recommended the same quota, which is anticipated to be adopted by the Secretary of Commerce in the winter of 2002. These are the same figures that were up during our discussion of the addenda. So, I think you're all familiar with the quarter process and the percentages associated with each quarter.

Here again is the coastwide quarterly quota landings for 1998 through 2002. Again, if you'll notice that those numbers are -- at the bottom are not consistent with what I have in the text, and that is because they are calculated with preliminary overages adjusted for. Go ahead, Bob.

The purpose of the emergency rule to allocate the available quota to the states user groups over the first quarter of 2002 and establish a trip limit for Quarter I, that's while Addendum VI, which we just discussed, is developed

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clarification.

CHAIRMAN PRESTON PATE: Sure.

BRUCE FREEMAN: I just want to make it certain -- because there's discussion that the Board would meet again to approve or it wouldn't meet again to approve.

CHAIRMAN PRESTON PATE: The Board will not -- if we pass this motion, the effect will be to approve the document for public hearing. The staff will modify the table and circulate it to the Board members for informal review and comment.

BRUCE FREEMAN: All right.

CHAIRMAN PRESTON PATE: We'll move forward with scheduling the public hearings. Take a minute for a caucus, if you think it necessary.

[BRIEF CAUCUS]

CHAIRMAN PRESTON PATE: -- caucusing between the states and not within the states. All those in favor of the motion, please signify by saying aye.

(Response.)

CHAIRMAN PRESTON PATE: All opposed?
(No response audible.)

CHAIRMAN PRESTON PATE: Null votes?
(No response audible.)

CHAIRMAN PRESTON PATE: The motion

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and approved. As of now, we do not have a possession limit for Quarter I, and so in order to have one, we need to pass an emergency rule. The addendum will not be finished in time.

As it is now, we have down for Quarter I 2002, which starts January 1 through March 31st, possession limit of 7,000 pounds per day. That was selected in order to be consistent with the current federal proposal. However, given past performance of the fishery, it may be worth entertaining the concept of putting in a trigger and an adjusted possession limit in order to keep the season open for longer. Thank you, Mr. Chairman.

CHAIRMAN PRESTON PATE: Thank you, Mike. Pat.

PAT AUGUSTINE: I think in view of the fact -- thank you, Mr. Chairman. In view of the fact that this is exactly in line with the Mid-Atlantic and -- (inaudible) -- I would move to approve the emergency rule as stated.

CHAIRMAN PRESTON PATE: Motion by Mr. Augustine for approval. Is there a second?

RICHARD COLE: Second.

CHAIRMAN PRESTON PATE: Second by Rick Cole. Any questions?

GIL POPE: What are the numbers in the trigger?

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MIKE LEWIS: Currently there is no trigger and there is no adjusted possession limit. It is 7,000 pounds for the duration of the quarter until the harvest limit has been reached.

GIL POPE: And there's more? There's more this year than last year; right? Or is it -- one - two -- whatever it is. It should go longer?

CHAIRMAN PRESTON PATE: Take a moment to caucus.

[BRIEF CAUCUS]

CHAIRMAN PRESTON PATE: Okay. Since this is an emergency rule, we do need to have two-thirds of a majority of the Board, and to make sure the record is clear on the number of representatives that are here that will be voting in favor, I'll ask the staff to do a roll call vote.

MIKE LEWIS: Massachusetts.

DAVID PIERCE: Yes.

MIKE LEWIS: Rhode Island.

DAVID BORDEN: No.

MIKE LEWIS: Connecticut.

ERNEST BECKWITH: Yes.

MIKE LEWIS: New York.

GORDON COLVIN: Yes.

MIKE LEWIS: New Jersey.

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that fishery won't last as long as it did last year because of the huge increase in availability.

Having said that, we've got another concern, which we share with the state of Massachusetts about the timing, but we figure that we can address that issue through the addendum that we're working through the process. So, we will change our vote to a yes vote.

CHAIRMAN PRESTON PATE: Rhode Island votes yes. Are there any null votes?

(No response audible.)

CHAIRMAN PRESTON PATE: There are none. The motion passes. Thank you very much.

The next item on our -- Bruce.

BRUCE FREEMAN: I'd just like to make a brief statement relative to this quarter. Our experience last year is that the quota didn't control, it was availability. Otter trawl caught large numbers very quickly, depressed the price of the market and stopped fishing. The price went back up, they started and they could take this entire quota in a week if they directed on it. But they didn't and it was market driven.

So, whether you make it 1,000 pounds or 9,000 probably doesn't make any difference. It's really going to be market driven.

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BRUCE FREEMAN: Yes.

MIKE LEWIS: Delaware.

RICHARD COLE: Yes.

MIKE LEWIS: Maryland.

BILL OUTTEN: Yes.

MIKE LEWIS: North Carolina.

PRESTON PATE: Yes.

UNIDENTIFIED: (Inaudible.)

MIKE LEWIS: Seven.

CHAIRMAN PRESTON PATE: We didn't get enough votes in favor to approve it. Is Rhode Island going to reconsider their earlier vote?

DAVID BORDEN: Mr. Chairman, can I have about a two-minute caucus with my own delegation?

CHAIRMAN PRESTON PATE: Yes.

[BRIEF CAUCUS]

CHAIRMAN PRESTON PATE: David, you all ready? Let's come back to order, please.

DAVID BORDEN: Mr. Chairman, with your indulgence, I'd like to make a very brief statement. The conclusion of our delegation is that because of the increase in availability the trip limit actually should be lower than 7,000. We recognize that the trip limit has gone from 9,000 to 2,000, but we're concerned -- 9,000 to 7,000, but we're concerned that

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Up to this point, up to this year, 2001, realize that the first quarter's quota was not taken. And the reason being there was no directed otter trawl fishery except for this year. And depending on prices again it will be market driven, but the catch rates really -- in this instance really have no influence. It's not to say that the industry should take lower amounts to keep the price high, but my experience in the fluke fishery and others is they don't. They'll go out and catch it and drive their price down and they'll stop. And then the resource will still be there, the quota will be there and they'll fish it like they did last year. They'll do it again. So, in our opinion -- the 7,000, 5,000, 9,000 probably -- (inaudible).

CHAIRMAN PRESTON PATE: David.

DAVID BORDEN: The Rhode Island delegation will debate that point with Mr. Freeman as --

CHAIRMAN PRESTON PATE: Thank you for your choice of venues.

We'll move on to Item Number 4 on the agenda, which is to review and approve Addendum V to the Scup Fishery Management Plan. Mike.

MIKE LEWIS: Thank you, Mr. Chairman.

JOHN DUNNIGAN: Before -- (inaudible) -- indication as to -- states -- (inaudible) -- Maryland, Rhode

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Island, Massachusetts and New Jersey. Thank you very much. Is there anybody else that wants --

(No response audible.)

JOHN DUNNIGAN: Thank you. I don't see any. Thank you.

REVIEW AND APPROVAL OF PUBLIC HEARING DOCUMENT
FOR ADDENDUM V TO THE SCUP FISHERY MANAGEMENT PLAN

MIKE LEWIS: Thank you, Jack, and thank you, Mr. Chairman. Bob, please go to the next slide. During the winter period the scup quota is available coastwide and it's restricted through the implementation of trip limits. Addendum I to the Scup Fishery Management Plan includes a state-by-state quota system that is in effect during the summer period. In the state-by-state system, quotas are distributed to the states based on their percentage share of commercial landings for the period May through October 1983 through 1992.

The summer quota period extends from the beginning of May to the end of October each year. In 1999, 2000 and 2001 the Management Board approved separate emergency rules to establish state quota shares that differ from Addendum I to the fishery management plan for scup, an emergency rule that was in effect this summer for the 2001 fishery expired on October 6th.

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additional Massachusetts landings were included in the database.

As a provision of the emergency rule, the percent share for Massachusetts was increased by one percent and the remaining state shares were decreased proportionally to account for the change.

Option 3 for the addendum. This is similar to Option 2, however the Massachusetts state share was not increased by one percent. Therefore, the state shares is based on the 1983 through 1992 landings data including the additional landings for Massachusetts. This option represents the state shares that were in place during the summer 2001 quota period.

And finally Option 4. This option uses the landings data for 1986 through 1992 to calculate percent allocation for the states. Massachusetts did not supply additional landings for the years 1983 through 1985, therefore those years were not included in the base period for this option.

I intentionally did not go through these charts one by one. Hopefully you all have copies and have had a chance to review them beforehand and they are before you now. If you do not have them, there are copies available on the table at the side of the room.

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In the absence of a new addendum or emergency rule, the summer period scup management program will revert back to that detailed Addendum I to the Scup Fishing Management Plan. The Addendum I management program is included in this document as Option 1.

Unfortunately again we have a little problem with the size of the screen and readability of the text, and I apologize for that. What that is is the summer 2001 state shares. They're established on the base period 1983 to 1992, after the database was updated to include the additional landings from Massachusetts. This is included as Option 3. That will be explained in greater detail at that time.

Option 1. This option includes the state shares that are included in Addendum I to the fishery management plan. As stated, this is the management program that will be in place for the summer quota period absent the development of an addendum or emergency rule.

The state shares in this option were developed based on state landings from 1983 through 1992, prior to an update from Massachusetts to reflect additional landings.

Option 2. This option was developed based on the emergency rule that was in effect for the summer 2000 commercial scup fishery. The state shares were calculated based on the landings from 1983 through 1992 after the

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I'd be happy to entertain any questions, but that concludes my formal presentation.

CHAIRMAN PRESTON PATE: Thank you, Mike. Dave Pierce.

DAVID PIERCE: This is deja vu. First, I don't believe the Board requested the staff to move forward with the development of this addendum. It's my understanding that this addendum came about as a result of a working group that assembled and identified a number of issues regarding scup, sea bass and black sea bass and then brought them forward to the Board in the form of a memo that we haven't yet discussed.

So, this has been brought forward at the suggestion of that working group and then of course developed by the staff into the addendum we have before us now. Massachusetts was not part of that working group and that's unfortunate because much of what I'm going to say now could have been said then, I suppose, and maybe that working group would have had a different perspective on this issue.

I'm not going to get into the history of Massachusetts' concern about permanent percent shares for scup. I think most of you have heard that story before and won't appreciate hearing it again. I have prepared a couple of memos. One memo went to Jack Dunnigan last week. Jack, I don't

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know if you've had a chance to read that memo and response to it. It's a memo that highlights that indeed Massachusetts does not want to go back to those days, those years when we debated this issue. It's a divisive issue, establishing percent shares for summer flounder -- for the scup summer fishery. There is a past lawsuit, decisions by the courts. Again, that's old business and I don't want to go there.

Nevertheless, Jack Dunnigan did play a major role in helping the states, Massachusetts specifically, agree to go to a percent share that we would live with on a year to year basis. That 22 percent share was so. So, we lived with that percent share for the last few years in the interest of compromise and the spirit of accommodation and reconciliation and not getting ourselves into that divisive debate as to some shares of this fishery that's important to Massachusetts.

So, you have that one-page sheet that was sent to Jack Dunnigan. Apparently it was not made available to the Board. Perhaps because it was sent to Jack late last week. Frankly, my intention was not called to the working group recommendations until rather late in the game. So, that's one letter -- one memo.

The other memo that I made available this morning to all of you describes the specific reasons why we feel that it's inappropriate for us to go to permanent shares at

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have, if it was 22 percent permanently. So, that's a concern to us.

The spawning closure. Massachusetts implemented a spawning closure last year. De facto spawning closure. Nevertheless, that was a major, major action that we took that stopped the commercial fishery during the spawning season. No other state has that kind of an action, that kind of a closure, and we do. So, we'd like some recognition for that.

Discards, the discards are still on the top of our list, how are discards treated. We're not confident that the gear regulated areas are doing the job. And if they're not doing the job, then we'll continue to have fishing mortality rates on scup and that will translate into low overall annual quotas, apply the permanent 22 percent to that and we end up with potentially a low -- a very low quota -- summer quota for Massachusetts.

