

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS MANAGEMENT BOARD

Radisson Hotel
Alexandria, Virginia
February 7, 2005

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The meeting of the Summer Flounder, Scup and Black Sea Bass Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Radisson Hotel, Old Towne, Alexandria, Virginia, Monday, February 7, 2005, and was called to order at 2:25 o'clock p.m. by Chairman Mark Gibson.

Call to Order

CHAIRMAN MARK GIBSON: I welcome everybody to the Summer Flounder, Scup, Sea Bass Management Board meeting. I think the first order of business, Bob Beal has an introduction to make.

MR. ROBERT E. BEAL: Thanks, Mark. Just real quickly, I wanted to introduce the other new FMP coordinator that the Commission has hired. Her name is Julie Nygard. Julie is back in that corner right there.

Julie is going to be taking over summer flounder, scup and black sea bass so there's going to be a couple months of transition from Toni to Julie. Toni's going to staff this meeting to give Julie some time to catch up.

Julie started at the beginning of January and has already taken over bluefish, as well as the habitat program and the artificial reef efforts at the Commission. I just wanted to introduce Julie and hopefully you guys will

introduce yourselves to Julie this week and get to know her. Thanks.

Approval of Agenda and Proceedings

CHAIRMAN GIBSON: Thanks, Bob. The next order of business is board consent on the agenda and proceedings. I'm aware of one adjustment that needs to be made to the agenda, which is Item 5 requires a board action and it's not noted on there.

Are there any other adjustments, additions, deletions to the agenda? Seeing none, we'll proceed with that, with the agenda as modified under Item 5 to indicate a board action for approval of scup recreational management measures.

We also have proceedings from the New Hampshire meeting, ASMFC meeting in New Castle. Are there any board comments, changes, additions to the minutes of the proceedings? Seeing none, I guess we need a motion to approve those proceedings.

MR. PATRICK AUGUSTINE: So moved.

CHAIRMAN GIBSON: Moved by Pat Augustine; Eric Smith seconded. Any board discussion on the proceedings from the New Castle meeting? Seeing, none all in favor of approving those proceedings please signify by raising your right hand; any opposed; abstentions or null votes. The motion carried. It was unanimous.

I hope the board will indulge me in my inexperience at managing this group, but if there are any troublemakers, they'll be designated as my training partner this week, and I can assure you that will be unpleasant.

The next item on the agenda is public comment, general public comment. There will be opportunities for the public to

comment on specific board agenda items, specific actions the board may take, but is there any member of the public who wishes to speak now? Seeing none, we can move on.

Summer flounder state recreational management proposals. In your briefings, you have a number of states which have submitted recreational proposals for 2005. All will require board action. Toni is going to make a presentation on those, and I guess then the board will have to decide whether we take them in an integrated fashion, approving or disapproving them all or work on them individually, so Toni could you take us through those.

Summer Flounder State Recreational

Management Proposals

MS. TONI KERNS: Thank you, Mr. Chairman. I'm going to go through the memo that was dated January 18, 2005, with all the states individual recreational proposals. In your briefing materials packages, you also received the individual state proposals.

If you have any questions that are deeper than what is in the memo, then we can move to those individual state proposals. All this information, if you do not have a copy of this memo, is on the back table.

The first state we're going to look at is the Commonwealth of Massachusetts. For 2004 they needed to make a 7.7 percent reduction in landings. They proposed a 17-inch minimum size, a 7-fish bag limit and an open season of all year. This was reviewed by the technical committee and approved.

In Rhode Island they needed a 0 percent increase and a 0 percent reduction. They

were right on target. For 2005 they propose to remain status quo, and this was approved by the technical committee with no comments.

The state of Connecticut needed to make a 19.37 percent reduction. For 2005 they have six options. The first option is a 17-inch size limit, a six-fish bag limit, and an open season from June 8th through December 31st. This would give a 19.3 percent reduction.

Option 2 is a 17-inch size limit, six-fish bag limit, and an open season from January 1st through August 22nd. The third option is a 17-inch size, six-fish bag, January 1st through July 14th and August 5th through December 31st as an open season.

Option 4 is a 17.5 size limit, six-fish bag and open season from April 30th through December 31st. Option 5 is a 17.5 size limit, six-fish bag limit, January 1st through December 20th is an open season. The last option is an 18-inch fish, six-fish bag limit and an open season all year.

These options were reviewed and approved by the technical committee. They had some additional comments. They wanted to note that the guidelines that are outlined in Framework 2 call for a viable curve to fit the seasons for the distributions from 1994 through 1998.

Connecticut compared the seasonal harvest patterns from 1994 to 1998 and a 2001 to 2004 period and decided that the 2001 and 2004 period better reflected what their fishery is seeing in their seasonal landings distributions.

The landings have become much more broadly distributed in the more recent years, and Wave 3 now accounts for one-third of their annual landings where before it

represented only about half of that in '94 through '98 wiabie curves.

In light of these changes, they used the 2001 and 2004 period to calculate their seasonal closures. And using those wiabie curve periods makes all but one of Connecticut's 2005 proposed measures more conservative than using the '94 through 1998 wiabie curves.

Next was New York. They needed to make a 6.32 percent reduction. They have two options that they have proposed for their 2005 season. The first option is a minimum size of 17 inches and a three-fish possession limit with an open season of June 10th through September 12th.

The second option is a 17.5 minimum size limit and a possession limit of seven fish and an open season all year. The technical committee reviewed and approved these proposals. There are some additional comments that need to be made for New York as well.

In 2004 the regulations for the summer flounder fishery in New York changed in the middle of the season from a 17 to an 18-inch fish. As a result of the change in size limit in the middle of the Wave, New York doesn't know a precise effect of this mid-season change.

They estimated what landings would have been if the size limit had remained at 17 inches throughout the season. When they calculated the savings that would be required in order to meet the target for 2005, that would be 845,000 fish.

This calculation increases their required reduction to 14.3 percent. So in this instance, they are being more conservative than they needed to be in order to account

for the change that they made in their size limit through the middle of the year.

They also proposed their base calculations on a wiabie distribution based on harvest years in 2001 through 2003, similar to that of what Connecticut did. Using the 2001 and 2003 wiabie curves allows New York to propose slightly less restrictive measures compared to the '94 through '98 wiabie curve. And if you want to look at this further, you can see the Appendix A which outlines the exact changes in their wiabie curve in the memo document.

Next is the state of New Jersey. They were allowed to increase their fishery in 2005 to 5.52 percent. Their proposed measure for 2005 is a 16.5 inch fish with a possession limit of eight fish and an open season of April 12th through October 21st. The technical committee reviewed and approved this recommendation. I'm going to ask Dave to continue; I'm having a hard time speaking.

MR. DAVID SIMPSON: Okay, so that took us through New Jersey. In Delaware this is the second state that can actually increase harvest. You see there is a north to south pattern of reductions are hitting the target and now liberalizations that are possible.

So in 2004, Delaware had a minimum size of 17.5 inches, a possession limit of four fish, and they were open year-round. They were able to increase their harvest by about 24 percent. They came up with eight options. There are eight options.

Do you want me to read all of them? Okay, very good. They came through eight options. The technical committee approved all eight. So they have minimum sizes ranging from 16 to 17.5 and bags from, it looks like, four to seven and a range of

seasons.

In Maryland, Maryland was able -- based on their 2004 harvest estimated harvest and their target in '05, they're able to increase by 110 percent. Their '04 regulations were 16-inch minimum size, three-fish possession limit, and they were open all year.

In 2005 they want to be able to bring to the public a total of 18 options, and I don't think it's necessary at all to go through all of those, but the technical committee approved the full suite of options.

There is a footnote here that the technical committee had a few concerns with the methodology of Maryland's proposal. First the volunteer survey data measures fish in half-inch increments, which could lead to some digit bias. People tend to record fish in the whole numbers and less frequently report the half-inch differences.

Secondly, to project what their changes in landings will be in 2005, Maryland averages the last three years of landings. The technical committee had concerns with the appropriateness of averaging these landings. The reason for that generally is that you can have different rules that produce those different landings so averaging raises some questions.

But, I think especially in light of the fact that they are well under their harvest limit last year, the technical committee gave them a little latitude.

Virginia, 2004 regulations were 17 inch, six fish and an open season from March 29 to the end of the year. They're able to liberalize by about 36 percent. Their proposed measures are laid out in the tables that you have in your document.

There's a total of 12, Toni tells me, so you can review those. And the technical committee approved their approach and all the different options that they presented.

Finally, North Carolina, they're able to liberalize by 53 percent. Their '04 regulations were a minimum size of 14 inches, a possession limit of eight fish, and no closed season at all. They were open year-round. And they plan to maintain those regulations for next year.

As a general comment, the technical committee notes the uncertainty associated with estimated landings under liberalized regulations and in the face of increasing stock size. This uncertainty stems from the use of historic minimum size and possession limit reduction tables taken from a period when stocks were smaller and size composition was more truncated.

As stocks continue to recover, the use of tables generated during more depressed conditions may cause under-estimation of landings, possibly leading to harvest overages. The technical committee recommends exploring alternative methods to estimate landings under liberalized conditions.

Options include the use of size composition data from trawl surveys, using data from volunteer angler surveys which Maryland has done in this case, and building a buffer in landing projections, taking stock growth into account as New Jersey and Virginia have done. In addition, uncertainty could be reduced by pooling data regionally, and there is a note here, or by incorporating multiple years.

CHAIRMAN GIBSON: Thanks, Dave and Toni. I note that the technical committee has approved all of these, but in some cases

has commented in the form of caveats relative to deviations from the guidance that Toni had sent out earlier as to how states should calculate their options relative to the use of wiable curves, season lengths and so on. I'm sensing that the board may want to have specific questions for either Dave or Toni or a state delegation relative to those, so I've got Gordon first.

MR. GORDON C. COLVIN: I have a question for Dave and a question for Toni, Toni first. My question relates to the last couple of sentences in the review of the Maryland proposal. Let me say at the outset that the issue I'm raising I'm not raising in the direction of Maryland.

It's hard to considering how their landings have been well below their target for each of the last couple of years. I do note that there is a projection of landings based on averaging the last three years.

I know that I had a discussion of that issue with my technical committee member and asked what the resolution of that question was when it was raised, and I believe I was told that one of the responses from the Maryland technical committee rep, when it came up, as to why that was done was to express the fact that it had been done last year as well. Is that correct, Toni?