The recreational fishery landings. They're still not effectively restrained to the targets. That's a major problem. It inflates the fishing mortality rate again. That affects the overall annual quota and then the 22 permanent share reflects once again on what we get for a summertime quota.

Regarding the commercial discard by gear type, we make the point again that in our state we have very low discard mortality. 85 percent or so of the landings

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this time. The addendum really is not needed. We need not get into all that discussion and renewed debate.

It makes a lot of sense to us for a continuation of the annual setting of the percent share, with Massachusetts continuing for now to agree to that percent share, again, in the spirit of cooperation. But not wanting permanent shares still is our position and there are seven reasons described in this document that I've provided to you this morning as to why we feel that it does not make sense.

There are a number of major issues that need to be discussed and resolved relating to not necessarily landings of scup in each state during the summertime, but well beyond that. It gets to the issue. It gets to the issue of the assessments, the assessments that are done, how reliable those assessments are, because obviously they have a lot to do with what the overall quota is, and then that impacts what Massachusetts has during the summer -- a 22 percent share.

We've got concern about the definition of overfished, that it's very likely that because of what the Board and what the Council has done regarding that definition, we will be forever more in an overfished definition. And that has implications for the quotas we will set each year and that has implications for the summertime share that we would

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that occur in Massachusetts during the summer is by pots, by hooks, by weirs. That's important for everyone to consider because it has an impact on how we consider the percent split in the overall quota between season -- summer and winter 2.

And then finally, there is a big difference in the summer fishery between the different states. If one -- (inaudible) -- belief that the trawl fishery one has higher discard mortality of scup. That needs to be considered when we deal with what summer shares should be, because Massachusetts is, as I said, about 85 percent pot, hooks and weirs, and the other states during the summertime do not have a fishery prosecuted primarily by those gear types, the trawl fishery is dominant for the discards that occur in those fisheries.

So and those are the reasons why we object to a permanent approximate 22 percent share in any year. We want to work with the Board to enact change in how we deal with the scup management and it will be difficult for us to work with the Board on this issue as we move forward in future years, especially next year, if we're suddenly obliged to accept a 22 percent permanent share. It will lead us down a road we don't want to go. It will bring us to a very bad place. And that's -- I want to avoid that if at all possible.

CHAIRMAN PRESTON PATE: Gordon.

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GORDON COLVIN: Thank you, Mr.

Chairman. I'm not sure that we just didn't get put in that very bad place. Quite frankly, I feel as if the statement just made is a threat to this Board and its members. Let me tell you why.

From New York's perspective, over the last couple of years, and you can see it right here in Tables 3 and 4, as was noted in the spirit of coming to agreement and assuring we have a cooperative management program, New York has agreed to a reduction in the share of the summer scup quota that our fishery has enjoyed.

I note that the Commonwealth of Massachusetts in the spirit of teamwork has agreed to an increase in its share. Be that as it may, the fishery management plan from which we operate, which presumably our actions are guided by, and upon which an addendum would need to be based, indicates that the summer quota is to be allocated according to the history of the distribution of landings by state, consistent with the details laid out in the Addendum I to the fishery management plan.

And that's all. There are lots of other reasons offered here by the Commonwealth of Massachusetts that we should take into consideration, none of which are part of the fishery management plan.

Now, what I hear being said is that

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Or worse, unless of course we increase Massachusetts' share, then we'll agree. Well, what's that got to do with what we're here to do? What's that got to do with what's in the fishery management plan? I'm very disturbed by this position, and I think it puts us in that bad place today.

I think we need to go forward and set -- and adopt an addendum that sets these shares down and puts this question behind us once and for all. If the Commonwealth or any other state believes that under the basis of the fishery management plan, God, how many times have we said this since this whole issue began, which is the state quota shares, can be shown to be different than what the history has recorded, we can make that adjustment. We can adjust this addendum at any time. But the fact is that none of us, including Massachusetts, is going to do that at this stage of the game.

We have recovered as much history as is recoverable. It's over. So, either we get on with the management of this plan the way it's written or we don't. And we better make that decision this morning. Thank you.

CHAIRMAN PRESTON PATE: Thank you, Gordon. David.

DAVID PIERCE: To clarify, it's not made as a threat and I'm saddened by the fact that Gordon has

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we would not like to adopt an addendum that makes these shares permanent. We would like to come here every year and renegotiate. Mr. Chairman, members of the Board, based on the direction that those negotiations have taken New York's quota in the last two years, I have some concern about what the intent of the Commonwealth is in making such a statement. Do they intend to negotiate a lower number than 22 plus percent, and a higher number for New York, year by year, over and over again? I think not. No way.

Moreover, these seven reasons that are offered as to why we can't come to agreement: A, have nothing to do with what I just indicated was the basis for the quota shares in the fishery management plan, and B, have no -- I don't understand the logic behind them as how they are related to a decision. Many of these are very real issues and problems that trouble all of us, but they don't bear on what percentage of the summer quota we get.

I guess what bothers me about this position is that it seems that the Commonwealth is suggesting that every year they would like to come before this Board, put these seven issues on the table and indicate unless we make progress on these issues, from our perspective, that being the Commonwealth's, we're not going to agree to a summer scup quota share.

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that point of view. It's unfortunate. It's not my intent to be combative or to set the stage for future acrimonious debate.

-- would be just to accept the 22 percent for next year with an understanding that it's just -- (inaudible) -- the year after, but Gordon is quite correct in one regard that we would like to see some progress on some of these other issues, because if we don't make progress, then we'll all share with -- I think the dissatisfaction with the overall management program for scup.

Gordon has clearly stated his position. He did share with me at the beginning of this meeting during a one on one --

GORDON COLVIN: Excuse me, Mr. Chairman. That comment was made off the record and if it's repeated here now there will be difficulty.

DAVID PIERCE: I did not realize that was off the record, Gordon.

GORDON COLVIN: I made it very clear.

DAVID PIERCE: You did not make it clear that that was comment was off the record, so I will not mention it. However, it influenced my thinking.

With that said, I'll refrain from further discussion on this issue and if the Board chooses to move forward with this addendum, then I think it will be clear

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how the future will progress.

CHAIRMAN PRESTON PATE: Pat

Augustine.

PAT AUGUSTINE: With that debate

behind us, Mr. Chairman, I would like to recommend that we move this addendum forward -- I guess -- recommend that we move this addendum prepared as such for public hearing.

CHAIRMAN PRESTON PATE: We have a motion to approve for public hearing. Second by David Borden. Any discussion or comments on the motion? Dave Borden.

DAVID BORDEN: Thank you, Mr.

Chairman. I guess I would point out that -- I know that this is a serious and very contentious issue, and it has been in the state of Rhode Island, but I'd just offer the perspective in regard to the Massachusetts comments that I wish there was something in this process that we could term permanent. Nothing in this process is permanent and everything is subject to change every single year, and I would just ask David and his director to reflect on that.

I think the Board has always had the position that any state around this table is free to come back to the Board at any point with any proposal that recasts these shares -- comes up with a different way of allocating shares, comes up with the a different way of allocating a rebuilding

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(No response audible.)

CHAIRMAN PRESTON PATE: Abstentions?

(No response audible.)

CHAIRMAN PRESTON PATE: The motion passes. Thank you very much. Let's take about a five minute break.

[BREAK: 9:48 A.M. to 9:57 A.M.]

CHAIRMAN PRESTON PATE: The Board will come back to order. Mr. Colvin has a statement to make about scup management.

GORDON COLVIN: Thank you, Mr.

Chairman. One of the other issues that is continuing to belabor the scup management program is that because of the history of the way the summer period quota has been managed and despite our attempts to reconcile it, there continues to be a difference between the ASMFC adopted quota and the federal quota which is a penalty for overages increasing in years, which has been carried over a couple years now, which I understand for 2002 will result in a difference of about 480,000 pounds.

There are two options basically. One option is that we can continue as we have to manage different quotas, with the state quota being higher, and the second option is that the states can take action to reduce the Commission quota to the same level as the adjusted federal quota, to get us

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resource in order to get at some of the problems. I mean, Ernie Beckwith has problems on some species, Dave Pierce has problems on other species, the state of Rhode Island has problems on stripe bass.

So, I view this with a fairly open mind that there are some real problems and we've got to get on with addressing those, but the way you address those is to craft options, bring those back to the Board and then we can change this next year. So, I don't view what we do here as being permanent. It's just it's a one-year allocation and if somebody else comes back with a proposal in the right time frame, we can change it.

CHAIRMAN PRESTON PATE: Thank you, Dave. Any more comments on the motion?

(No response audible.)

CHAIRMAN PRESTON PATE: We'll take a minute to caucus.

[BRIEF CAUCUS]

CHAIRMAN PRESTON PATE: All those in favor of the motion, please signify by saying aye.

(Response.)

CHAIRMAN PRESTON PATE: Opposed?

(Response.)

CHAIRMAN PRESTON PATE: Null votes?

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back on the same page.

This affects fishermen in different ways. The current system has been very difficult for the federal permit holders who have been closed out of the summer fishery early in the summer each of the last couple years and have been shut down for months -- many months waiting for a very short and unsatisfying Winter 2 season to begin. And it will affect the state permit holders in the initial year by a substantial reduction, in this case 480,000 pounds, of what would otherwise be available to them.

I thought we should -- particularly given that we have a little bit of time -- that we should at least put the question on the table of whether we want to institute the second of those two options. If we do nothing, the first will be in place again next year -- and at least have a discussion.

CHAIRMAN PRESTON PATE: Dave Borden.

DAVID BORDEN: Thanks, Mr. Chairman. I'm glad Gordon raised this. It goes back to the point that I made before, which is this issue of have we gotten any read from the National Marine Fisheries Service as to whether or not they're going to implement the quota recommendation that the Board is recommending. Because Gordon is not asking -- this is not an academic question that he's asking. If in fact they

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don't adopt that quota, then the numbers that we've got in Table 5 there change pretty significantly -- if I've got the right table. And I think we ought to discuss those.

I guess my question is again do we have any indication from National Marine Fisheries Service as to whether or not they're going to follow the recommendations of the Mid-Atlantic Council and the ASMFC?

CHAIRMAN PRESTON PATE: Bob Beal.

ROBERT BEAL: Yeah, David, the only real insight I have on that is the fact that the proposed rule that's come out that the National Marine Fisheries Service published does have a quota consistent with the Mid-Atlantic Council recommendation as their preferred alternative at this point.

So, they're proposing to go ahead and implement that unless they hear something, I assume through public comment -- through the public comment period that would change their mind. It would be my assumption anyway that they'd go forward with that quota.

DAVID BORDEN: Okay. But -- and not to make this more complicated. That quota will result in a different -- as I understand it, a different set of numbers than we have in Table 5; is that correct? In other words --

ROBERT BEAL: Yes.

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somewhere there -- well, anyways, there's a reference to the fact that overages will come off, which we would expect, but it doesn't get to the issue of different state and federal quotas.

What they will do, I don't know. I haven't been privy to that. I suspect they may adopt the amount off that we harvested through our more justifiable higher state quota for 2001.

And the Division's comments to Pat Kurkul you have, at least we've given you a copy of our December 4th comments on the 2002 proposed specifications, we make note of the fact that there is this problem, that there will likely be a large deduction that will indeed create some problems for federal permit holders and that will widen the gap between the state and federal permit holders in the future to the extent that perhaps they'll eventually have a minuscule federal commercial quota.

However, we do suggest that the National Marine Fisheries Service reflect on its own conclusion about stock abundance this has in the Federal Register announcement, and that conclusion is the stock abundance is likely to increase in 2002 and that for the short term the proposed scup specifications are based on an exploitation rate is conceptually sound.

There are other comments like that in

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DAVID BORDEN: So, we would --

ROBERT BEAL: I have them.

DAVID BORDEN: Okay.

GORDON COLVIN: It looks to me based on -- Mike told me the other day that it looked like the overage was about 481,000 pounds. So, I would expect the federal quota to be about 2.541 million.

CHAIRMAN PRESTON PATE: Dave Pierce.

DAVID PIERCE: Yeah, Gordon was quite right to raise as a concern as an issue and -- (inaudible) -- some further debate about what we should do. And certainly one of the options would be for us to back off of the approach -- back off of the quota that -- federal quota that likely will result after they subtract overages off of the federal quota that they've proposed.

The Federal Register announcement doesn't really speak to this issue as to the differences between the state and federal quota in 2001, so the reader of the Federal Register is quite -- well, not -- misled is not the right word -- it's just missing, so the full picture is not there.

But in the table they have for the proposed commercial quota and possession limits, they do indicate in a footnote that -- I believe there's a footnote

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the Federal Register that indicate to me that the National Marine Fisheries Service desires to -- desires to rid itself of this problem for federal permit holders, they have the ability to do so, with a little bit of creativity and a little bit of support for the ASMFC approach.

So, we concluded our comments by suggesting to NMFS that they take the lead in putting the Council and the states back on the same track and not disadvantaging federal permit holders in a way that probably will lead to more regulatory discards. We use that as another argument for the Service to go with the ASMFC quota. Don't go with the federal quota that would result from subtracting the ASMFC so-called overage. If you do that, NMFS regulatory discards will increase dramatically and NMFS of course does not want that and should not allow that to happen.

So, I'll conclude by indicating that I definitely do not feel that you should back away from our stance, which is defensible. We've gone over this ground already when we set the higher ASMFC quota. We should ask the federal government to show some initiative here and to support our position.

CHAIRMAN PRESTON PATE: David Borden, then Gil Pope.

DAVID BORDEN: Thank you, Mr.

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Chairman. I'll make this brief. I agree with David and hope that the National Marine Fisheries Service will adopt the 3 million pound quota that's recommended by the Commission and the Council, and use the logic that he put forth in terms of using that as a mechanism to deal with the overage.

Absent that, one of my biggest fears here is that -- is the result of litigation or some other stroke of logic that we will end up -- last year's quota was 1.6 million pounds, and using Gordon's math, the overage was 480,000.

One of the alternatives here that I hope they don't consider doing is not adopting the new numbers, using last year's quota, taking the overage off, and conceivably if we did that we could end up with a federal quota of 1.2 million pounds, which would do nothing more than promote discards and all the problems that the Board has raised.

So, anyone that has some contacts with the National Marine Fisheries Service, I hope you use those contacts to urge them to adopt the course of action that the Commission and the Mid-Atlantic Council put forth and also use the logic that Doctor Pierce put forth to deal with the overage.

CHAIRMAN PRESTON PATE: Gil.

GIL POPE: Thank you. Gordon, just a

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deduction was '98. Bob.

ROBERT BEAL: Actually, the first year we started going our separate ways was '99 when the Commission adopted a higher quota based on some assumptions that were made on discards and the discard mortality rate associated with different gear types.

CHAIRMAN PRESTON PATE: Have they had any discussion --

GORDON COLVIN: There's a distinction to be made here, Mr. Chairman. In 1999, we adopted different quotas. And then the situation was exacerbated by the deduction of the overage from the preceding summer from the federal quota.

In 2001, I believe we adopted the same quotas. So, there was not a difference going in, but there was this continuing deduction for the overage that dated back to 1999 when we got --(inaudible). Actually, I think it dated back to 1998 when the summer overage first happened. So, it just had been carried forward since then.

I think actually it's gotten a little lower over those years. I think it was at one point well over 500,000 pounds, it might have been six.

So, I guess what we could say is we've taken one step in coming closer to where the federal government's decisions have landed and that we are now -- we

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quick question for you. In that 481,000 pounds, did it occur like equally over the three periods or was there a problem period there that you know of?

GORDON COLVIN: The 481 was the summer.

GIL POPE: It was all in the summer?

GORDON COLVIN: That's the summer period overage.

GIL POPE: But is that the entire year?

GORDON COLVIN: No.

GIL POPE: Was there an under in the other periods? I just --

GORDON COLVIN: I don't know. But if there was overage in periods Winter 1 or Winter 2, the overage would be deducted from the 2002 Winter 1 or Winter 2 periods respectively and wouldn't bear on the summer fishery.

GIL POPE: Thank you.

CHAIRMAN PRESTON PATE: How many years has this happened, Gordon?

GORDON COLVIN: Well, we've been rolling this forward since the federal government eliminated the state-by-state quotas, which I believe was in 1998. It might have been '97, but I think the first year we started having this

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have for the last two years at least adopted an initial pre-penalty quota and we may or may not individually agree that we should have done that, but we have.

And at this point then the only question becomes do we take the opportunity given by the substantial increase in quota this year to reconcile the entire situation. And I don't know whether we should or not. I'm kind of ambivalent about it, but I would point out one thing and that is that I laid out two options before and I was -- I probably should have identified a third that occurs to me, and that is that you don't -- if you make the decision -- the Board would make the decision to work toward the elimination of this difference, it wouldn't necessarily have to do it all in one year. It could actually decide to nip away at it over two or three -- that's another option, as well.

I agree with the comments that have been made that suggest that before we commit to such a course of action, it would be useful to know what the final federal decision is. And we're proceeding on the assumption that they're going to adopt the 3 million pound summer quota and then make a 480,000 pound penalty deduction from it.

I believe that's a good assumption, I think that's a reasonable assumption. But we ought to proceed with the knowledge of what the final decision is. And maybe

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ultimately this decision or this discussion should get deferred to that point, but I thought it was useful to bring it up now.

We've argued before that we'd like to see the feds for any number of reasons make the decision to forego the penalty and move on. I think that argument makes sense. We tried it a couple of times, though, and haven't succeeded. I don't know that we'll be any more successful this year.

CHAIRMAN PRESTON PATE: Rick.

RICHARD COLE: I think we'd be naive to think that the National Marine Fisheries Service is going to go to do anything but calculate the deduction -- the overage in the deduction. I mean it's pretty clear if you read this proposed rule. It says -- it's spelled right out here, this is preliminary. And it's subject to reductions -- (inaudible) -- overages.

So, I don't know -- I would think that Gordon's suggestion of possibly working towards eliminating this overage in a piecemeal approach might be the way -- (inaudible) -- address this.

And the other thing is obviously we should probably wait until there's a final rule so we know what the exact numbers are.

CHAIRMAN PRESTON PATE: Gil Pope, I

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during the summer fishery, particularly since the Winter 2 fishery has yielded them so little. And I would hope that some reconciliation is possible. Obviously I'd prefer reconciliation where we met the federal government at least halfway. I don't know if that's going to happen.

Failing that, it probably makes more sense to try to solve this problem by eating it in smaller pieces. And if I knew that the quota next year was going to go up again substantially, as it did last year, then I might say let's do it in two years. But I don't know and so I think we need a little bit more time to deliberate.

CHAIRMAN PRESTON PATE: Has there been any discussion by NMFS along the lines of precluding the state fisheries after the federal closures. There's a very similar situation to the one we were trying to create for ourselves with fluke last year where we purposely adopted different quotas and one of the arguments against that, which made us change our mind, was the disadvantage to the federal permit holders. So I don't see a whole lot of difference -- that was a train wreck and this is another.

GORDON COLVIN: Well, that depends on whether or not you have a federal scup permit. If you do -- (inaudible) -- the beginning of June and you're done fishing until November.

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had you down for a comment.

GIL POPE: I guess this 481 it's all commercial. Were there any recreational in this that were deducted? (Inaudible.)

CHAIRMAN PRESTON PATE: Gordon, would it be helpful if we deferred any more discussion until the next meeting when we know exactly what the feds are going to do?

GORDON COLVIN: I think that's a reasonable course of action, assuming of course that there's timely action on the federal quota decision. There are reasons to think that there will be and then there are reasons based on history to think that maybe they won't be. But hopefully we can take this up again at that time.

CHAIRMAN PRESTON PATE: -- (inaudible)-- February. Gil.

GIL POPE: Gordon, are you saying that you would like to see maybe an informal recommendation that maybe over a three-year period that we deal with this? Was that your idea?

GORDON COLVIN: I'm very seriously ambivalent about this issue. I think it's important for the Board to consider and then discuss and deliberate it. Personally, I have difficulty watching the federal permit holders be consistently disadvantaged the way they have been

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CHAIRMAN PRESTON PATE: Dave Borden.

DAVID BORDEN: A quick point, Mr. Chairman. I share Gordon's concern about the impacts on federal permit holders. But I'm very uncomfortable with trying to deal with it -- this issue today. It seems to me you're dealing with really major policy issues and those should be put forth in a very public process and I don't consider today's meeting that process.

So, I would opt for the option of wait until we see what the National Marine Fisheries Service does this year. Then I think that whole strategy and approach has to be one of the strategies that we'll consider next year for implementation next year.

CHAIRMAN PRESTON PATE: Thank you, Dave. I agree with that. Dave Pierce.

DAVID PIERCE: I agree with David Borden it makes some sense to wait a little bit on this, and in particular it makes sense to wait until we get the spring 2002 index of abundance for scup. The reason why I say that is consistent with what Gordon said a little while ago, will the quota drop in 2003? It all depends on what happens in spring 2002.

The reason why the quota went up for 2002 is that back in 2001 we guessed -- the word's projected --

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we projected that the spring bottom trawl survey index of abundance in spring 2002 would be higher than spring 2001. That's one of the interesting aspects of our assessment for scup. It truly is a guessing game.

So, if we end up with a lower, for whatever reason, bottom trawl survey index for the spring 2002, the quota will be lower in 2003. It becomes harder to pay it back. So, I guess we have to keep our fingers crossed, hope that indeed the index is as high as guessed, that is projected, and if it is higher then maybe we will be in a position to go in the direction that Gordon suggested, which is maybe meet the feds halfway. But we'd have to wait for that.

CHAIRMAN PRESTON PATE: Okay. Any more discussion on this point?

(No response audible.)

CHAIRMAN PRESTON PATE: If not, we'll move on to the next agenda item, which is the review of compliance reports for 2001.

REVIEW OF 2001 COMPLIANCE REPORTS

FOR SUMMER FLOUNDER, SCUP AND BLACK SEA BASS

MIKE LEWIS: Thank you, Mr. Chairman. The Scup Plan Review Team has conducted its annual review of the state's compliance with the Scup FMP, review focused on the

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The PRT also noted the State of Maryland maintained a seven-inch minimum size limit while Addendum III required an eight-inch minimum size to be implemented. The maintenance of this minimum size results in Maryland technically not implementing and enforcing all of the requirements of Addendum III. The PRT noted, however, that in 2001, no recreational landings of scup were recorded by MRFSS.

The PRT is recommending that if conservation equivalency is to be used in the future, a separate reporting requirement be established early in the year to evaluate the states' implementation of the required measures. All the other states with a declared interest in the Scup FMP implemented a recreational management program that was reviewed by the Technical Committee and approved by the Executive Director in accordance with Addendum III.

The PRT would also like to express concern over the timeliness and completeness of state reporting. A number of states were very late in forwarding their annual compliance reports to the Commission. Also a number of the reports did not completely detail the current management programs that the states have implemented. That concludes my review of the scup.

CHAIRMAN PRESTON PATE: Thank you.

WILLIAM OUTTEN: The State of

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states' implementation and enforcement of Addendum III emergency rule to the 2002 scup -- commercial scup fishery and the commercial specifications established by the Management Board.

The Plan Review Team has determined that all the states have fully implemented and enforced the commercial management specifications, including minimum fish size, minimum mesh size and small mesh thresholds. The PRT also determined that the states have restricted their summer period commercial fisheries to the state-by-state quotas established by the emergency rule that was approved by the Management Board.