MS. KERNS: Yes, they did do the same process last year.

MR. COLVIN: Now, just as a process issue, this just concerns the heck out of me. I don't recall the board being informed of that during the very lengthy and extensive discussion of the New York situation last year. Can somebody help enlighten me on that?

CHAIRMAN GIBSON: While Toni's

looking, I would also point out that under Item 6, review of Addendum XVII, there is an issue related to multi-year averaging of data. I think the technical committee had some recommendations on that in terms of its appropriateness.

MR. COLVIN: I'll look forward to hearing them. And let me just point out that this is not a good thing to have in our record. You know, we had a state go into non-compliance last year on this issue of multi-year averaging, and we've got another state whose proposal evidently was approved using multi-year averaging.

And the fact that it was using multi-year averaging did not appear to be related, that I can recall, very clearly to the board, in the context of the New York discussion or you can bet I would have made a lot more noise about it, including in New York state's appeal to the National Marine Fisheries Service.

Mr. Chairman and staff, this underscores the need to make much more clear what the technical guidelines are that we are to use to formalize the process of adopting them and to very clearly point out each and every departure from them in the context.

We need to have a much more level playing field here. I mean, I'm very concerned about this. That said, Toni, if you've found anything to help me, fine, otherwise I'll just leave it there.

MS. KERNS: The TC did not make any comments towards Maryland's averaging in 2004 in our meeting when we reviewed the proposals, so then there is nothing in the memo to the board saying that they did that. So, therefore, it would not have been brought up.

MR. COLVIN: I'll leave it there for now. It may become an issue at the Policy Board, but we'll take it up with the staff later. If I could move on to my question to Mr. Simpson, David, one of the things that occurs to me is there was a pattern mentioned I think in the presentation, a north-south pattern.

I think that pattern is evident in each of the last two years in terms of the northern states perhaps having more of a struggle in staying within their current quotas than the southern states are.

Has the technical committee discussed what that might mean, what might be causing that? Is there some dynamic in the stock that might be contributing to that situation? I don't think people are moving north, at least it seems to be going the other way, so I'm wondering what you could tell us.

MR. SIMPSON: Yes, we have talked about it for the last two years. If I remember right, two years ago Chris Moore did a little bit of looking at temperatures which might have been more favorable to fish moving north so being more available to the northern states.

There was also the issue of an aging, growing stock size and a general view that larger fish are found in more northern waters. Those are sort of the biological and climatological, if you will, explanations for it. But you're right, it shows up at least two years running now where the catches are higher in northern waters and kind of lagging behind in southern waters.

CHAIRMAN GIBSON: A.C. next and then Tom Fote.

MR. A.C. CARPENTER: Mr. Chairman, I'd like to note that there is no PRFC specific proposal in these plans because we

can't break the data out that way, and it has been our practice we will normally review and choose from the same options that either Maryland or Virginia does. I just needed to get that on the record that since they're all approved, we can select any one of them.

CHAIRMAN GIBSON: Thank you, so noted. Tom, you wanted to speak to the seasonal distribution we just referred to?

MR. THOMAS FOTE: Yes. I remember a couple of years ago though it was Virginia, Delaware, Maryland and New Jersey that were basically -- for two years in a row were having problems and had to take drastic hits so we took a lot of changes about three or four years ago.

So at that time it was the southern states that were taking --and it was from New Jersey south that were taking the real big hits. And if I remember right, because I remember when it was Virginia basically had a big cut.

Delaware had a big cut and Maryland. So it may be because we took those cuts four years ago it's finally catching up to the overall stock. And if we look at it, we should look at it in the context of what's happened over the longer period of time.

CHAIRMAN GIBSON: Thanks. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. The point that Gordon brought up was very important and we just kind of glazed over it. We were put in a very awkward position last year and we won't beat the subject to death.

Gordon was very kind because he doesn't want to rock the apple cart too much other than make the point of the fact that here we've got a particular state, it doesn't matter

whether it's Maryland or who it is, now has successfully used the three-year averaging two years in a row.

And the technical committee has kind of said, okay, that's fine. At the same time, we've got to go back home -- and some of our fishermen are here -- and say, oh, well, Maryland was able to do it this year.

We couldn't do it last year; we were found out of compliance and literally sunk the industry, party boat and charter boat people, by having to go from our three at 17 to three at 18 at the time that we did. It just seems to me that we need more discussion or have a clearer determination.

If it's acceptable for one state to change the process, be it right, wrong or indifferent, why then isn't it fair for the rest of us to go back. Let's delay the process of approval of these things and see if we can't do better, why we can't use three-year averaging.

It's just a question, Mr. Chairman. I would like to hear other people's opinions around the table because this is going to be a very difficult one to deal with when we get back home. Thank you.

CHAIRMAN GIBSON: Yes, I don't want to glaze over this. In fact, I was going to inquire if New York and other board members wanted to hear what the technical committee's position was on multi-year averaging before we go too much further in regard to the pending Addendum XVII. Maybe that would be helpful, and then we need to get back to the individual state proposals and start dealing with them.

MR. AUGUSTINE: Just a follow up, Mr. Chairman, I think we've got two issues we're dealing with. We know Amendment 14 and Addendum XVII are heading toward multi-year. We're not there yet.

As far as I understand, there is nothing in the record as far as ASMFC is concerned and the Summer Flounder Board that allowed any state to do three-year averaging. Now I understand what the allowances were that Dave had commented on, and that they've been below harvest for the last two or three years, but I think it's a process issue, as Mr. Colvin pointed out.

We either do it or we don't do it. And I think, again, you're not glazing it over, but to pass it back to the technical committee to respond to it -- well, first to accept one state doing it. Last year we couldn't do it.

To jump ahead of the process by allowing a state now, I just think it's premature, and I would like to hear from the other states around the table. Were they to be in the same situation as we were last year, what would you do in this case? Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. I have Bruce, Dave Pierce and Vince O'Shea, but first Toni wants to make a clarification as to what Maryland has actually done relative to the averaging.

MS. KERNS: Steve Doctor is here. He's the technical committee representative from Maryland, and I'm going to ask him to come to the microphone to clarify this. He's the one that developed the proposal and he can best explain it.

MR. STEVE DOCTOR: Thank you for letting me approach the board. My name is Steve Doctor. I'm the technical committee representative for Maryland. And just a little bit of background.

The reason that Maryland -- we've looked at this hard and fast, and the reason that we've

decided to use three-year averaging is because you guys all know that there is a lot of variability in the MRFSS estimate.

And, the technical committee has been asked repeatedly to find a way to rein in recreational harvest and make it more predictable. Well, the reason we decided to use a three-year average is it gets rid of some of the variability and the ups and downs of the survey because of the small sample size that Maryland has.

When we did use a three-year average, we made adjustments for seasonal and size closures so we zeroed it out. The important factor to note here is that when we used the three-year average, it was considerably higher than our actual landings.

We used a figure of like 90,000 fish; whereas, we only landed 60,000 fish. If you look on the table up there, we're allowed a 110 percent increase next year; whereas, we're only asking in the best case scenario for a 67 percent increase. So, the methodology that we used is considerably more conservative than would have been allowed if we would have just used the one-year average.

And we felt it prudent to use such an approach because we did not want to go over. We have a commitment to staying under. You can see with our last three year's history that we've always stayed under. So are there any questions?

CHAIRMAN GIBSON: Questions for to that issue. Pat and then Tom Fote.

MR. AUGUSTINE: Thank you, Mr. Chairman. That's exactly the same logic that New York used when we found that we were 110 percent over. We went back and we looked at where we were and where we

were going.

I thought it was all documented, substantiated by our technical folks, presented to the technical committee. And, we did exactly the same procedure as you did. We overestimated what the harvest was going to be.

We thought we were going to be safe at three at 17 only to find out we were still out of compliance with the plan as it relates to the Department of Commerce through the joint effort between ASMFC and the Mid-Atlantic.

So therefore I again question -- not that you did something wrong, I think you did something right except legally we're not in a position to do that according to the plan, as I understand it. And, again, Maryland I think has done a noble thing in doing this but, again, is it at the right time, and is it appropriate?

And one final comment. If Maryland had gone through the process of using just the one-year MRFSS survey, did they come forward with a document that would indicate what their size, bag and season would be for 2005 for comparative purposes? I think that might be a question the technical committee might want to answer. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: All right, I need to get back to my list. I had Bruce. You're on the list, Tom, but I've got a ways to go. I have Bruce, Dave Pierce and Eric Smith.

MR. BRUCE FREEMAN: Let me hold mine, if I could, if they want to pursue this because my issue is different than this, so I'll just wait until this is finished.

CHAIRMAN GIBSON: Dave, did you

want to speak to this issue?

DR. DAVID PIERCE: Yes, I do. I can understand Gordon's concern and Pat's concern. It's very legitimate. It's three-year averaging, and perhaps it should not have been done by the state of Maryland just because it's not allowed.

However, I don't think it had much of an impact on the grand scheme of things since when you look at their landings, their harvest for 2002 through 2004, they're on the very low side. They're all on the same ballpark, 69,000-40,000-64,000.

And, they're all, in each of those three years, far less than the target harvest of number of fish, in some cases about half as much as they were allowed.

So in all three years, they were way below their target and they're not big players in the fluke recreational fishery's game relative to the state of New York, for example, and other states where when you have big shifts from one year to the next and there are large amounts of fluke being landed, it raises more concerns about three-year averaging in terms of our being able to meet our conservation goals.

So, again, they probably should not have done it but in terms of it having an impact on our efforts to conserve fluke, I don't think that impact was significant at all and it doesn't disturb me at all.

CHAIRMAN GIBSON: Vince, you were next up.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. I actually had a process question here. Before the discussion got into how other states felt, I thought it might be useful to get a

clarification from the chairman of the technical committee.

The statement has been made that Maryland is doing exactly what the state of New York tried to do last year with averaging. Last year New York wasn't allowed to do it. The proposal is this year Maryland is and that's not right. So my question is, is in fact what Maryland is doing here the exact same thing of what New York tried last year?