The PRT noted that the summer period allocation to the State of Connecticut was adjusted to reflect a change to the landings database for landings from summer 2000. There is -- due to a database correction, Connecticut no longer has an overage.

The PRT wanted to reiterate the concerns of the Management Board regarding the compliance of the Commonwealth of Massachusetts with the provisions of the conservation equivalency program for the recreational scup fishery. The Board, the Executive Director and Commission Chair have addressed this issue earlier in the year, which resulted in the issue being referred back to the Management Board for further consideration. This is in regards to the party and charter boat fisheries possession limits for scup.

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Maryland -- (inaudible) -- go through the exercise -- (inaudible).

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: I have a question about the very last sentence of the report, indicating that some of the state reports didn't detail the current management programs. I'm assuming that the Plan Review Team needed to go back to those states and secure that information; is that what happened?

MIKE LEWIS: Yes, they did.

GORDON COLVIN: Okay. So, we do have the information. We're not basing our conclusions on incomplete information?

MIKE LEWIS: No, all that information has been gathered.

GORDON COLVIN: Thank you.

CHAIRMAN PRESTON PATE: Bruce.

BRUCE FREEMAN: Thank you. I had a question on the Maryland size limit. Did I understand, Bill, that you indicated Maryland is in the process of changing that? It's an issue with Maryland just to make timely changes takes a lot of time in some instances. Is that the issue?

WILLIAM OUTTEN: In some instances it does, but we'll fix it.

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CHAIRMAN PRESTON PATE: Bill, can you move your mike up?

WILLIAM OUTTEN: I'm sorry. Bruce's question was, was it administrative delays and in some sense it is, but -- (inaudible) -- get this one done.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: Thank you, Mr.

Chairman. I'm comfortable with the report, but I guess it leads to some questions. What's the deadline for states to submit proposals for next year? In other words, we're going to go through this meeting with the Mid-Atlantic, do some quota specifications, and what is our deadline, our internal deadline for submitting proposals? And I'm specifically addressing -- I'll come back to the issue of Massachusetts' proposal, but --

MIKE LEWIS: That time line has not yet been determined. -- by tomorrow.

DAVID BORDEN: Okay. So as part of the deliberation then -- you need to specify that.

I guess the point on the Massachusetts proposal is without going back and recreating the history involved in that, which I don't think would be productive, it seems to me that we have to be very, very clear this year as to whether or not that type of proposal is going to be allowed and what type of confidence intervals we're going to

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during the various periods that would have been required. I guess really we're talking Winter 1 and Winter 2, because the summer's a state-by-state system.

MIKE LEWIS: You're asking me if what was implemented was calculated out to see if it got the percentage reduction necessary by the plan?

GORDON COLVIN: No, what I'm asking is we get periodic notices from Commission staff that it's time to reduce the trip limit to so many pounds by such and such a date, or it's time to institute a closure of this period by such and such a date, and I'm wondering if the Plan Review Team has been able to review the states' performance in doing those actions within those deadlines.

MIKE LEWIS: No, we were not.

GORDON COLVIN: It seems to me, Mr. Chairman, that that would be an appropriate thing for the Plan Review Teams to do. You know, we've spent a great deal of time this morning talking about instituting an addendum for black sea bass that will create a comprehensive obligation when it's finally done for each of the states to institute a trip limit management program which requires timely action on changes to trip limits and seasonal closures over four quarters of the fishing year.

We have such a system in place now in

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accept in terms to splitting loads within the recreational fishery.

So, I'd ask everybody to put that in the back of their mind. As we get in terms of the deliberations with the Mid-Atlantic Council, we're going to have to specify that.

CHAIRMAN PRESTON PATE: Any more comments on the compliance report? Pat.

PAT AUGUSTINE: Thank you, Mr. Chairman. Would it help Maryland if the Commission sent another letter to your state relative to the seven inches?

WILLIAM OUTTEN: No, -- do that.

PAT AUGUSTINE: Well, I just thought I'd ask. If there are no further questions on this, I'd move to accept this --

CHAIRMAN PRESTON PATE: We don't need to do that. Thank you, but it's not necessary. Gordon.

GORDON COLVIN: I do have another question. One of the things that I wanted to raise relates to the issue of the timeliness of the implementation of commercial threshold changes and closures.

Was the Plan Review Team able to comprehensively review each states' performance in terms of instituting the reductions in harvest trip limits and closures

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Winter 1 and Winter 2 for scup. We've talked about this before and I think we need to spend some time talking about it again at the Board's convenience. But it's enormously important to ascertain how the states are actually getting this job done.

If one state is open a week longer than another state who -- consistent with the Commission's advice, there's an enormous economic advantage given to the state that stayed open for a week and that ultimately -- that kind of performance will impair our partnership a great deal.

So, the two things that I would request is that number one, that the Plan Review Teams compile that information as part of their report. And if the states do, I believe, report to the Commission or are at least asked to report to the Commission, or both, when they've closed or when they've reduced a trip limit consistent with the Commission's advice. I do have a couple of comments which I'd share with Mike over the phone -- that's the difficulty sometimes with getting things done by the deadlines we're provided and that's -- I think we all share that.

The second thing I'd ask is that I clearly recall that sometime back there was a discussion at the Board level about the development of a white paper or a staff paper on the issue of examining these questions and considering changes to the compliance provisions of management plans dealing

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with the issue of late implementation of these kinds of issues or the late -- for that matter, the late implementation of recreational regulations. And I haven't heard about that for some time, and I kind of request a status report on that topic.

CHAIRMAN PRESTON PATE: I was trying to come to the same recollection, Gordon. I thought it came up at the Policy Board meeting we had a few meetings back and the Chairman was going to put together a group to do that very same investigation, but my recollection could be wrong. Any comment from the staff on that point?

ROBERT BEAL: The issue definitely came up at the Policy Board and we had a limited discussion on it there. I don't remember whether the Chair requested that a group be put together or not, but there's definitely -- it was an issue that the Policy Board wanted to continue discussion at some later undetermined time when they had some more available time on their agenda to deal with whatever -- you know, it was pretty open-ended and doesn't really backstop it or put a time certain on it.

But we could definitely resurrect the idea of putting together a white paper and explore the performance of the states with some of the closures and trip limit changes and things like that that we have had for a lot of these fisheries.

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word out -- a mechanism and policy for getting the word out to fishermen. (Inaudible) -- a phone line established. We just went to public hearing to indicate that the burden will now be on the commercial fishermen to keep up-to-date as to what the limits are, when they drop, when they're projected to drop, when fisheries are closed. It's a call-in system, so we expect that that will go a long way towards making sure that there would be absolutely no problem with notification.

Clearly, up to this point in time, we have made sure that we've closed when needed and sent the notices of closure to the ASMFC office immediately to make sure that the staff is aware of our actions, there is no doubt that we're doing what needs to be done when required. I would think that if there has been any problem with notification, has been any problem with timely closures, that the staff -- I guess through Jack would immediately contact the appropriate State Director and express concern and that concern then would spread like wildfire to the other states and there would have been some resolution between the directors regarding lack of timely response.

So, that's been happening I'm sure. It will happen in the future. And Massachusetts now we have this traditional mechanism to ensure timely closures.

CHAIRMAN PRESTON PATE: Bruce, I had

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You know, part of the responsibility falls on the Commission staff and data collectors and everybody else to notify the states in time for them to make the changes. So, we'll probably need to discuss both sides of the coin, how much lead time do the states need to close their fisheries and how much time does it take once the states are notified that a state's closed their fisheries, and given the process between the states we can resurrect that process.

CHAIRMAN PRESTON PATE: I think it's a very important issue to the -- (inaudible) -- certainly the cohesiveness of this group is one that you have so many different mechanisms with which the states can respond or that the states can use to respond and those that can and do act with expediency are often penalized for doing so. And criticized for doing so, I might add, when other states are not as expedient for whatever reason. David Pierce.

DAVID PIERCE: Yes, expediency is the key, as Gordon said. One state keeps the fishery open for a week longer than another state or states, that creates tremendous economic advantage for that state and disadvantages the others.

To make sure that Massachusetts is in a better position to ensure that closures occur in a very timely basis, we have adopted a new policy in our state for getting the

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you down for a comment.

BRUCE FREEMAN: No.

CHAIRMAN PRESTON PATE: No? Any more discussion on Gordon's point? Gordon.

GORDON COLVIN: Well, I have to confess, Mr. Chairman, that I am somewhat concerned about the open-endedness of this. I had thought, going back to this Board's discussion of this issue a couple of years ago, perhaps, a year and a half anyway, that there was in fact an analysis and assessment of the situation and development and I'm disappointed learning that there isn't.

I think that something more specific is needed. You know, David just outlined a scenario under which the Executive Director's probably doing this and the staff's probably doing that, so on and so forth. And I don't really think that's what happens. And witness -- at least not with that urgency that this scenario conveyed.

Witness the spiny dogfish facts that we got a while back where the staff after the fact is still trying to find out whether some of the states did a closure a couple of weeks after the closure was required.

And the last I know -- they probably wrapped all that up by now, but it just isn't quite as urgent nor are the states quite as urgently pursuing the question about

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what's going on as his scenario implied. I'm not quite sure to this moment what is the status of the spiny dogfish closure in certain states.

So, this issue I think needs to be addressed and if the ISFMP (phonetic) Policy Board is going to just wait until it has time to talk about it, that's not going to get it done.

I'd rather see this Board, frankly, put a proposal forward along the lines of scenarios that have been suggested in the past, such as that -- for example, that the management plan compliance section could include a provision that indicates that landings that accrue in a state past a closure date will suffer a penalty from that state's allocation, or that an equivalent closure within a state would be required, where we're operating on a common quota. Or similarly, on the failure to get a recreational rule in place by the time the deadline is set that there would be a process for establishing a penalty.

The problem with all this is that if you don't do something like that, there's virtually no mechanism to compel compliance. The applicable mechanism doesn't work in this instance. It's -- you know, you're not going to close a state for late compliance with something that they ultimately complied with. It just doesn't work. There has to be a

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implications.

CHAIRMAN PRESTON PATE: That was my initial thought. Would it be acceptable to ask the staff to draft some language that would propose a solution to Gordon's concerns and consider it at the next Board meeting once we've determined what mechanism is necessary to put it into the plan? Bob.

ROBERT BEAL: Consider us instructed to do so.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: I completely agree with Gordon's suggestion, but if you go back and reflect on it, it really was -- he made the suggestion in a generic context, that this is a broader problem than just this fishery management plan process. I think we can try to resolve it with these species, but really we need to resolve it with all of our species.

CHAIRMAN PRESTON PATE: I agree, and that was the context in which we had the discussion earlier at the Policy Board. Ernie, did you have your hand up?

ERNEST BECKWITH: Actually, Dave said it.

CHAIRMAN PRESTON PATE: Thank you. Bob.

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mechanism short of that that imposes an appropriate penalty that creates the incentive that's required for states to do things on time.

I personally would advocate that this Board go ahead and write something and maybe that will be an incentive for other boards to take an equivalent approach.

CHAIRMAN PRESTON PATE: Any comments on that? Rick.

RICHARD COLE: I wholeheartedly support Gordon's approach. As he has indicated about the current threat of a closure in a state is not -- by the time the process is completed, we're generally into another year and into another management approach. So, we need to do something different. I like his approach.

CHAIRMAN PRESTON PATE: Those sanctions would probably require an amendment to the plan?

JOHN DUNNIGAN: I really don't know the answer to that question, whether it's an amendment or addendum. It's one or the other.

CHAIRMAN PRESTON PATE: Would it be acceptable to --

JOHN DUNNIGAN: Let me just -- and the reason why I think that it may rise to the level of needing to be dealt with by an amendment is because of the compliance

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ROBERT BEAL: Just so I make sure I understand our instructions. What I'm thinking anyway is probably put together a white paper on the general issue of implementation dates and timeliness and effectiveness; and based on that put together specific recommendations or potential language that could be included for these three species in the FMP, with guidance as to whether it's an addendum or an amendment.

CHAIRMAN PRESTON PATE: That's the way I interpret it. Gordon.

GORDON COLVIN: That would be -- I'd be very happy if we got to that point, and I appreciate this discussion. I think it may well be that, consistent with the last two comments, that this Board may wish to go to take that work product, once we've had a chance to work with it, to the Policy Board and advocate its application more broadly. That would be great.

CHAIRMAN PRESTON PATE: Exactly.

GORDON COLVIN: But if for whatever reason the Policy Board just couldn't get around to dealing with it, I would hope that we would keep open the possibility of exploring its applicability as an addendum or an amendment to this management program.

CHAIRMAN PRESTON PATE: Thank you.

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Let's move forward to the next agenda item, which is to approve the Advisory Panel members from -- oh, the compliance. I'm sorry. We didn't complete the review of the compliance reports for scup and black sea bass.

MIKE LEWIS: Thank you, Mr. Chairman.

The Summer Flounder Plan Review Team has conducted its annual review outrageous the states' compliance with Summer Flounder FMP. The review focused on the states' implementation and enforcement of Addendum III and the commercial specifications established by the Board.

The PRT has determined that all states have fully implemented and enforced commercial management specifications, including minimum size, commercial quota, minimum mesh size, and small mesh thresholds. All of the states have also implementation a recreational management program and that was reviewed by the Technical Committee and approved by the Executive Director in accordance with the Addendum III.

And we had -- the PRT does want to express the same concern over timeliness and completeness of state reporting with regard to summer flounder.

There are also a couple of corrections to the chart as it was circulated. Connecticut had a minimum size of 17 inches and North Carolina is 15.5. Thank you, Mr. Chairman.

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and a maximum possession limit of 25 fish and a seasonal closure from March 1 through May 9 for black sea bass.

The Commonwealth of Virginia implemented the minimum size limit and possession limit; however, a closed season was established from January 1 through March 31 and from July 15th through May 14th. The implementation of this recreational management program results in Virginia not fully implementing and enforcing the recreational specifications established by the Management Board.

The Plan Review Team noted that the implemented closed seasons achieved the same reduction as the closures established by the Board. The PRT also noted that Virginia recreational fishery is currently constrained by regulations that are consistent with those established by the Management Board.

The State of North Carolina has implemented and enforced a ten-inch minimum fish size for the recreational fishery. However, North Carolina is currently going through the state legislative process to increase the minimum size to 11 inches.

All the other states with a declared interest in the black sea bass fishery have implemented a recreational management program that is consistent with the recreational specifications that were established by the Board.

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CHAIRMAN PRESTON PATE: Thank you.

Any discussion on the compliance report for summer flounder?

(No response audible.)

CHAIRMAN PRESTON PATE: If not, we'll do black sea bass.

MIKE LEWIS: Okay. Thank you, Mr. Chairman. The Black Sea Bass Plan Review Team did its own annual review of the states' compliance. The review focused on the states' implementation and enforcement of the emergency rules for the 2002 commercial sea bass fishery and the commercial and recreational specifications established by the Board.

The PRT has determined that all the states have fully implemented and enforced the commercial management specifications, including minimum fish size, minimum mesh size and small mesh thresholds. The PRT also determined that the states have restricted their commercial fisheries to the initial possession limits, triggers and adjusted trip limits established by the emergency rules that were approved by the Management Board.

The PRT wanted to express their concern regarding the recreational management program that was implemented by the Commonwealth of Virginia in 2001. The Management Board established a minimum size limit of 11 inches

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The PRT is recommending that if conservation equivalency is to be used in the future, a separate reporting requirement be established early in the year to evaluate the states' implementation of the required measures. The states' recreational management programs are summarized. Hopefully you guys all have a chance to review those.

The PRT, again, would like to express concern over timeliness and completeness of state reporting with regard to the black sea bass fishery. Thank you, Mr. Chairman.

CHAIRMAN PRESTON PATE: Thank you, Mike. Any questions for Mike on this report? Rick.

RICHARD COLE: Mike, in regards to the Plan Review Team's findings on the Virginia closure -- the effects of the Virginia closure, did in fact the Plan Review Team calculate the effects of this closure on a coastwide perspective? Because the closure that was implemented by all the other states was based on a coastwide effect. And my question would be was this Virginia closure also calculated in that same approach and who did the calculations and what kind of supporting information was there to come up with the Plan Review Team's conclusion?

ROBERT BEAL: Rick, I think Virginia used the same tables that the Management Board and Council used to establish the coastwide quota. In other words, they were

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using the coastwide tables to set their seasonal closure. The Commonwealth of Virginia didn't put forward a proposal to the Commission for anything along those lines. They I guess took it upon themselves to come up with this season and go ahead and implement it with the assumption that it was okay since it -- on paper anyway had the same percent reduction that the coastwide quota -- or coastwide closed season had for 2001.

RICHARD COLE: Okay. My point is that -- we've been told this repeatedly over time, that you can't have one state doing one thing and another state doing another when you're trying to achieve a coastwide reduction.

Virginia's approach here was incorrect, it should have been gone to our Technical Committee to allow them to give us some guidance on this. I question whether or not the conclusions here by the Plan Review Team are in fact accurate. But -- and again, just this particular issue just exemplifies the problem that Gordon's brought forward that it's difficult to require compliance after the fact.

CHAIRMAN PRESTON PATE: Dave Borden.

DAVID BORDEN: Thank you, Mr.

Chairman. I'd like to echo Rick's comments that -- I mean, to me, if this conclusion in the third paragraph of the document is accurate and they implemented something that is substantially the same as what we recommended, that's fine and dandy. But the

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to me -- I don't have a particular recollection but it doesn't come as a surprise to me what Virginia did. I do recall their representatives being very outspoken about the concerns that existed with respect to the closures that were taken and I believe they did indicate something is -- the intention to do something different and I'm not sure what kind of a message came back from the Board at that time. I just don't recall, but this isn't new information I don't think -- necessarily -- not entirely. And so that's a question without Virginia being here that we can't really go further with today.

I would say this, though. I have a sense, based on what Jack had to say last year, that if we on Wednesday end up with something similar in terms of a period of time within which a closure is contemplated, that Virginia may very well be in the same mindset next year with respect to wanting to do something different.

Given Rick's comment about the fact that -- I think it's a good point that an independent technical review might not come to the conclusion that the alternative closure was equivalent, that it would be useful to consider positioning ourselves to have such a review done on a quick turnaround basis if in fact after Wednesday we can foresee the same chain of events unfolding.

CHAIRMAN PRESTON PATE: Thank you,

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fact of the matter is we had labored over setting up a process that forces each of the states to go through a specific structure to make sure that we don't have inequities. And that's exactly what this type of thing creates is inequities between the member states of the Commission.

And I don't think we should tolerate this, nor do I think that it's the type of thing that you want to have necessarily raised to our attention at this point. In other words, I think one of the failures here is that this should have been brought before the Board very early on when the Commonwealth of Virginia adopted the regulations initially and force the discussion of it at that point, and then either we could have decided yes, they're in compliance or not in compliance. But we can't deal with it after the fact.

And I -- (inaudible) -- Gordon's point that we have to develop a process that stops this from taking place. Because if you set this type of precedent with this stock, then Rhode Island or some other state is going to want to do it on some other species and it's just going to set off a chain reaction within the Commission process that's not in our collective best interest.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: Some good points have been made, and a couple of more. It doesn't come as a surprise

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Gordon.

GORDON COLVIN: The other thing I'd say, Mr. Chairman, is we might want to hold off on -- (inaudible) -- push too far until after Wednesday.

CHAIRMAN PRESTON PATE: -- Marine Fisheries Commission. So, the brakes are easier to apply there than they are otherwise. Rick.

RICHARD COLE: I asked the Board whether there would be any benefit if we requested that a letter be sent to the state of Virginia specifying our concerns on the way this was approached and handled, and indicating that there's still questions in our mind regarding the validity of the calculations, etcetera, just as a heads-up that we're aware of what's going on and we're not happy about it.

And I'd also point out that Virginia's representatives at the Advisory Committee meeting that we just had last week weren't very happy about the seasonal approach and they got it in their mind how they think it ought to be done. So, it's very likely that Virginia will be facing this same problem again in 2002.

CHAIRMAN PRESTON PATE: Jack.

JOHN DUNNIGAN: Mr. Chairman, if that letter's going to be sent, perhaps I'd point out as well that it's not at all clear that we even have conservation equivalency

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available to us in black sea bass. I'm not going to say today that we don't, but we're going to have to look long and hard within the plan to find it.

RICHARD COLE: Do we need a motion to send the letter?

CHAIRMAN PRESTON PATE: Yes, please.

RICHARD COLE: I'll offer it as a motion that the Board under the signature of either the Board Chairman or Executive Director send a letter to the state of Virginia defining our concerns regarding the management approach for the recreational black sea bass fishery in 2001 and highlighting the point that conservation equivalency very well may not be an acceptable approach or a valid approach under the current FMP.

CHAIRMAN PRESTON PATE: Is there a second to Mr. Cole's motion? Second by Pat Augustine. Discussion? Jack.

JOHN DUNNIGAN: It would also be my intention to include in that letter, Mr. Chairman, the C word. We have done this in the past with a number of states when we've notified them if they didn't -- if they continued to take action that they'd been taking or didn't start taking action they were supposed to, that in the mind of the Board it would be a compliance matter and that the Board would act with all dispatch

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about having the fishery extend into the latter part of the season, and they thought that they had to have that.

So, what I was trying to emphasize is there was concerns amongst the advisors from Virginia regarding seasonal closure that we're going to have to deal with. And of course, none of us know what ultimately will happen Wednesday.

CHAIRMAN PRESTON PATE: Any more discussion on the motion?

(No response audible.)

CHAIRMAN PRESTON PATE: Need to caucus for a minute? No? All those in favor of the motion, please signify by saying aye.

(Response.)

CHAIRMAN PRESTON PATE: All opposed.

(No response audible.)

CHAIRMAN PRESTON PATE: The motion passes. Thank you very much. That concludes the compliance reports and we will move to Item 8 on the agenda, which is the approval of Advisory Panel members.

APPROVE ADVISORY PANEL MEMBERS

MIKE LEWIS: We have three names before us that have been on the Advisory Panel list for quite some time, but have never been officially approved by the

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in order to process that. And I think that kind of message is also important for this letter.

CHAIRMAN PRESTON PATE: Bruce.

BRUCE FREEMAN: I totally agree, but I am somewhat confused. As I understand the memo, it indicates that Virginia now is in compliance, but as I heard from Rick, apparently they're looking at going back and putting some conservation equivalency in place. If that is the case, they're contemplating a change to 2002, that that letter becomes very critical and needs to be sent.

CHAIRMAN PRESTON PATE: Any more discussion? Pat.

PAT AUGUSTINE: Just a question, Mr. Chairman. A Technical Committee look at what they did to see whether this is equal to --

CHAIRMAN PRESTON PATE: -- think that's necessary.

PAT AUGUSTINE: (Inaudible.)

CHAIRMAN PRESTON PATE: Rick.

RICHARD COLE: Just to keep the record straight, Mr. Chairman, to Bruce's point, I didn't say that the state of Virginia is currently considering conservation equivalency for the 2002 season. I indicated that their representatives at the Advisory Panel meeting were very adamant

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Management Board, and we need to have a motion to do so in order for this to take place. The names are: from New York, Mr. Tom Jordan; for the state of New Jersey is Mr. Brock Dalton; and for the PRFC is Dandridge Crabbe.