MR. SIMPSON: I'm not sure. I can talk with Toni who has looked more at the notes and whatnot. I can't recall all of the discussion that went on, but I will say from my own perspective, that the standard may not have been as rigorous because Maryland was well under what they were supposed to catch, and so the level of scrutiny may have been different.

If you have a catch estimate that's very problematic for the state and they're looking for a way to minimize it, that kind of raises the bar a little bit, and you get a concern that you have real overages that get masked by this multi-year averaging.

Our comment that's later on in the agenda concerning multi-year averaging is it's generally not a good idea, especially if you can sort of get away with it in a case of a rising stock if the difference between the single-year average and the multi-year averages is minimal, but in a falling stock condition it's very risk prone. That's as much as I can say at this point. Toni may have something to add.

MS. KERNS: I can add in that Maryland has a volunteer angler survey that gives a very thorough estimate of numbers or data sample of length-frequency data that I do not believe that the New York proposal had.

And, beyond that, those are the only differences that I could give you right now because I haven't gone back through and looked at each proposal. I know that the Maryland proposal has several pages of figures and data that you have in front of you right now.

CHAIRMAN GIBSON: Okay, I have Eric Smith and then Tom Fote.

MR. SMITH: Thank you. This sounds very much like a problem looking for a solution, and I'm not sure I have a good one. I don't hear New York saying let's go back last year and either create a penalty or give New York relief for the past action.

What they're really saying is we need to move forward with a level playing field. We need to know what the field is. And if there are deviations from it, we need to be clear what the reasons are.

And that's what I heard them ask for. Beyond that I think another part of the solution is -- as I understand this debate, even though from a scientific point of view, I think what -- I hate to say Dr. Doctor because I'm not that sure it is and it's confusing,

Steve said they did what they thought was right scientifically. I think we're also involved in a process to try and put three-year averaging in place, and there are some concerns with it, as you just heard from Dave Simpson. So I think that whole issue of whether we do that or not needs to be deferred to the time we're talking about it in a plan adjustment.

The question right now is what do we do for 2005? I think everybody needs to be held to the standard that we have in the plan for 2005. And as I understand that is you use

the previous year to project your future year.

I say that at the risk that it means Maryland has to jump through a couple of burning hoops, but I don't sense that's even the case, because I sense that they're so far under and what they're asking for as an increase is still under the 110 percent they could take.

So, substantively it's not a problem with Maryland. So we ought to just stick with the rules, tell everybody to play by the one year -- use the last year to project the future year, and move forward and make sure technical committees, not just this one but all technical committees, and boards try and set out the standards, the rules of engagement, I would call them, so you know what the rules are; and you know if you're going to deviate, here is where it is and here is how you have to explain it so all the states know what the expectations are of them.

So I don't know how that process part, I saw Vince nod so I guess Vince and Bob can work on that to make sure technical committees understand that part. Beyond that, I think we ought to just move on, deal with it one year, and if Maryland did their analysis based on three years, but it's not going to have a substantive effect, don't worry about it.

CHAIRMAN GIBSON: Thank you, Eric. Toni reminds me that if we go that route, it doesn't apply only to Maryland. There are several states that would be impacted by that convention. So, if that's the sense of the board that that would be the standard, we can start looking at these proposals individually, and we're already behind about a half hour so.

MR. FOTE: I had a few questions when we started this discussion, but what I also remember is we are allowed to be more

conservative than we have to. And if I heard Maryland's proposal right, it is that they basically looked at the one-year average and they could have had so many thousand fish.

What they decided to do is be more conservative than what the plan called for and they looked at the three-year averaging not to relax their regulations, not to make it easier, but actually make it more restrictive.

This Commission has always allowed a state to be more restrictive than necessary and giving them tools available to do that. So if it was where they were using the three-year average to basically gain a foothold or basically relax their regulations, then we would be scrutinizing it and look differently.

But if they're coming in to the technical committee and said we want to be more conservative than you're allowing to us because this table don't really reflect, they have the right to be more conservative, as all the states do.

We just can't be more liberal. So, I don't think there's a real problem here if I heard Maryland say, right, that they were not going up to what they could have, if they used the one-year average and looked what the increase.

What they actually wanted to do is be more conservative than the plan allowed them to do that, so what do we -- you know, again it's a different story with New York. You know, I defended New York and I tried to do it with New York, but this is a different case scenario.

This is where they want to be more conservative and we've always allowed a state to be more conservative under all the plans. I mean, that's how I feel about it.

CHAIRMAN GIBSON: Bob, did you want to speak to the process and technical committee guidance to the states in these matters?

MR. BEAL: Yes, please, Mark. Just on the process issue, in Gordon's opening comments and in Eric's recent comments, they mentioned the need to make sure the technical committees are working off the same sheet of music.

And as you guys will remember, the Policy Board passed a conservation equivalency guidance document last summer. And in that document there is a requirement for the plan or the staff to set the standards for conservation equivalency, which I believe the memo that Toni sent out set those standards.

And as part of the conservation and equivalency guidance document, any proposal that deviates from those standards must highlight the deviation and highlight why they deviated. And the technical committee's review of those proposals should, again, highlight to the management board what is different from the standard and do they endorse or not endorse the deviation from the standard.

So, as far as process goes, I think some of those -- you know, as last year as we went through conservation equivalency and some of the issues last year, I think the need to highlight any deviation from the standard process became painfully clear.

And I think my interpretation, anyways, is that conservation equivalency guidance document does resolve some of those issues and make sure or tries to make sure that the states and the technical committees are all working off the same process.

CHAIRMAN GIBSON: Thanks, Bob. Eric's advanced I guess a proposal to set a clear standard for evaluating these proposals. Where does the board want to go? Is that the sense of the board, that we ought to adopt that, the last year of data for purposes of evaluation of these proposals? If that's the case, we can be prepared to go forward with these evaluations. Eric.

MR. SMITH: Just a clarification. I was a little confused by the comment that there are three-year averages in a lot of proposals. I think if I understand it it's using the wiable curves, there is a three-year average or a five-year average in '94 through '98, but most other proposals deal with '04 to predict '05, I think. So it's really the recent year to predict the next one.

MS. KERNS: It was my understanding from your comments before, Eric, that you wanted everyone to be working from the same playing field from the start of making their proposals to the end game of what their proposal said and not only incorporates whether it be multi-year averaging, but it also incorporates the wiable curves.

And so that's why I said there would be other states that would be affected by this because in the document that you're saying the same playing field, there is also instructions on the wiable- curves, and that's why I said there would be other states affected because, as we said.

MR. SMITH: May I? That clears up my confusion on your comment, but I think to be clear the strawman proposal I'm making is the wiable curve is what it is. We've used three to five year averages for that; we should continue. The other part of this is predicting '05 based on '04, and that's what everybody should do and it probably doesn't make any difference for Maryland.

CHAIRMAN GIBSON: Other board comments on that suggestion or perhaps a motion to endorse that process. Gordon.

MR. COLVIN: Well, yes. I mean, to string together a couple of comments, including what I think Bob pointed out and Tom's comment, I'm almost a little sorry I got us down this whole path because none of what I said was construed to mean that I had any problem with anything the technical committee has recommended this year.

I think the process this year is fine. It's last year I'm a little concerned about in that there was something that came to us that was not communicated so clearly. It's a communication issue.

And it became particularly sensitive last year in the context of finding a state out of compliance based on the same issue. And that's the only issue I'm really raising. In fact, I'm perfectly prepared -- again apply what Bob said a minute ago about the process, the guidance was issued.

States developed proposals. Where those proposals differ from the guidance, that is clearly reflected in the rationale for the state and the technical committee appears in this report and we're here able to question it.

I'm at a point now where I'm prepared to make a motion any time the board chair will accept it, to approve all the recommended proposals in one motion that the technical committee has approved or recommended approval of.

CHAIRMAN GIBSON: Eric, do you have objections to that?

MR. SMITH: No.

CHAIRMAN GIBSON: Any other board comments? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Oft times we disagree and we end up with null votes. I think we're back to the same basic question is although the technical committee says it's equal, I agree with Gordon.

I don't see a problem with Maryland or any state again having gone along with this three-year averaging. It still is inconsistent with what one state ended up going through last year, and the process has not been changed.

It just seems to me that if it requires -- and I have no idea how many other states the same approach was used, but the question would be begged to be asked, how many other states would have to go through a formula workout or workup as to if they compared or developed their 2005 measures based on 2004, whether or not they would end up in a negative situation where it would not be palatable for their fishermen.

I don't know if it's two states, three states, or four states. Relative to another comment made by New Jersey, a state can be as conservative as they want to be. It doesn't have to be what the norm is for the rest of the states.

But you can be as conservative as you want, as in the case of another species of fish, which is striped bass, where New York has stayed at one fish for all these years while most everybody else went to two.

So, I don't think the conservatism is a part of the whole issue. The issue is one of strictly process. And it appears to me that if process was held as the high standard last year for any one state, it should apply to all other states in the future until such time as

the addendum or amendment is created to change it. So thank you on that, Mr. Chairman.

CHAIRMAN GIBSON: I have Harry Mears next and then Bruce.

MR. HARRY MEARS: Thank you, Mr. Chairman. I believe there were several positions that were very convincing in terms of the importance of establishing a level playing field.

I think one way to treat this particular situation may be that the board could approve Maryland's proposal on the basis of what Steve Doctor told us, that if in fact the most recent year had been used as was on the procedure used by the other states, we would have come to the same conclusion that they would have met the goal of establishing the current year regulations.

To let it go by without comment, I think would probably be a mistake for the very reasons that people have already commented on it from a process perspective and what it could mean in future years. So, I think the concept of a level playing field at this point is very important regardless of whether it makes a difference or not.

CHAIRMAN GIBSON: Thank you, Harry. We seem to be stuck at whether to entertain a motion to approve all of these proposals as submitted or to adopt a set of higher standards for everyone to meet, which Toni tells me will send four states back for reconfiguration. I have Bruce Freeman next, then Eric.

MR. FREEMAN: I want to confuse this a little more. There were recommendations originally from the monitoring committee that they anticipated an increase in growth -- I think it was the 2000 year class. Dave, I

guess it would be directed to you -- and cautioned states to build this into their consideration for the 2005 specifications.

I noticed that all of us, all the states have taken it up to the very edge without this consideration. I know it was a recommendation by the technical committee that we may not take the increased stock size into consideration in making our final determination.

Now, speaking for New Jersey, we are able to have a 5 percent increase. We submitted a proposal to do that. Now whether we will or not remains to be seen. We just want to know how far this could be taken, but we have not made a determination as to what our season size and bag limits will be.

And I'm just curious from the technical standpoint, Dave, was there any guidance given as to what that consideration should be relative to the recreational specifications for 2005?

MR. SIMPSON: I think generally in the monitoring committee meetings, we try to send signals to be cautious, proceed with caution for this or that reason. There may be a year class coming into the fishery that could increase landings.

There again that's why the quota was increased, and that's why our target is different this year, so the other way of looking at it is that has already been built in by the allocation that was made.

The probably larger source of uncertainty is the estimate coming from MRFSS. However good the survey is, it's an estimate. It's not the same level of information we have from the commercial fishery.

It's an estimate so be cautious as you're setting your regulations. But, as I say, the other way of looking at it is that the quota takes into account that the stock is growing.

CHAIRMAN GIBSON: For my clarification, I know there is a motion on the board. That hasn't been made yet, has it?

MR. COLVIN: I'll be happy to, Mr. Chairman.

CHAIRMAN GIBSON: Please proceed to get us going.

MR. COLVIN: If I can. Mr. Chairman and board, based on the report that Bob Beal gave us a few minutes ago, I'm satisfied that the formal guidance the Commission has adopted on conservation equivalency and its use in setting annual specifications has been followed by our process for 2005 in that the staff did draft detailed technical guidance, provided it to the states through their technical committee members, and that the states develop proposals that were generally consistent with that guidance and where they submitted proposals that varied from the particulars of that guidance, that those variances were discussed and reviewed by the technical committee, and the merits of those are reflected in the technical committee's recommendations.

I believe this is all consistent with the process and the technical committee has fully communicated to us in this year with respect to their reasons for their recommendations.

Accordingly, I move to approve all states' 2005 summer flounder recreational proposals that the technical committee has recommended for approval.

CHAIRMAN GIBSON: Okay, I have a

motion by Gordon and it is seconded by Eric Smith, I believe. More discussion on the motion?

MR. SMITH: If I understand correctly, there are some things that will be finalized after the end of the year data comes in, and in particular it's what the calculated mean weight of the fish and so forth are, and it's just understood when we pass this, it's embodied in the motion that we use the final, most recent data and the states do their reductions accordingly. Is that correct? No?

CHAIRMAN GIBSON: Toni, could you address that.

MS. KERNS: Unless it's going to largely affect your numbers, no, we don't normally go back and do that. It's not something that we have done in the past.

CHAIRMAN GIBSON: Other board comments on the motion? Eric.

MR. SMITH: If I may, I guess the reason I look at our own proposal, Connecticut's proposal, and there is some question in the footnote that I read to mean an estimate of what the mean catch is in November might actually come out to be different later on, and it has a couple of percent difference for us.

And the final statement, which is part of our proposal, says if the final numbers from MRFSS and these other assumptions hold true, then adjustments to the proposed options will be made accordingly. That's embodied in our proposal. I would expect that to be a part of this vote.

CHAIRMAN GIBSON: Bob, you have an opportunity to speak to this.

MR. SMITH: Or Dave might.

MR. SIMPSON: Yes, when I put our proposal together, I wasn't clear exactly on the mean weight, how it was calculated. And so Connecticut's was the first proposal that kind of hit the street, and I put it out there as sort of a signal, do I have the number right.

And Jessica Coakley from the Mid-Atlantic Council said, yes, those numbers are right, that there isn't any -- you know, the alternative percent reduction we might face was an error, so somehow that hung on through the final draft.

CHAIRMAN GIBSON: Thanks, Dave. Okay, other board comments on the motion; otherwise, I'll ask for any audience comments. Any member of the audience wishing to comment on this potential action by the board at this time? Seeing none, Tom Fote.

MR. FOTE: Call the question.

CHAIRMAN GIBSON: Tom Fote has called the question. All those in favor of this motion, please raise your right hand. Oh, sorry, I forgot the caucus. The states need time to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: **Okay, all those in favor, raise your right hand; any opposed; null votes; abstentions. The motion passes.** Toni has a follow up to that.

MS. KERNS: I would like to make a request to the board to please give me your final recreational measures by March 11th. If your state is unable to give me those measures by that date due to state process, please give me a call and let me know that.

I need to do this in order to have the National Marine Fisheries Service have their information in for the final rule by March 15th so that's March 11th your final 2005 recreational measures. Thank you.

CHAIRMAN GIBSON: Thank you, Toni. Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, with regard to that, the Summer Flounder Plan has sort of been the prototype for our delayed implementation procedures that the Policy Board had implemented, and I'm just wondering about this notification process, the request from Toni, whether that's going to be an ample decision by the board and the members to do this or whether it needs to be more formally stated?

And, again, the objective here is that we don't end up in July finding out what the states are going to do and whether or not they're going to be in compliance. Thank you.

CHAIRMAN GIBSON: Okay, Vince, are you suggesting the board should endorse a time certain to notify Toni? Does the board have any suggestions on that? Tom Fote.

MR. FOTE: Yes, I could see -- we have a March 4th council meeting. We have a committee meeting on February 16th, but the Commission won't sign anything until a little later because it has to go through the process, so we could give you what the Marine Fisheries Council, what we're moving forward at that time with the regulations, but it might not be the process.

It will be opened up way before the season. We can give you a time table of when we figure it will be, and I guess it should be a request that if we're going to go over that period of time, and it will be before the season is opened, then we need to notify

you.

I mean, I'm just trying to figure time-wise. We're approving measures here and knowing most of the states and the process we take, too, we're still going to have to go to public hearing to basically let them basically come in with discussion.

We have four or five options. In our state it's is going to be pretty simple but other states are more complicated. It might take a period of time, so March is a little short to get the process in.

MS. KERNNS: I realize that March is a little short for some states, and the reason why I ask is due to the process that the Fisheries Service has, and they put their proposed rules in for their final -- actually I guess it's the final rules on March 15th in the Federal Register, and that's why I give this date certain by.

In terms of I think where Vince is going with the compliance, we could push that back so that it's in time for everyone to have their public processes and their different state processes.

I would not want any measures from you earlier, though, because your board did not put those in place, and then it was in the final rules in the Federal Register, that would be confusing to fishermen and that would not be fair to them. I don't know where we want to move from there. It's up to the board.

CHAIRMAN GIBSON: How about the annual meeting, when is that? It's too far away. We have to strike a balance between states regulatory apparatus and Toni's needs. I'm open to suggestions to pick a date to do that that the board could endorse. Are there other states that have problems with March 11th? Rick.

MR. RICK COLE: I don't think we'll be able to make any March 11th deadline. I don't to go to public hearing for two weeks yet. And then there is, of course, the open comment period in preparation of the hearing officer's report and approval by the secretary. March 11 is not realistic, and I've been on as fast a track as possible, given this whole process.

CHAIRMAN GIBSON: Tom.

MR. FOTE: Maybe the Commission has to be notified three weeks before the opening of the fishery because most of us should have those regulations in before the fishery opens, so we look at the dates the state opens up their fishery or proposed opening up -- I'm just trying a thought process here. I'm not sure.

MS. KERNS: For compliance, that may be okay, then we also need to decide -- or maybe this is a discussion that I need to have with your state off-line. I need to give something to the service in time for them to put something in their final rule.

It may be that your state doesn't have their regulations in the final rule. It's a conversation that we may need to have with the service as well. But we cannot have them postpone their final rule for months, as we did last year, because no one will be notified of regulations, and that's not fair to the fishing community.

For compliance, three weeks may be okay if that is something for the board. but in terms of what we need for the final rule, that is not okay three weeks prior to the opening of your fishery.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I mean, this discussion is kind of making my point here. I'm not advocating any particular date, but I think we all ought to understand what date we're trying to get to and what the implications are of not meeting that date. Thank you.

CHAIRMAN GIBSON: Okay, so the thought is to set March 11th as a notification date and work with those states that can't meet that date -- Delaware and New Jersey at this point. That's the consensus of the board.

I don't think we need a motion to do that. We'll just agree that that will be the date to notify Toni. If you can't meet that date, work with her to get the information needed as soon as possible. Thank you. Tom, again.

MR. FOTE: I was just thinking that some of the states are actually relaxing -- the two states that are we talking have the possibility of relaxing their regulations, but they're actually more conservative so we don't change it. It's going to be more conservative. But, I mean, that's what we're looking at right now.

CHAIRMAN GIBSON: Okay, we need to move on. The next issue, scup recreational management proposals. And just a reminder that there is a board action required to put that in place. Dave is doing to do that? Thank you.

Scup Recreational Management Proposal

MR. SIMPSON: Okay, I'm going to be talking about the regional approach that the board had approved back in December, I guess it was. The board had asked that -- or there was a motion that the states between Massachusetts and New York develop a

common set of rules.

The proposal suggested was that all three states have a 10.5 inch minimum size, a 25-fish bag limit, and a season that would last 90, 120 or 150 days. And, they put it to the technical committee to figure out if that would work or not.

The one other detail to it was that the party/charter mode would be allowed a period of time to fish at a 60-fish limit, so this would be a differential bag limit by mode in this case.

So our task was to figure out if that combination of regulations could achieve the 4.2 million fish harvest limit that was set for 2005. Our problem in evaluating this is that in '04 every state had a different set of regulations, ranging from 10, 10.5 inch and 11 inch minimum sizes. Bag limits range from 20 to 100 fish.

And every season among those states was different, every open season was different, so we really did need a different type of approach to figuring this out, what the expected harvest would be in '05 if we set this one set of common rules.

So our first approach was to look at the total catch, including the released fish, and look at the suite of management options that would deliver the 4.2 million fish that the region would be allowed to harvest this coming year.

The three things we need in terms of characterizing the catch is the size composition information, for which we used -- basically our problem is what's the size of released fish, what's the size composition of the B-2s? That's what it's called in MRFSS.

For that we used the Connecticut volunteer

angler survey data, and that appears on Table 1, Page 3. It's a pretty good collection of lengths. There were 4,240 fish that were measured in the 2002 to 2004 period, so it's very contemporary. It should reflect the size composition of the population that's out there presently.