CHAIRMAN PRESTON PATE: Unless there's objections, we'll take these as a group. Does anyone have a motion -- Gordon. Motion for approval by Mr. Colvin, seconded by Mr. Freeman.

All those in favor, signify by saying aye.

(Response.)

CHAIRMAN PRESTON PATE: All opposed? (No response audible.)

CHAIRMAN PRESTON PATE: The motion passes. Okay. We'll move the Item 9 on the agenda, which is the discussion of Other Business. And Mr. Pierce has the floor.

DAVID PIERCE: Motion passes. David, did you have --

OTHER BUSINESS

DAVID PIERCE: I've made available to all Board members a memo that describes some -- (inaudible) -- that the Commonwealth has done regarding the black sea bass commercial quota, state shares. Obviously there were a number

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of options in the PID, and in the PID for black sea bass it indicates that there is an issue that ASMFC can address and that is the effects of differing management regimes during the base period.

I'm not going to get into any specifics. All I'm indicating here is that we've got an analysis using NMFS data, state data, and we'll forward these data to the Technical Committee if the Board would like so the Technical Committee can review the analyses, step by step procedures that was used by us to calculate these revised percentages, again consistent with the option called evaluating effects of different management regimes during the base period.

So, that is my first bit of other business. And then the other is to provide you with a memo for tomorrow, actually. You might want to read it this afternoon or tonight. It's with regard to party/charter vessels scup bag limit 2002. Clearly there was a great deal of controversy regarding what Massachusetts did in 2002 for our party and charter vessels.

I've given this some food for thought, taken a look at the MRFSS database, identified a couple of very interesting bits of information relative to the importance of party and charter boat fishing in Massachusetts and elsewhere for that matter.

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plan.

With that direction, I put together what has come to be termed a planning group, composed of members of the Mid-Atlantic Council and this Board. We met in Baltimore on October the 1st and the proceedings -- the conclusions of that meeting are outlined in a memo to you from Mike Lewis dated November the 16th, 2001.

That memo sets forth the short-term Commission issues, the joint management issues for all three species, and various joint issues that affect on the single species. Some of those we have addressed this morning, particularly the permanent allocation for the scup summer fishery was one of the recommendations that came out of that group.

Just proceeding along the lines of the memo, the first short term issue that is presented is one on the 2002 quarterly trip limits for black sea bass. Again, we addressed those this morning to the extent that a public hearing document has been approved. The same for the scup state-by-state allocation.

On page 3 of the memo, there are various issues that dealt with all three species. The first is a quota rollover for unused commercial allocation. This issue has been before the Board a number of times without resolution

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So, this is for your information and I intend to refer to this memo tomorrow when we meet jointly with the Council.

CHAIRMAN PRESTON PATE: Thank you, Dave. Is there any other business to come before the Board today? David Borden.

DAVID BORDEN: Thank you, Mr. Chairman. You're the head, Pres, of the committee that was looking at a whole variety of other alternatives for black sea bass and fluke and that committee put forth a recommendation. Could you just outline -- or maybe we could get Rick to outline the time frame for dealing with the issues that are in that and how the Mid-Atlantic Council will join us in an effort to deal with some of those issues.

CHAIRMAN PRESTON PATE: At the last joint meeting with the Mid-Atlantic Council, there was a recommendation to form a subcommittee of Board and the Council to look at the various issues that were under consideration as changes to the management plans for these three species. It was recognized that there were a number of discussions that have been -- or a number of issues that have been before the Board for a number of years that had not received the attention necessary to bring them to closure. And there were various changes that needed to be made that had not yet been made to the

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and went before the Technical Committee on my recommendation following the discussion that we had in the planning group.

The Technical Committee concluded that the unlimited rollover of quota would have an adverse effect on the ability to perform an accurate stock assessment each year, but informally I think there was some recognition that some small amount of quota could be carried forward without that effect.

So, attached to your memo is a memo to the Management Board from Rick Monahan, who's on my staff and is Chairman of the Technical Committee, which he outlines the Technical Committee's discussion of this issue and concludes with the recognition that the idea of a limited amount be further considered by Mark Terceiro, who's a stock assessment biologist with the National Marine Fisheries Service, to look at incremental rollovers to determine if there is a small amount or if there is a break point which quotas would begin -- quota rollovers would begin having an adverse effect on the stock assessment.

It was the intent of those that have supported this idea all along to keep that rollover to a minimum level of 5 or 10 or 15 percent, in an effort to try and take some pressure off of the process that is used in several states for hitting the target at the end of the year for harvesting the

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quota allocation without going over, and avoid the reality that is faced from time to time of leaving flounder unharvested because of the inability to hit the target each year.

Recreational overages was discussed. Recognize that the FMP does not have any mechanism for repayment of landings in excess of the soft target. There were a number of suggestions that had been put forward in the past and were discussed during our meetings, such as the pound for pound reduction, recreational harvest limit based on the average landings from a number of years, and a reduction in the recreational harvest limit based on a percentage of the overage to account for uncertainty under MRFSS landings.

I'm sure that we'll see tomorrow that this will be again a very important item for the joint groups to consider. The projections, if my recollection is correct, for this year is that the recreational landings have exceeded the target on the order of about 40 percent. That's based on projection of WAVE 5 fishing success this year relative to the proportion that WAVE 5 contributed to the overage last year. And we hope that WAVE 5 data and the actual analysis of that will be available for our consideration tomorrow.

It continues to be a very contentious issue in many venues about the way that we're treating the recreational sector versus the commercial sector in our

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potentially the focus of that concern or at least makes it more complicated, such that that focus can now be directed at individual state performance and not just at the collective management program. And I'm not saying that's good, bad or indifferent. I'm just saying it's interesting.

CHAIRMAN PRESTON PATE: Well, it is interesting in that complexity. It creates a moving target from year to year. And in my opinion I think that's worse, because it gives the process another place to hide from fairness.

Conservation equivalency was discussed by -- which is Item Number 3 on page 4. That was discussed by the Technical Committee and again is included in the attached memo from the Technical Committee. I'd have to go back and refresh my memory on their conclusions. The question came up with regards to all three species. There were different findings for all three species based on where the fisheries are prosecuted.

Their conclusion was that it was not feasible for black sea bass conservation equivalency because that fishery occurs primarily in the EEZ, which is different from the situation with fluke and with scup, which have fisheries that are -- recreational fisheries that are primarily in state waters and therefore is a feasible management approach with some obvious limitations.

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management approach.

You may remember that the North Carolina Fisheries Association brought suit against the National Marine Fisheries Service on this very issue, claiming in their complaint that the Magnuson Act was violated and that there was not fair and equitable treatment of the harvest sectors.

They lost that suit. The judge did not rule on the substance of it, but dismissed it based on procedural matters and his findings were that the Fisheries Association did not execute a timely appeal to the fishing specifications within a 30-day period to allow him to rule, and therefore they were not -- the case was not right to be heard by the District Court.

I have a feeling that that will continue to be a very high -- there will continue to be a very high potential for litigation on that point if there are not some changes made to the plan and our management approach to establish more equity between those user groups. Gordon.

GORDON COLVIN: Thank you, Mr. Chairman. It occurred to me when I read the e-mail that I got about the outcome of that suit -- I guess it was yesterday or possibly late last week, just as a kind of point of rumination that our decision to manage the recreational fishery last year on the state-by-state conservation equivalency basis changes

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Multi-year management program is an idea that's been discussed on a number of occasions. National Marine Fisheries Service is currently considering that idea. The planning group came to the conclusion that the assessment for summer flounder may support a multi-year management program, but both scup and black sea bass lack sufficient data for such a program at this time.

On management issues affecting a single species, on page 5, the first one is completion of the biological reference points analysis. We went through this last year with the idea that the reference points in -- that are currently used in the plan, particularly for summer flounder, are more conservative than necessary given the rapid rate with which that stock has rebuilt, and the conclusion that came back was that there was not consensus for -- the work that was put together to review that question, there was not consensus or clear enough basis for making a recommendation for changing the reference points.

Let's see. The summer flounder stock assessment will be going through the SARC process in the summer of 2002 and one of the terms of reference for the SARC that will be analyzed at that point will be the fishing mortality and biomass targets and thresholds.

The Issue Number 2 was continuation

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of The Heinz Center facilitated process, and the Commission and Council relationship to this process. We did have a meeting that was managed by The Heinz Center in Charleston about three or four weeks ago in which we discussed a number of issues and evaluated whether this process is adequate or applicable to the types of issues that we deal with at this Board and throughout the Commission's responsibility.

I think the consensus was that that process was helpful. Since that time, Jack and Bill Hogarth and I and others have had a conversation with The Heinz Center about how that process will be continued, not only with fluke but others -- and Jack, if you'll help me remember where we came out on that discussion, without having a chance to ponder that conversation, which seems like a half a year ago.

JOHN DUNNIGAN: I have it --

CHAIRMAN PRESTON PATE: Okay. I'll just go on and come back to that. While Jack's looking for the minutes from that meeting.

The next on page 6 was the allocation of the commercial quota. This came up in the context of summer flounder, but goes beyond that single species and touches on the allocation of quota to individual states for all species in which that management tool is used.

The issue was brought before the

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Resolution of state and federal quota differences, we discussed this morning, and we'll respond according to the decisions that were made today.

The state option of opening the summer quota period on April 15th, we didn't take that up, David. That was one of your issues and I quite honestly forget exactly how we left that. If there's anything that you want to say about that once I conclude, we'll go back to it.

Did you find what you were looking for, Jack, on The Heinz Center?

JOHN DUNNIGAN: Not paper. After the meeting at Charleston, The Heinz Center prepared a list of potential issues that had been discussed, and that small planning group which consisted of me and Pres on behalf of the states, and Bill and Laurie Allen on behalf of NMFS, and Mary Hookatsers and Bill Merrill on behalf of The Heinz Center, focused on where we all thought that they could actually do something that would give to managers something that we could proceed forward on. And I don't think that we're thinking that a follow-up to the May meeting is necessarily going to be very productive.

There is a broader suite of issues from his perspective -- Bill Hogarth would like The Heinz Center to focus on things that are not just limited to one fishery or

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ASFMP Board at the last meeting and the Chairman has decided to put together a working group that would evaluate that management approach for all species, but to my knowledge that designation of that working groups' members has not been made yet.

Under black sea bass, recognize that we need to move forward with the completion of draft to Amendment 13 and it's anticipated that the states and Council will hold hearings in November and December on that draft amendment and we'll take it up in our February meeting for approval.

Let's see. Setting the target and threshold for the sea bass fishery, the biological reference points were -- that are in Amendment 12 were discussed. There were deficiencies in the assessment as a result of the annual quota being based on a relative exploitation rate which needs to be further refined and discussed by the Technical Committee.

Under scup, the need to set targets and thresholds, the approach of setting targets and thresholds in that fishery was much the same as it was at the black sea bass discussion. The Technical Committee, the Demersal Committee and the SAW Methodology Group meeting was held on September 24th and 25th. And a summary of that workshop is being developed to explain the short-term and the long-term measures necessary to improve the scup assessment.

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one fishery management plan. They'd like to conduct a series of fisheries policy dialogues on a range of issues over the next couple of years.

One of the issues, for example, was bycatch. Although we agreed at that meeting that it wouldn't be useful for The Heinz Center process to spend too much time on that because right now there are a couple of other bycatch initiatives that are underway, including the one at the Atlantic States Marine Fisheries Commission.

We did think that there may be some attraction though in looking into some of the basic competencies of state and federal management systems and whether or not there's a better way of allocating authority rather than as we did in many of our species, you know, try to work together, and there are different types of doing that.

There's the Summer Flounder, Scup and Black Sea Bass model as opposed to the herring model, as opposed to the red drum model. So, but that there may be an option to consider the possibility that some fisheries the federal government just wouldn't manage, and some fisheries the states just wouldn't manage. And we also do that in a number of instances. So, the question of how to do that and whether there are standards that can be identified is an issue that they may follow up on.