And, most states seem to think that generally reflected the size fish that they saw in their waters. The second part that we need in this evaluation is the catch frequency data. And for that, the folks at MRFSS were able to provide me with each state's catch frequency data for the 2002 to 2003 period, I believe is what we used. Yes, 2002 to 2003, from Massachusetts to New York.

And that appears in Table 2 on the next page, and it's expanded. It's weighted by trips by state and year, so this is actually the first time we've gone to that extent to make sure that the catch per trip reflected differences between states.

It has not yet been done to the wave mode level, which would be the ideal thing to work toward, but it's certainly an improvement over the more simplified approach that we've used in the past for most species.

And the third thing is the seasonality of the catch. And for that, you can look at -- it's the fifth page. And all these things are summarized in a more useable form in Tables 3, 4, 5, and 6.

So if we just go to the tables and if you'll let me start at Table 3, the size composition, that small table shows the proportion of harvest that you would achieve. From the catch with a 9-inch minimum size, 88 percent would be harvested at the 10.5, which is the important value for us. Based on the board motion, 56 percent of the catch

would be harvested with a 10.5- inch minimum size. That's an important conservation tool there, obviously.

Table 4 shows the proportion of harvest with the 25 and 60 fish bag limit. It shows some others, too. You can see that the 60- fish bag does very little; 97-98 percent of the catch would be harvested. Twenty-five fish provides a little more conservation value and gives you about 80 percent of the catch expected to be harvested.

The other important thing is since now there are different rules by mode is the proportion of harvest that comes in under each mode, and that appears in Table 5, so you can see that the shore mode harvests just under 8 percent of the total.

The PR mode or the private boat mode harvests about 74 percent. Almost three-quarters of the harvest comes from that mode, so it's really key what you do there. And the party/charter mode accounts for about 19 percent.

And if you go to the right of that value, you can see the portion -- how that breaks out by state. So of the 19 percent, Massachusetts harvests 13. Rhode Island harvests 1 percent. New York harvests about 5 percent.

And actually in the data that was used, the '97 to '99 time frame, MRFS did not pick up any party/charter harvest of scup, so really the estimate for Connecticut is zero. In Connecticut -- did I not say in Connecticut? That's an important detail. But, for rounding purposes, I put in a very small percentage.

And you should know and it's in the table that I looked in some more recent years, and in 2003 MRFSS picked up an estimated

catch of 19,000 fish in the Connecticut party/charter mode, and in 2004 they picked up 15,600 fish, so you're talking about a very small proportion of the 4.2 million that this region is allowed to harvest. So, that's a small source of error in this estimation process.

Table 6 shows you the breakout by wave for the shore mode and the private rental mode. Table 7 shows you the breakout by wave in each state for the party/charter sector. Now this is based on '97 to '99 data.

I understand that there have been some changes in the seasonality of the fishery since then, but the reason this '97 to '99 period was chosen is it predates season restrictions and bag limits. It effectively pre-dates Commission-mandated regulations on the fishery, so I felt that would best reflect what the fishery would do in the absence of these constraints.

You can't look at last year because most areas were closed in one state or another. The actual calculation of how we did the calculation is on the front page, and it's basically just summing up these proportions by mode and by fishing sector and so forth and multiplying it by the expected catch, which is the big issue.

If you look at Table 8, these regulations are based on an assumption that the 2005 catch, A plus B-1 plus B-2, looks like 2004. That's sort of the standard approach that we use. You look back to last year and you apply the rules, as we talked about for quite a while earlier, to the following year.

But just for a little bit of range checking, I also went back and said, well, what if the catch looked like 2003? In 2004 the total catch was 8.9 million fish. In 2003 the total catch was 13.9 million fish. So you get a

somewhat different answer under the so-called "high-catch" scenario, and that's reflected in the options available under Table 9 and Table 10.

So if you look at Table 8 and the expectation is that the catch in '05 will look like the catch in '04, you can have a 10.5 inch minimum size in all modes, a 25-fish bag limit in the shore and private rental modes, and in those modes you can be open Wave 4 and Wave 5.

And what I did for choosing the waves was simply to leave open the most productive wave, leave open the most productive wave. And then the second wave that I looked at opening was the second most productive wave. So if there has been a shift, as long as the fractions are the same, it's okay.

In the party/charter sector, for example, Massachusetts could have their 60-fish bag limit during Wave 3, which was their biggest wave, and then they'd have to drop down to 25 fish in Wave 4, their second biggest fish, and the same thing through the rest of the table for Rhode Island, Connecticut and New York.

And since Connecticut had no estimated catch, I simply used the Rhode Island scenario, be open for Wave 5, which is what I would expect to be our biggest wave, and then at 25 fish in Wave 4.

So you get the 120-day season basically with the 10.5 and 25/50. And the heavy lifting is done by the minimum size. That's reducing the harvest for the most part. The high catch scenario means that you can keep -- one option is to keep the 10.5 inch minimum size, but then drop down to a 20-fish bag limit for the shore and private rental mode and a 20/50 for the party/charter mode.

You can stay open all of your most productive wave, but only 30 percent of the next most productive wave, so that's about an 80-day season. So if the expected catch in '05 is more like what we saw in '03, then we need to shorten up the season considerably.

And then Table 10 is just a variance on that where we do a little more work with an 11-inch minimum size and the bag limit stays at the 20 or 20/50, and that buys you another ten days. You can stay open half of your second most productive wave.

So, in the end, this was something that was reviewed by the technical committee. Their recommendation was to advise some caution. We don't know what that '05 catch is going to look like in terms of availability, and that the board may want to consider assuming the high-catch scenario, which would be more likely to keep us under the 4.2 million fish cap. If there are any questions, I'd be happy to answer them.

CHAIRMAN GIBSON: Thanks, David. Questions for Dave on his presentation? Pete.

MR. W. PETER JENSEN: How was the 97 percent determined?

MR. SIMPSON: As the region's share, is that what you're asking?

MR. JENSEN: Yes, the 97 percent that are allocated New York north.

MR. SIMPSON: That was used last year. It's the sum of the allocation under a state share system that Massachusetts, New York, Rhode Island and Connecticut would get.

MR. JENSEN: Is that based on history?

MR. SIMPSON: Yes.

MR. JENSEN: I just want to remind you northern states that us poor southern neighbors used to have a scup fishery, and we'd like to have one again, so please don't take all '97 percent in perpetuity. Let some of them escape south.

CHAIRMAN GIBSON: Toni's going to speak to that, what the other block of other states has to do and what their opportunities are.

MS. KERNS: At the last December meeting, as a reminder, we decided that pending an evaluation of New Jersey, that they would remain the same as last year, and Delaware through North Carolina would have a minimum 8-inch size, 50 fish and open all year.

New Jersey has a minimum 10-inch size, 50 fish, and open from July 1 through December 31st. After we go through these proposals, I will go through an evaluation that New Jersey did to see if they could potentially drop from a 10- to a 9-inch fish as requested by the board at the December meeting.

CHAIRMAN GIBSON: Gordon.

MR. COLVIN: David, you probably didn't, but I just wondered, did you have an opportunity to, following the same methodology you used with the 2004 projection in Table 8, ascertain the affect of a minimum size of 11 inch instead of 10.5? And if not, do you have a rough idea of what it might add to the season?

MR. SIPMSON: If we look at the Table 3, the 11-inch minimum size reduced the catch to 48 -- the harvest to 48.5 percent of the

catch. Overall what we're looking to do under the '04 catch scenario is to limit -- you know, 4.2 million is 42 percent of the 8.95 million. I think I have that proportion right.

The other thing I neglected to mention here is that I did look at the non-compliance issue; and based on the minimum size, we typically harvest about 6 percent. Six percent of our total is sub-legal sized fish, so I had that in as sort of a penalty, if you will, a non-compliance rate. So, 8 percent probably gets you another week or two. I'd have to do the calculation but certainly it would be a fair trade.

CHAIRMAN GIBSON: David Pierce.

DR. PIERCE: First of all, would you refresh my memory as to what the percent reduction region-wide is supposed to be for the states from New York through Massachusetts.

MR. SIMPSON: Well, we went over the '05 allocation by 11 percent.

DR. PIERCE: Okay, so all these calculations, all these different combinations of party/charter, private rental for the different states, the bag limits, of course, differing with the open waves, that all corresponds to the attempt by the technical committee to get some 11 percent cut in 2004 versus 2005?

MR. SIMPSON: In effect. That isn't the approach we took. We came about it a different way, but that's the effect of it.

DR. PIERCE: Yes, so it was to get an 11 percent cut; therefore, correct me if I'm wrong, after you did your analyses, you concluded that it's impossible for any state to have more than a four-month season for scup.

I know from your table that for all of us, Massachusetts through New York, there are only two waves for which there are applicable bag limits and minimum sizes. So, was that the conclusion of the technical committee that, for example, in Massachusetts there would be, using Table 8, no fishery in September, October, November, December? We'd have a four-month season, May, June, July, and August, and that's it with those varying bag limits.

MR. SIMPSON: Right. What I did was I took the size and bag out of the motion first and said, you know, set that, and then see what we need for a season to achieve the target reduction or the target harvest level.

And I started with the middle season, 120 days, and looking at it in terms of, you know, by wave you get two open waves. And as I said before, I used the two most productive waves for each state.

DR. PIERCE: Okay, therefore, you've concluded that the motion that the board passed at our last meeting was -- of course, it provided a range of opportunity, and all that opportunity is impossible. For example, we set a season of 150 days perhaps and it's no more than 120 days across all the states.

CHAIRMAN GIBSON: Jessica.

MS. JESSICA COAKLEY: Jessica Coakley with the Mid-Atlantic Fishery Management Council. Just a clarification that the scup coast-wide reduction, based on Waves 1 through 5, is 8.8 percent or 9 percent, not 11 percent.

CHAIRMAN GIBSON: Toni, you have a comment on that?

MS. KERNS: We're speaking of just the

reduction from Massachusetts through New York. The coast-wide reduction was 9 percent. The regional reduction was 11 percent.

MS. COAKLEY: Thanks for clearing that up for me.

CHAIRMAN GIBSON: Board questions for Dave? What we're trying to get to is a decision or an action on these three options which are embodied in Table 8, 9 and 10. And, again, the technical committee has recommended either 9 or 10 based on precautionary arguments about the likelihood of what the catch will be in 2005 compared to '03 or '04. Dave Pierce.

DR. PIERCE: All right, I need to make sure that I understand where we are right now relative to the motion that we made back at our last meeting. I left that meeting with an understanding that clearly is proving to be a misunderstanding on my part.

And that is we said that the season would be between May 1 and November 30. Each state will have an open season of 90 days or 120 or 150 days, dates at the discretion of the state. That's the key phrase, "at the discretion of the state."

As it stands right now, with these options that are before us, there would be no discretion by any state, notably Massachusetts, to pick the months that we feel are necessary for us to, for example, balance allocation dates.

We have that situation in Massachusetts where if we were to pick, for example, Table 8, we would give advantage to one segment of our party/charter boat fleet and almost put out of business another segment of our party/charter boat fleet.

I thought we would have some actual discretion to use relative to the months we picked. Now it seems that perhaps that's not the case. And if that isn't the case, then it's going to be difficult for me to move on these tables.

CHAIRMAN GIBSON: Dave, speak to that.

MR. SIMPSON: Yes, as I mentioned what I did -- the MRFSS data as you know is collected by wave. And so to break the catches down beyond that level is pushing the data further than you really can. So I looked at the data by wave.

So, in my assessment you could choose any two waves you wanted because I've already assumed you're going to pick the two most productive ones based on the historical period that we used, the '97 to '99.

Breaking it out by wave is more risk-prone, and it would certainly be an issue under Table 8. It would be less of an issue under Table 9 because that's a pretty high-catch assumption, so a little bit less concern there.

But, certainly, if I were to look at the summer July-August Wave 4, I would expect more catch to be coming in in August than in July. And so if I were looking to do the best for my state, I would say, well, be open August and September and don't worry so much about July. Don't worry about being open in July.

And that's how you can kind of use the information that you have that goes beyond what the MRFSS data provides. So you risk over-harvesting if you start to break it out beyond the wave level.

CHAIRMAN GIBSON: Toni, you have more to add to that.

MS. KERNS: In terms of process I can give you -- Dave put together these tables and the times that he had. If we were able to get these tables faster, then I would have given them to you sooner.

You can pick your own time frame. If we do that, then we'll have to put off making the decision on what you want your regional measures to be until the next meeting. The one thing that the technical committee did say was that you would have to keep it within the wave, the dates.

You couldn't break a wave in half and use half this wave, half that wave. That was one thing that -- contingent upon approving this proposal, was you would not be able to break the waves in terms of setting your seasons, because it then gives you much more leeway than they would feel comfortable in the proposal.

CHAIRMAN GIBSON: So, just as I understand that, Toni, if the sense of the board is that states need more flexibility in terms of the season, we would have to postpone decision on one of these options and what states would have to declare prior to the next board meeting which season they wanted to operate with?

MS. KERNS: Yes, that's true, but we would need to make a decision on which option you wanted to work from at this meeting.

CHAIRMAN GIBSON: Dave Pierce, then Eric Smith.

DR. PIERCE: Well, the dilemma that I have and perhaps other states have a similar dilemma is that right now the industry is out of the picture. They really haven't had a chance to participate in the debate.

The industry in Massachusetts, for example, the party and charter boat fleet, they have expectations that they'll have an opportunity to discuss what months will they have the 60-fish opportunity and the other months, 25 fish.

That's not necessarily going to happen now if we were to choose one of these options today. Plus, I know that, again, because of the allocation issues in my state, the fleet may want to have May fishing and July fishing in order to divide up, as best you can divide up, the available fish between the sectors. And by sectors, I mean geographical sectors.

Massachusetts has a unique scup recreational fishery, notably the party/charter. So, I am not sure how I'm going to move on this now, but I realize there are analytical difficulties in breaking up waves, but then again there are analytical difficulties in this analysis, period, so it's not as if we're going too far afield with the numbers.

CHAIRMAN GIBSON: Eric Smith.

MR. SMITH: Well, a couple of thing on this. I think what I heard Dave and Toni both say is you can be at liberty to pick your waves. Once you've picked which one of these tables you want to work from, don't break the waves up because it's risk-prone, frankly.

Then you're always picking a few days here or a few weeks here and there to maximize, and the analysis doesn't account for that so it would be a risk-prone outcome. I would urge against that.

We also can't wait until the May board meeting to decide this stuff. That's the pickle we were in last year where the fishery

is already underway and people who have their fishery regulations set, and then you're trying to get them to adjust -- last year it was July before we had this settled, and that's a mess so we should decide today as much as we can.

A compromise, in my view, would be to allow states to pick whatever waves, whether it's two waves or a wave and a third or a wave and two thirds, let them pick whatever ones they want, but don't let them adjust the days to try and capture the fact that if they do pick a wave that had a lower catch per day rate, that doesn't mean they get more days.

It means they have to live with the number of days they're allowed. And implicit in that is you're getting that flexibility, but it's more risk prone, against the urge to pick and choose and increase your catch.

So if Massachusetts wanted to have May and September, for example -- I'm sorry, Wave 3 and Wave 4, well, am I getting that right? If it was Table 8, if they wanted to have Wave 3 and Wave 5 instead of Wave 3 and Wave 4, that would be their choice.

But it would be the pure wave, no additional adjustments. I would just suggest that as an overall strategy to address David's concerns. And then I would offer a compromise thought here, because I think we need one in one sense and I'll explain why.

I read Table 8 to say relative to these other tables, that's not bad news, but it is based on a low catch or a lower catch in 2004. If you look at Table 9 and you say, "Oh, my God, it's 70 percent higher, which year is going to happen next year, this coming year?" Well, we don't know. We can't predict that.

I would suggest we need to lean towards

being more conservative, but there is no reason to think that it will be the same catch as it was in '03 than it was in '04. So my suggestion -- and I won't offer the motion yet until I hear if it seems like something we want to build on -- I would build a compromise between Table 8 and 9.

I would make the size limit 10.5, as it is in either one of them. I would make the possession limits, bag limits, 50 and 20, and then use the waves approach in Table 8, which is two waves. It's kind of a happy medium in there.

If anything, it's probably not halfway between the conservation of Table 8 and Table 9, because if I understand my discussions with Dave, you get more conservation out of the season than you do out of the bag limit.

So, if anything, it leans back a little towards Table 8, but at least it's not as risk averse or risk prone. I've been using those wrong. It's not as risky as just taking Table 8 outright. It's more conservative than that.

I would suggest that's the kind of approach we need to build on, a compromise between Table 8 and Table 9; allow states to pick the two waves that they want.

CHAIRMAN GIBSON: Let me make sure I understand that. You have proposed in Table 8 essentially substituting for 25 and 60 20 and 50. Everybody understand that? Discussion on Eric's proposal?

MR. SMITH: And not hardwire those waves as they are, but call it two waves, you get to pick whichever waves you want.

CHAIRMAN GIBSON: Flexibility in the waves, you pick which two you want.

MR. SMITH: Right.

CHAIRMAN GIBSON: Okay, comment on Eric's proposal? I have Dave Pierce, then Gordon Colvin.

DR. PIERCE: Well, compromise, of course, is good, but in this particular instance we compromised down to a point with your suggestion, Eric, to a point where the party and charter boat fleet is out of business.

I mean, we're all aware of what the party and charter boat fleets have said relative to what they need in order to make themselves viable businesses; and by dropping it down below 50 for at least one wave, and then, of course, 20 or less during another wave, I suspect that the party and charter boat fleet representatives would get to the microphone and they would indicate that, indeed, we have finally done what they think we've been attempting to do for a long time from New York through Massachusetts, and that's put the party and charter boat fleet completely out of business.

Now, the 60 fish for party and charter for two waves, that's already -- or for one wave -- that's already extremely restrictive, and it will be extremely difficult for us to make work. By "make work", I mean have the party/charter boat fleet survive.

So dropping it below 60, it's just put the letter in the mail, "your business is over." And going below 60 is not something I think that we -- I know we could not support without region-wide incurring the wrath of the party/charter boat fleet.

CHAIRMAN GIBSON: Okay, David. Gordon Colvin.

MR. COLVIN: I understand David's comments on the bag limit. I also have a concern I'd like to address for a minute, the

season length. Just focusing on Table 8 for the moment, as I understand this – David, correct me if I’m wrong -- that an across the board option for New York would be a 10.5 inch minimum size for all modes, a bag limit of 25 for all modes, and a season length of two months for the party/charter mode and four months for the shore/private rental mode; is that correct? Am I reading it right?

MR. SIMPSON: It would be open two waves in the shore and party PR mode. The party/charter mode you’d be open one wave at 25 fish and one wave at 60.

MR. COLVIN: They would be a different wave, yes. As strong as David’s concern was about the bag limit, a season length of only two months for the party boats is going to be awfully difficult. I just don’t see it as being workable.

And, retaining our current 11-inch size limit, from what David said earlier, discourages me in terms of what it might get us in terms of additional season length. Just a couple of points, and also I want to just address this 2003 versus 2004 thing for a just a minute.

In 2003 the regional catch was very high primarily because of New York, and in 2003 our size limit was 10 inches, our creel limit was 50, and I don’t think we had much of a closed season at all.

And so going back to that is just not in the cards, and so that makes me wonder why we are as concerned, as has been suggested, about basing our assumption on a return to 2003 catch levels. I just don’t see it happening, frankly.

In 2004 all modes in New York had an 11-inch size limit, a 20- fish bag limit and a five-month open season, for all intents a purposes a five-month open season. And,

we undershot the assigned quota pretty well, you know, not hugely, but quite significantly, I think probably by six figures. So, rolling back the size limit a half an inch, increasing the creel limit by five, cuts our season from five months in party/charter to two. I just don’t see the guys going for that at all. I would think that they would be jumping out of their chairs in the back of the room already. I’m a little surprised. David, am I missing something?

CHAIRMAN GIBSON: Dave Simpson, respond to that.

MR. SIMPSON: Yes, it would be a four-month season in the party/charter mode. Two months or one wave would be at 25 fish, which is more than you had last year, and then two months would be at 60 fish, so it would be a four-month season for the PC mode, but you’d have the higher and lower bag limit.

MR. COLVIN: So I can actually add those last two together, Dave?

MR. SIMPSON: Yes.

MR. COLVIN: That’s what I wasn’t understanding before. Well, that’s helpful. That’s very helpful. Thank you.