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There were a number of other issues that were on the list that I don't recall right now all of what they were and they didn't get a lot of attention in our discussion. Those were the ones that we really focused on.

CHAIRMAN PRESTON PATE: Thank you, Jack. David Pierce.

DAVID PIERCE: Regarding the use of The Heinz Center for some of these other initiatives, some of these other issues, I'm not saying it's the wrong way to go, I just would like to see the final product from this go-around with The Heinz Center on summer flounder.

I haven't seen the final product. I'm not sure how successful the initiative was. I hear all sorts of things from those who participated in the sessions. I haven't heard anything yet that would indicate it was so successful that we should continue to pursue The Heinz Center to deal with other issues on other species.

Maybe it would be a good thing to do, but again, I await a product of the first go-around to convince me that it's worth the time and the investment.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: Thank you, Mr. Chairman, for summarizing the results of that subcommittee meeting, but I guess my question goes to the overall strategy

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One good example is the analysis of the opportunity to carry forward unused quota, keeps getting bounced back and forth among the technical reviewers of that idea. There are some that don't have any problem with it. There are others that oppose it. And there are some that are somewhat neutral on it.

And it may get to the point where we have to make a management decision on whether or not to adopt that as a management strategy, which is going to be difficult if there's lack of consensus among the technical reviewers, given the National Marine Fisheries Service' conservative approach to quota management and their ultimate call on the federal side of setting the annual specifications.

I guess one approach that we could take, David, in this list, and I'll refer to it as a shopping list of items that are before us, that have been before us, is to pick those that we think are the most urgent and move forward with specific discussions at the joint -- not tomorrow, because the agendas will not allow it -- but the next joint meeting that we have with the Council on coming to closure with some of these. We need to get them off the plate or resolved, one way or another. Go ahead.

DAVID BORDEN: And that's exactly my point, that is the conclusion is that we intend to schedule a

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that you or we intend to employ in order to implement those actions.

In other words, when you went through the list, you can't help but notice that there are -- it seems to me a number of those items fall into two categories. Some issues fall into the category that we're working on it, there's a work in progress, and others that it's an idea or a strategy that has come forth.

I guess my question is what is the time frame for us discussing those items of joint interest to the Mid-Atlantic Council and coming up with a consensus view and time frame for implementing those? Some of those items, as you correctly pointed out, have been discussed for three years or longer and yet I can't go back to my constituents and say this is the time frame and this is the process that we intend to follow to implement those.

So, when are we going to discuss that recommendation that you formalized, and I compliment you for doing I think an excellent job of chairing that joint session. I think the output was excellent. It's a question of how we get on with it.

CHAIRMAN PRESTON PATE: Both of those items that we took action on this morning, there is no time certain on completion of any of them.

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joint meeting with the Mid-Atlantic Council, put all of those items on the agenda, figure out a time frame for dealing with them. Obviously, there's going to have to be some debate as to whether or not people share mutual views as to their desirability, but let's do that, from my perspective, as soon as possible. Some of those will float to the top and others will go to the bottom, and then at least we could all say we've addressed those issues, this is what the time frame is, this is what the process is. So, I would endorse your proposal.

CHAIRMAN PRESTON PATE: How valid is the idea of bringing this whole list before them at the next meeting?

DAVID BORDEN: I personally think there's a lot of validity in doing exactly that, having a fairly substantial discussion on it. Those are important issues. They're not just Rhode Island issues. They're issues that are desirable from a coastwide perspective, I think, and certainly will have impacts on coastwide --

CHAIRMAN PRESTON PATE: Rick, you amenable to that?

RICHARD COLE: Sure, if we can work it in. I don't know what the agenda yet is for the January meeting, but sure. The only point that I'd like to emphasize is that I think the Technical Committee did a very good job of

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trying to address the issues that the planning group brought up.

One other issue that you didn't mention was the concern about the 1998 quota period and the Technical Committee reviewed that and they concluded that the '98 period was in fact probably the fairest, most equitable way to approach it. There was not that much difference in other time frames that they looked at.

And I'm going to encourage everybody to look at Rick Monahan's memo because again, the Technical Committee has provided us technical advice on many of the issues.

And yeah, we can move forward trying to continue to pare down this list and see how we want to go, but keep in mind we've got Amendment 13 out there and we've got to get that thing out to public hearing and try to get it finalized. And that's going to take up a lot of time in this early segment of 2002.

CHAIRMAN PRESTON PATE: Thank you, Rick. Gil.

GIL POPE: Thank you, Mr. Chairman. One of the things that I was curious about in this paper is Number 3 is conservation equivalency for the recreational fisheries, and why there's never been any looking at the

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fluke program.

And I would expect that that would include these sorts of considerations, Gil. At least that's what I had in mind -- that's one of the things I had in mind.

GIL POPE: It would be nice to see it written in here.

UNIDENTIFIED: I'm sorry?

GIL POPE: It would be nice to see it in the document. That's all.

CHAIRMAN PRESTON PATE: Bruce. No. Rick.

RICHARD COLE: Just to Gil's point. Under the current strategy, quota-based management strategy, conservation equivalency cannot be employed in the hard quota approach. In order to use conservation equivalency, as I understand it, in the commercial fishery, you would have to go to some kind of F-based management approach, which would be quite different than what we've had in the past. I'm not saying it couldn't be done, but it would take a major amendment to the plan, and -- (inaudible).

CHAIRMAN PRESTON PATE: With everyone's understanding, we'll move forward with the goal of getting as many of these items as we can, and that are appropriate, on the next joint meeting's agenda.

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conservation equivalency for the commercial fisheries, as well.

I've always been interested in that issue and it's never really been expressed to me as to why that can't be a part of the process along with the recreational fisheries.

I've mentioned this over a period of two or three years. Melvin Shephard and I talked about this almost three years ago. And it's just something I've always wondered about, the state wanting to go farther or with a higher size limit or something like that in a fishery, whether it's in a different -- either seasons, or increased seasons or whatever. I mean, it's done in some fisheries and for some reason it's not done with these fisheries. And I was just wondering as to the reasons why that might be.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: That's a good question. I know over the years some of our folks have expressed a desire to pursue the notion of a larger minimum size, larger minimum mesh, in tradeoff of for increased quota, which is I think what you're getting at, Gil, and I -- if you'll recall, we had quite a debate here over a long period of two days the last time we met jointly in this hotel and ultimately passed a motion jointly with the Council to begin a process of looking at the future of the commercial management side of the

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Any more items to come before the Board? John.

JOHN CONNELL: Thank you, Mr. Chairman. Earlier in the meeting, David Borden mentioned having an open mind and maybe looking at new approaches, and thinking about it, there was something I've been mulling over for a long time. Unfortunately, I see we don't have any public -- I know Jimmy's out there, but I don't count him as public. But I'd like -- I think he's one of us.

I'd like to mention an approach and I'd like to bring it up for consideration, whether it's being considered today or tomorrow or never. This is an opportunity for me to do this in front of the Board without you or public or -- you have an opportunity to say geez, this guy's a damn fool or maybe this is worthwhile looking at. And that is in terms of summer flounder management, recreational -- in the recreational fishery.

Considering in concept we set a minimum size and then an overall possession length, and just to elaborate, in looking at Chris Moore's recommendations for four fish at 17 inches. If you wanted to apply my concept, it would be similar to a 14-inch minimum size with an overall length -- possession length of summer flounder being 68 inches. And they could be any size between 14 inches and above.

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I think, number one, if you want to look at it from enforcement, from an enforcement issue, on the surface it looks like it's quite enforceable since all enforcement people carry rulers.

If you want to look at it from discards, it's certainly going to significantly reduce the amount of discards.

If you want to look at it from a political point, there is becoming increasingly -- it's been an increasing concern developing amongst recreational fishermen that the divergence between the 14-inch minimum size for commercial fishermen and a 17-inch minimum size is very unfair.

In addition, there's a recognition that by continually increasing minimum sizes, not only are we number one, drastically increasing discards, but we're also not meeting our goals because we're still catching a lot of fish and all those fish -- the weight of those fish is just astronomical, the higher we go.

I also believe that one of the main purposes that people fish for fluke is that they want to bring something home. And if you give people an opportunity to bring home some of the fish that they formally discarded, many people in many states fish all day, discard all day, and bring nothing home. Those people would have an opportunity to bring some fish

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The greens closed their eyes, and for good reason. We had all kinds of air pollution. A week after the event, there was dredging done in the East River. Permits? Permits shmermits. It was needed, it was done. Under normal circumstances, you'd need ten years to get a permit to do that kind of thing.

Maybe this is the year when we should consider testing the system, and looking the other way at maybe some of the scientific documentation and trying something new.

I'm sure there's 20 other reasons that I could present why I think this is good. I'm sure there's reasons why you think it could be bad. It could either be factored in with a regulation, however unenforceable, that you can't discard a fish that's over 14 inches. Since most of our enforcement is just based on the individual people that are fishing, you could consider that and maybe some of the people that are fishing would say okay, I'm not going to throw away this fish, I'm going to count them up.

If you do the numbers, if you're saying everybody target 14-inch fish, if you number up the 14-inch fish, which I did, you couldn't bring home more than four fish. 14 doesn't go into 68 evenly. So, you'd get to four fish and you couldn't catch any more. Yet you could catch a 22-inch fish and whatever else could bring you out to 68.

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home and I believe that the few people who hygrade -- and I admit hygrading will always be done -- the few people that hygrade will probably continue to hygrade. But the majority of people once they have enough fish to bring home, will either go home or look to direct towards other fisheries.

Now, I'm certainly not speaking from having any scientific information that would support this type of concept, but I would like to bring it to the attention of the Board, think about perhaps someday, whether it be this year, next year or five years from now, we might be able to do something.

I believe it would be a more acceptable approach than the ones that we're currently using. And I think -- you know, I look at things this year. A lot of people were closing their eyes to a lot of things. One of the things we have to recognize is we don't know how to manage the recreational fluke fishery.

And this is a year when a lot of people closed their eyes. I spent four days from September 11th to September 14th involved in the rescue operation at the World Trade Center. I saw millions upon millions of gallons of polluted materials being pumped into the Hudson River because it was being pumped out of the World Trade Center, which was being filled up with water.

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And again, I see this as an opportunity to present a concept to you. If you think it's a damn fool idea, we'll go to lunch. If you want to discuss it, fine. If you want to think about it, fine. That's all. I just -- I knew we had time -- we have time. That's the only reason I brought it up. Thank you.

CHAIRMAN PRESTON PATE: Thank you, John. Any comments on what he's saying? Jerry.

JERRY CARVAHLO: Yes, thank you, Mr. Chairman. I agree with the idea of looking for other approaches to this problem. I've even suggested that there be no size limit for inshore people, just a bag limit. There's a number of proposals that were put forward during that work session, and we need to look at things differently. We need to fine-tune what we've been doing because what we're doing, there's too many errors in it, too much waste. So, we have to look hard.

CHAIRMAN PRESTON PATE: Dave.

DAVID BORDEN: Thank you, Mr. Chairman. Just a brief comment on John's suggestion. I mean, that's exactly the type of suggestion I think we ought to be considering, not you know, evaluating the merits of the strategy, just that what he's suggesting is a new way of doing business to avoid some of the problems we've had in the past.

And it seems to me that if somebody

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has a data set that allows one of our modelers to model that strategy, we could start to test some of those approaches.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: I kind of agree with David. I think we do need some outside the box ideas. This is certainly one. There hopefully will be some others that will come along. And maybe that's one of the benefits of trying to get our technical committee on fluke, scup and sea bass to be more active and more involved in the management program than they've been in the past, that we will be able to conduct analyses of options such as this. I hope it is.