MR. SIMPSON: And the other point I feel like I need to make was you can just imagine how many permutations you could run on this kind of thing. If Massachusetts wants 30 days here and 30 days there, Rhode Island, Connecticut, New York, you know, everybody something different, I needed to simplify a little bit, and so I marked the open waves as that entire period.

I think it would be consistent with how we’ve done things in the past for this species and others to say as long as you’re picking

two-week blocks of time for closures at least, that it would be reasonable to do 30 days in one wave and 30 days in another.

But I would need to know, because I can't do hundreds of these, if states wanted to come forward. This costs us time, which I realize we don't have, but given three-four-five scenarios to run from every state, I could do that and that would be more consistent with what you're accustomed to having as flexibility with other species and with this species in the past.

CHAIRMAN GIBSON: David.

DR. PIERCE: I certainly understand your problem, David. There are so many different combinations that you had to make a decision, and you did, and the analysis I'm sure is fine, although again it's the first I've seen it so it's hard to digest it. It's hard for me to really understand exactly what is here.

Clearly, at a minimum, most states would want to allow recreational anglers fishing from the shore to wet a line, to have a chance to catch a scup, a child from a dock and pier -- I mean, some shore-based allowance.

And the way the analysis is shown here now in Table 8, nobody could wet a line and catch a scup except in Waves 4 and Waves 5. That's a problem, clearly. And it becomes an even greater problem when we start to overlay on top of that other actions that the states are going to have to take relative to recreational fisheries for other species.

For example, winter flounder, I understand that the board has closed down recreational fishing for winter flounder except for March and April. You can't even wet a line and

catch a winter flounder for the majority of the year, even though there are commercial fisheries pretty much unrestricted. Well, that's not quite right, but they have no trip limits, and I won't go there.

Anyways, I would like to see, for example, the ability of a shore-based fisherman, a five-fish bag limit; I mean, to somehow preserve an opportunity for the landing of some scup. Now obviously that analysis is not easy to be done and it's not something perhaps that would --

CHAIRMAN GIBSON: It's clear, as Dave said, there could be many, many permutations here, and Dave had to do a lot of simplification, but I'm advised that if we postpone this and try to allow states to configure more options and bring them back, we'll be backed up to a May board meeting, technical committee review, and it's just not going to work. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I think a lot of points have been brought out, a concern by Massachusetts, by Connecticut and New York. We do have party boat/charter boat folks both from New Jersey and other places, including New York, here.

I'm wondering if a ten-minute break might be in order -- it's 4:00 p.m. -- and then come right on back, at least have an opportunity to discuss with them are any of these options -- do they make sense at this point in time, is it important that we put Dave back through the cycle of doing a lot of work.

If none of these are acceptable by user groups, we're going to take it back and come back with a new answer, so I think a ten-minute break might be appropriate, Mr. Chairman.

CHAIRMAN GIBSON: I don't know that there are party and charter representatives from all the affected states. We're already one item behind in the agenda. It seems to me we need to get a motion here to get some traction on this issue. Gordon.

MR. COVLIN: Well, for purposes of discussion and getting this moving, I'll move that the board approve Table 8 as the available options; with the further provision that if the states adopt measures that are more restrictive than those tabled, they can submit for approval a compensating alternative for another measure, subject to approval.

CHAIRMAN GIBSON: Is there a second to that? Seconded by Everett Petronio.

MR. COLVIN: In other words, if I can, Mr. Chairman, if New York chose to stick with its 11-inch size limit, it could convince the board of an appropriately equivalent longer open season than Waves 4 and 5.

CHAIRMAN GIBSON: Understood. I think we need to get the motion up on the board, so we can see it. Gordon, is that the motion?

MR. COVLIN: Yes, Mr. Chairman.

CHAIRMAN GIBSON: I would just point out this would seem to open up somewhat of a Pandora's Box of another hodgepodge of proposals coming forward that aren't consistent within the intent of the original board action.

MR. COLVIN: If I may, Mr. Chairman, I would offer an alternative view, and that is that what we have done is we have created a uniform framework for four states as a region. We did not do that up until now with scup.

Each state has had an assigned percentage. That percentage of the quota has varied from year to year as a result of negotiations at this table, and it has led to individual state conservation equivalency proposals. What has happened here is we have created a single standard for the entire region.

We have a regional quota and a set of regionally calculated measures rather than measures calculated by each state with all of the infirmities attendant to that segregation of the MRFSS data and the other supporting data into individual state pools.

I think this is a substantial improvement both in terms of the use of regionally pooled data to calculate the effect of different management options as well as creating a level playing field from which the states can work.

Now, it maybe that a state like New York might choose to vary slightly from this proposal by raising its size limit a half an inch with the hopes that it could have a slightly longer season.

I would think that if New York did that and its calculations were consistent with those provided today by the chairman of the technical committee to derive it, that each of the other three states in this region would be confident that there was no significant advantage accrued as a result of that, that there was a true equivalency in terms of its effect on opportunity for harvest of the regional quota.

CHAIRMAN GIBSON: Other board comments on the consistency of this motion with the December -- Dave Simpson, you want to respond? Okay, we'll go with Dave first.

MR. SIMPSON: Yes, I'll just point out that when I did this analysis, except for the party/charter mode, the shore and private rental modes, I did, weighting the effect by, for example, the PR mode across the region; and if I break it down further to see if we're still going to come within the 4.2 million fish, I've got to put a weighting to New York in this case, which goes right back to, okay, what is your percent share allocation, what do I expect your catch to be. So it does kind of backdoor you into the -- it might be a different base year but it would bring you back to state allocation.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I had a question for Dave. Just so I understand it, I mean, would it be possible, under the scenario that was outlined about a state just kind of tweaking this a little bit, is there a way for a state to come up with 100 fish?

MR. SIMPSON: Well, the 100 fish is easy. The 60-fish bag limit only helps by about 2.5 percent, and even the difference between 50 and 60 fish makes very little difference. The 100, basically you don't have a bag limit and if we did that across the region, you'd be fine, but when you start to set specific rules by state, you get back to, okay, what percentage of the total catch will come from that state?

EXECUTIVE DIRECTOR O'SHEA: Okay, so is that a yes or a no?

MR. SIMPSON: When you asked using the example of 100 fish, my response was it doesn't make any difference, you're not getting any conservation out of that. There was something more to your question than 100 fish?

EXECUTIVE DIRECTOR O'SHEA: Yes, there is, and I guess the point is an argument has been made that this is going to address -- this motion is going to address the sort of perceived inequities that have been raised over the years.

I'm just trying to tease out how much real flexibility there is going to be and whether or not we're going to be able to address this sort of fairness issue that has come up in the past.

The argument has been made that this would allow the states, as they look at their neighbor, have the fishermen conclude that everybody is sort of treating fairly, and I'm just trying to see how much deviation could come out of this, that's all. And so that the board is aware of that when they consider this motion.

CHAIRMAN GIBSON: Do you have anything to add?

MR. SIMPSON: Well, again, I thought the intent of the board's motion was to evaluate a uniform set of rules for the region so I approached it that way. And when you start to break it back down by state, it all falls apart.

CHAIRMAN GIBSON: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'd like to amend this motion. It could be friendly or otherwise, probably friendly -- we did ride together so I may have to walk home -- amend this to actually include that this would entail states staying with the measures as identified in Table 8, bag limit either 25 or 60 as total maximums.

No matter what other deviation you came up with or alternative, if you will, that the bag will remain or 20/50, whichever one we

agreed to, but no more than 60 or for regular recreational no more than -- it could be 20 or 25.

This one leaves it open. If the chairman of the technical committee is going to look at the 20/50 as opposed to the 25/60, somehow we've got to capture in here that no state will have an opportunity to go beyond those limits of 25 and 60 or 25 and 50. So, can we capture that in some way?

CHAIRMAN GIBSON: I'm trying to understand that, you're locking in the bag limit column of Table 8, but allowing the flexibility of the states on the other two ends of minimum size and the season?

MR. AUGUSTINE: Yes, exactly.

CHAIRMAN GIBSON: Was that motion seconded, that amendment seconded?

MR. SMITH: A language improvement: Move to amend to include that states would approve the Table 8 bag limits, just take that word "that" out, say bag limits and allow length limit or season to vary.

MR. AUGUSTINE: Good.

CHAIRMAN GIBSON: Like that perfection?

MR. AUGUSTINE: Yes.

CHAIRMAN GIBSON: Okay, Gordon hasn't accepted that yet.

MR. COLVIN: I can accept that perfected amendment, Mr. Chairman, if the seconder is willing.

CHAIRMAN GIBSON: Who was the seconder? Okay, Everett, you're okay with that?

MR. PETRONIO: Yes.

CHAIRMAN GIBSON: Eric.

MR. SMITH: Okay, a comment on the motion. The risk of adopting a strategy only based on Table 8 is that if you overshoot by a lot, then you're in a deep pit next year and everybody has to come back, and that's a problem.

That was my concern when I originally talked about compromising between the two tables. Now Gordon made a good point that to a large extent the high level of the 2003 landings were based upon New York, and New York had much less conservative rules at the time, so maybe that mitigates against my first concern.

My biggest concern with the motion, even though I tried to help with the language there, is that we've been fighting for two years or more for common rules. And now even though this friendly amendment is an improvement, it still moves us away from the common rule strategy.

It seems like we either have to do it or we don't because I can just see a couple of states -- there are only four in play here -- a couple of states could have an alternative rule, more technical committee time, some need for board approval at some time in the future, which probably means a special meeting because you can't wait until May.

I almost think we ought to just -- if you're going to go with Table 8 with the adjustment and flexibility and picking your waves, that's probably a better approach for the first year, try it out.

Nobody should be alarmed or surprised by what we've gotten to. This is what we voted

to do in January. There has been very little deviation. It's a little bit in the creel limit but far better than most states had in 2004.

And it's a 120-day season. It was right in the midpoint of that motion that we passed, between 90 and 150. So, I don't think there should be a need to go back home on this one, if you will, because I think it's well within bounds of what we had talked about in January.

So, I guess I'm hoping for more debate. I don't have to drive home with Gordon, but when the phone rings, you know, it's hell, so I want to keep him happy if I can. The second half of that motion bothers me a little bit, and I would hope that we could maybe have a better reason for having to have the variability in there.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, was that 25 and 60; that's what Table 8 had said. Thank you.