But my immediate reaction to the specifics of what John's suggesting is that it would -- because such a proposal would likely involve the retention of a very huge vast number of fish that are now being released, that we have to pursue it with flexibility that looks at probably a top end and probably limits that would not be simply equivalent to four at 17 or some baseline, but substantially less than that because of the small fish retention question.

But that doesn't seem it shouldn't be looked at conceptually. I think those kinds of ideas would be very interesting. I can remember when a former chairman of this Commission some years ago when we were piddling with some amendment to striped bass, I can't remember which one it was, it

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there are many instances where we can take the opportunity, particularly on rebuilding or rebuilt stocks, to examine our parochial management ideas and come up with something new that can be as effective and give some relief to the confusion that the public has now about our approach to things. Gil.

GIL POPE: I guess that my problem with this whole thing all along has been not that the aren't great ideas and things that we should be -- could be doing, should be doing, things we'd like to see done. It's just that every time I mention -- well, we've got a process we have to follow and we just can't change it, or it just takes two, three years, especially when you have a joint thing.

So, I guess my problem -- the amount of time that it takes for us to react to this thing. Is this process so heavy that it -- you know, we come up with these ideas and they just seem to carry over for three or four or five years to where you just give up with your idea and just say forget it, I'm not coming up with any more ideas, they never get done.

And I think that's a lot of what the public is having a hard time with, what I've had a hard time with all along is that we don't seem to be able to react fast enough or be able to change what we do fast enough, even when we find out that something is drastically wrong, that it says no,

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was somewhere between III and VI, suggesting that we look to a freshwater model where at the time in freshwater fisheries there were a lot of fisheries that were managed at so many pounds plus one fish, was all vogue at that moment. We never really did look at it, but I wonder maybe if we shouldn't have.

CHAIRMAN PRESTON PATE: North Carolina pursued something somewhat similar to what John is suggesting with our recreational weakfish fishery this year, and we gave the fishermen an option of abiding by the -- I don't remember the number -- the 14 and 10 possession limit, 14 fish at -- 10 fish at 14 inches, or the 12 and four limit, the four fish at 12 inches. And if you had any fish that was less than 14 inches, you could only possess four. But if all of your creel was over 14 inches, you could possess ten.

And that recognized the regional differences in the distribution of weakfish along our coast, and the fact that some years we get small fish and some years we get big fish, and we were constantly having to flipflop between the size and bag limit.

That was a very innovative idea, I thought, and new and some people thought we were crazy and others thought it was great. But it seems to have worked very well so far.

But I agree with Gordon. I think

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you've got to go with the process, sorry. Just have to do that. And I hate that, only because I think that we're smarter than that as a group, smarter than that as people, is that the process should not rule us as much as it does. Thank you.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: I absolutely agree, Gil. And of course the process becomes exponentially more burdensome when the federal process is joined to the interstate process. And it's not a nimble process at all. We all know that. It is what it is, and maybe it can be improved.

But I will say this, insofar as the interstate process alone is concerned, it's important that we follow the process, but it's more important that we take whatever time and fashion whatever deliberations we need so that we are all on the same page to the maximum extent possible when we get to the time of making the decision.

And that doesn't always happen overnight, and a new idea will not always be greeted with consensus. So, we need to bear that in mind. These are not easy things to -- for each of the states to surround. And we need to give ourselves the time and the communication we need to come to consensus.

CHAIRMAN PRESTON PATE: Jimmy Ruhle, you approached the table as if you had something to say.

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JIMMY RUHLE: I have a little bit to say. First of all, I totally support John's concept. But let me get this out of the way. Don't consider me one of you just yet. That kind of hurts my feelings a little bit.

But anyway, at that workshop the other day when John mentioned that, it was an idea that's just -- it's really stuck in my head, and it's got a lot of merit and it's got a tremendous amount of merit.

The beauty part of that is -- and it's amazing. The 14-inch number is the one that I had in mind, also. There is nobody since I've been involved with this process that really looks out for the little guy. The little substance fisherman who got very little economic advantage, he's got very little access to these fish, and the few fish that he used to catch he's now having to throw back. And the further north he gets, the more so that applies. And that's always bothered me about that.

That's why last year I offered a motion which was ruled out of order for a separate allocation for the for hire vessels, because that's where they go.

It is not uncommon for a household in the city, Philadelphia or New York, either one, to pool their money to send the best fisherman they got out on a boat. And he's not going out to have a good time. He's going out to get

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many fish we're going to have problems.

We don't have a problem with the commercial fishery, and we go to 14 inch fish if we want to. In fact, we prefer 14 inch fish over the bigger fish because we can't sell them.

But the other key issue here, and somebody that's got a hell of a lot more sense reading graphs can figure it out, look at the -- what is it, percentage of successful angler trips, and go down to number four, four fish. Look at the percentage of people that go fishing that catch four fish. It's not that high. It has never been that high.

So, maybe the threat is not there if these documents are correct. I don't know. I don't know how many people actually catch all the fish that they want to or not. I really don't. But the concept that John's come up with -- and I think it all has to be tied together, and the 14-inch has to be part of it.

You don't really need a bag limit per se if you've got a cumulative total. And you might as well put it on the table right now. If you go with 60 or 65 inches or 68 inches, you're going to have to associate an administrative tolerance with it, boom, right out of the box, two percent, five percent. You've got to do it. Because you're never going to get your fish to come up to an even number. And there's going

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as many fish as he can to bring back. And that supports these people.

And we have totally turned our back on them. And if there's anybody in this country that shouldn't be turned their back on, it's the little guy. I don't like fleet owners, I don't like anything that involves the real big guys, just because of the way they seem to forget where they came from.

But this -- John's idea here, and I'm going to do everything I can tomorrow to try to make this thing fly. And you know, when you look at this data and this bull shit that we've got to deal with, think back when we started having trouble with fluke, when we went too big on the size. We had eight fish at 14 inches. We never really got in trouble with overages until '93 up.

It's all right here. It's right here. And I understand -- I can't read all the graphs and fully understand them, but I can certainly read when you see the average -- the number of fish and then the number of pounds. In '94 you got 6,700,000 something fish, 9 million pounds.

Now you look at 2000, for example, 7 million fish, 7 and a half million, 15 and a half million pounds. Something's wrong. We're being controlled by pounds, not numbers of fish, and I understand the concern if we take too

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to have to be something, and you might as well set it out right out to start with, so everybody knows it.

And right away people's going to say well, they're going to fish to the percentage that they're allowed over. Well, how in the hell are you -- yeah, maybe some of them will, maybe some of them won't. But I don't think that amounts to anything significant. I really don't.

And the argument is well, how are we going to enforce it? How in the hell good a job are you doing enforcing what you've got now? You're not. So, you're not going to lose anything.

So, if there's any way that I can convince the Council itself to adopt this type of strategy, I certainly am going to go forward with it, and I'm curious to hear some of the other Board members' ideas on it.

It still gives -- you're going to have to have conservation equivalency and that's all going to be part of it. But I really believe there's enough true sportsmen out there -- when they go fishing, in my opinion, the guys that really want to catch the big fish, they go where the big fish are. They don't keep catching 14, 15, 16 inch fish until they get the 20's. They know where to find the 20's -- the 18's and 20's. That's the true sportsmen. You're not going to affect them.

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But the little guy is the guy that really needs some consideration here and I would really like to do all we can to give them that advantage. If the system was working real well and we didn't have any problems, then it would be different. But what we've got ain't worth a damn, we might as well start with square one and start over. Thank you.

CHAIRMAN PRESTON PATE: Got to love him. He speaks from his heart. Pat.

PAT AUGUSTINE: Thank you, Mr. Chairman. I was at the same meeting and I listened to John's pitch. It makes sense. I put it on the table what you catch is what you keep up to a bag limit. John went one step further and said a cumulative total number of inches. I think it's the same concept. And I would support it 100 percent. It's a great way to go, outside the box, and it makes sense.

CHAIRMAN PRESTON PATE: Gordon.

GORDON COLVIN: Jim's right about the concern of the -- what some people refer to as the subsistence angler. I'm not sure it's as simple as that, but what we have are shore-based anglers primarily who can only afford boat fishing from -- these days from a head boat and often only with financial support from their family or their neighbors.

So, primarily it's this shore-based fishery that concerns me a great deal because perhaps even for

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another thought to throw in there.

CHAIRMAN PRESTON PATE: Thank you, Gordon. Any more comments on this approach? Certainly some merit and -- around this table a lot of support. Rick.

RICHARD COLE: From an enforcement concept, I don't know how many of you have been checked by enforcement officers. Assuming one size limit of summer flounder. What they do, in my experience has been, is they come aboard -- when they check you at the dock, they flip open your cooler, look in your fish box. They certainly don't measure every fish in there. They eyeball them. They know what a 17-inch summer flounder should look like. They look at enough of them.

Now, if anybody sitting around this table thinks that enforcement people are going to sit there and have the fishermen sort through that box, pick which fish are theirs, and then the enforcement people are going to measure the fish and total them up, you're dreaming. That's never going to happen. The enforcement people do not have the time to try to implement a strategy like that.

John, a slot limit in my opinion is an excellent idea. The analysis needs to be done to implement something like that. That is enforceable. But this collective size limit, in my opinion, is totally unenforceable.

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fisheries like sea bass, scup and up in our neck of the woods tautog, the increasing size limits are increasingly isolating fishermen from those resources. And that's what they catch. When they fish, that's what they catch. And to a lesser degree winter flounder. When they fish from the shore it's those fisheries and in the middle of the summer it's snapper, bluefish.

And I wondered once -- and I'll wonder aloud now -- what would happen if we simply exempted the shore-based anglers from the size limits, just exempt them, or adopt something substantially different for them. That would still have to be constrained by catch limits, creel limits and what have you. But I really wonder if we calculated it out what would happen if they didn't have to comply with these 17-inch fluke and God knows where we're going to end up with sea bass and some other things.

I can tell you that compliance with those size limits among shore-based anglers is a growing difficulty. Many, many of the anglers who are apprehended and given tickets are not English speaking and we're not obviously communicating effectively with them. And I'm not sure that we can, because their views and cultural views towards the use of the resources is coming from a very -- an information base that's very different than where we're coming from. Just

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CHAIRMAN PRESTON PATE: Well, certainly it's going to have its drawbacks and there may be something equivalent to that, if you're using that term, that would accomplish the same thing that would perhaps relieve the enforcement. I agree with that aspect of it, not that that's an impenetrable barrier, but it's certainly going to be a complication that we would have to recognize.

Okay. We are at the end of our allotted time. I thank everyone. Bob Beal has a quick comment.

ROBERT BEAL: Just two housekeeping things. At 1 o'clock in this room, the Mid-Atlantic Council meeting is starting with their -- I forget the new name of the Comprehensive Management -- Ecosystem Planning Committee or group. And they're going to discuss the research priorities -- research set-aside priorities for 2003 and work on that process a little bit. That's the first one. The Board members are encouraged -- invited and encouraged to attend that meeting and participate in the discussions.

The second thing is for all the folks that we are reimbursing at the Commission, the end of the year we close out our books. So, please get your stuff in before the end of the year so we can get a check to you in a timely fashion.

CHAIRMAN PRESTON PATE: Thank you.

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Gil, real quick.

GIL POPE: Yeah, I think by the 20th.

By the 20th of December.

CHAIRMAN PRESTON PATE: Thanks to everyone. Good meeting. David Borden.

DAVID BORDEN: Did we approve the advisors or was I out of the room?

CHAIRMAN PRESTON PATE: We approved them. The meeting is adjourned.

WHEREUPON:

THE MEETING WAS ADJOURNED AT 11:52 A.M.

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF NORFOLK

I, PAUL T. WALLACE, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, true and accurate transcription of the audiographic tape taken in the above entitled matter to the best of my knowledge, skill and ability.

In witness whereof, I have set my hand and Notary Seal this 22nd, day of January, 2002.

PAUL T. WALLACE, Notary Public
My Commission Expires
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