CHAIRMAN GIBSON: Gordon.

MR. COLVIN: Part of the reason -- not part of the reason, the reason I made this motion, Mr. Chairman, is that I, in sitting here today, have a very strong interest in retaining New York's size limit at 11 inches, not dropping it to 10.5 for a couple of reasons.

One is that I think it is potentially considerably more risky in terms of what the effect might be on the total harvest to drop our size limit for the entire length of our season, however long it may be, given what happened when we were at 10.

And the other is that, what feedback I'm getting from industry here today suggests that they're willing to stay at 11 inches if it

can get them a slightly longer season and have that little bit of extra opportunity, and that's consistent with advice we've heard from people not just in the industry but also representing anglers from the beginning of the dialogue that we started that Eric was kind enough to host in his office last fall.

But I truly believe that it would not be in anybody's interest for New York to drop back to 10.5 inches. I'm quite concerned about what might happen, particularly if availability does get high.

CHAIRMAN GIBSON: Thank you. I would point out that we're about two items behind right now. We're supposed to be talking about Addendum XV so we need to -
- Bob Beal.

MR. BEAL: Well, not on the time line; I can't help you with that. But, is the intent of this motion to approve Table 8 and not allow conservation equivalency?

In other words, states can be more restrictive than the 25 or 60 fish, they can be more restrictive by implementing a larger minimum size, but if they implement more restrictive bag limits or minimum size limits, they're not going to be offset by increasing seasonal length or something else. Is that the intent, Gordon?

MR. COVLIN: No, the intent is that if a state -- if New York were to stay at 11 inches, that we would benefit by an equivalent longer open season, going back to my very original discourse with the chairman of the technical committee.

And, again, my evaluation of that reflected in my last comment is that I believe that the risk is greater with the lower size limit. I think that's borne out by our experience.

CHAIRMAN GIBSON: It seems to me we're going to need to dispense with this motion. Maybe it's better to move ahead with regional equivalent measures in baby steps than in large steps, if that's all we can achieve. Other comments from the board on the motion? Eric.

MR. SMITH: I'll just say quickly, that point Gordon made is persuasive, in my mind, so I'm more comfortable with this than I was before. He's right, there is a relative risk and dropping the size limit is the bigger one.

CHAIRMAN GIBSON: Thank you. David Pierce.

DR. PIERCE: Just a clarification of the motion. What does it mean by "allowing the season to vary?" Does that mean that we're not obliged to live with the wave designations, a specific bag limit for a specific wave?

MR. COLVIN: I believe this also goes back to an earlier dialogue that Dr. Pierce had with the technical committee chair in terms of right now the table specifies certain open waves and that a state could adopt a different open period that was equivalent.

So if there was, for instance, an open season period for New York's party/charter fishery that was equivalent to 60 in Wave 3 and 25 in Wave 4, that alternative period could be substituted for what's on the table. That's the intent of the language in the motion, as I understand it.

CHAIRMAN GIBSON: Okay, I'm going to go to the audience and see if they have comment on this motion.

MR. DENNIS KANYA: My name is Dennis Kanya from United Boatmen of New York. New York would approve -- the

party and charter boat industry in New York would approve this motion the way it's written as long as we have the option of giving us a longer season, a four-month season.

There are big problems in New York versus the east end of the island versus west end of the island, also recreational fishermen versus party and charter boats. Everybody in industry has always said we need the time to fish. The shorter the time to fish, the less time we have to make money. So this motion would be the best of all the options I've heard today. Thank you.

CHAIRMAN GIBSON: Other audience comments before I go back to the board? Toni has a question for Gordon.

MR. KERNS: Gordon, you're saying it's okay to split the waves? Yes? I just needed a clarification for when I'm making sure everyone is following the rules.

MR. COLVIN: Well, let's talk about that for a minute. I understood the chairman of the technical committee earlier to say that waves ought not to be split, but that a different wave could be substituted or a period of a wave could be substituted so long as it was equivalent in length in what it achieved. Now, I may have gotten it wrong; and if I did, we should discuss that for a minute and make sure the motion reflects the advice we got.

MR. SIMPSON: No, that's right. In doing the analysis, I assumed that every state would pick their best wave; and based on the data I used, these were the best waves, but I can see that over time that changes and someone might want to be open Wave 5 instead of Wave 3.

The other thing I was saying to Dave Pierce

was that it is typical for states to be able to take a wave and sort of take advantage of the fact that there is a pattern within the wave that MRFSS doesn't -- you know, the MRFSS data can't bring out.

And, so it's been standard to take advantage of those things, and I suppose the board should have the latitude to do that here, too, so that you probably could be open August and September, if that was better for you.

That's not how I evaluated this, but that would be consistent with how we've done it for other species and for this species in other years. I guess this is the problem we're trying to shoot for -- the motion a couple of months ago was 10.5, 25/60 and then work on the season.

And, of course, as you look at the results, you say, well, 11 inches might be better, what would that get us for the season and that's -- you know, there's a lot of variations possible on that.

MS. KERNS: So that's splitting the wave, Gordon, I just want to make sure that --

MR. COLVIN: Well, let me ask this question, then so we're on the same page. Let's look at the New York party/charter example where we have a table value of 60 fish in Wave 3 and 25 fish in Wave 4.

That means the total season length for the party/charter mode in New York under the table would be approximately 60 days from May 1 to August 31. Let's say that New York actually preferred to have the same waves open in party/charter that it would have in shore/private rental, Waves 4 and 5.

And I'm presuming, Dave, for the purpose of simplicity that you chose Wave 3 because it was a very productive wave for that mode,

so that Wave 5 would be less productive, and that if New York were to substitute Waves 4 and 5, that we would not be concerned that would be a less conservative option and therefore we could do -- consistent with your advice, Wave 3 skipping to Wave 5 would be not good. Wave 4 and 5 would be okay with Wave 5 being at 60 and Wave 4 still being at 25.

MR. SIMPSON: Right, you could be open Wave 4 and 5, and I didn't mean to imply you can't skip a wave. I think that would be all right, too. That's how we've always done it. You can be open whatever period you want.

The closed seasons have to be at least two weeks long. I think that's what the board should think about in terms of limitations. But as I did the analysis, I would expect anything different from this based on MRFSS data to produce fewer fish not more.

MR. COLVIN: Right.

MR. SIMPSON: And now I know there are subtleties that you can work to your advantage, but based on the MRFSS data, I'd expect anything different than this to produce fewer fish.

CHAIRMAN GIBSON: So what we're talking about here is wave substitution, not splitting waves in half or in other components. Okay, yes, we could perfect that. Eric, you have a comment on that?

MR. SMITH: Yes, it's understood here that you can't split waves, and it's also understood that your whole fishery has that wave strategy. If this document says it's four and five for Connecticut and we decide we want it to be three and five, it's the whole fishery.

It's not mode splits in there with the party/charter boats doing Wave 3 and the private boats doing 5 and everybody else doing 4. Let's not complicate this too much. Is that understood? Is that everybody's understanding?

CHAIRMAN GIBSON: That's mine. Everybody understand the motion? We have to dispense with it or we'll be here all night.

MR. AUGUSTINE: Call the question.

CHAIRMAN GIBSON: Need to caucus?

(Whereupon a caucus was held.)

CHAIRMAN GIBSON: So the motion reads: move to approve Table 8 of the scup recreational fishery proposals requiring bag limits of 25 and 60 and allowing size limit or wave substitution with the provision that if states want to adopt something more restrictive, they can submit other alternatives for approval. Motion by Gordon Colvin and seconded by Mr. Petronio.

Ready to vote? All those in favor, please signify by raising your right hand; those opposed; abstentions; null votes. The motion passes.

MR. SMITH: Before we leave that issue, it was suggested to me that -- and I don't know how to do this and I didn't want to confuse that motion, but we go forward when we adopt this. If a state decides to back out of this four-state regional strategy in a coming year, there needs to be some kind of penalty against that.

I mean, ideally we won't be looking at state share numbers anymore, so maybe it won't be a problem. But if it is, I think there was a

strategy that had been embodied in one of the other proposals last year; and if we could just hear that and see if it's still relevant, if it's needed. If it's not needed, we don't need to belabor it.

MS. KERNES: It wasn't embodied in one of the proposals. It was just a discussion that we had that I can give you the gist of that discussion. Are you talking about what we discussed for summer flounder or what was in another addendum?

MR. SMITH: I just wanted to be sure that if there was a staff concern on this, that it got out on the table and we didn't have a problem. If there is no concern, we can move on.

CHAIRMAN GIBSON: Eric, your concern is if someone pulls out of the regional set of measures that affects all the calculations and the conservation that's achieved by the other states, so perhaps you need a convention that if someone pulls out, they have to achieve the larger of the two reductions that would have been called for either by the regional approach or the measures that they're trying to go to. Dave Pierce.

DR. PIERCE: That question may have been raised because of the way I voted on this motion. I should clarify my intent or out intent. I mean, our intent is to try to do what this motion says; however, I could not vote in favor of this motion for a number of reasons, one being a matter of principle; that is, I have made a number of commitments to the party and charter boat fleet in my state that they would have an opportunity to comment on what would go into place this year.

Plus, I'm still concerned that when we did pass the motion at our last meeting regarding what we would do as a group of

states, we did say that the open season, the dates would be at the discretion of the state.

Now maybe this would still provide for this discretion, I'm just not sure yet, so we'll give it our best shot regarding trying to comply with the spirit of the motion. I just did not feel comfortable voting for it, especially because I received the document today, as everyone else did.

I received the document today and I just haven't had a chance to look it over as closely as I need to in order to feel comfortable with a decision of this sort that has implications of which I'm still not certain.

CHAIRMAN GIBSON: Eric.

MR. SMITH: Actually, I was not directing it at Dr. Pierce's vote, I'm sorry. I was directing it – frankly, I'm angling for the staff concern. If it's a real concern on this one, we ought to get something in there. Your words were as good as anything else, but I'm not sure I feel — I mean, I'm looking to try and make sure that this is a tight document and it doesn't have a boomerang affect next year.

If you want those words in a motion, if you think it makes sense, I'll do that. I'm not, in my own mind, convinced whether it is or it isn't a concern.

CHAIRMAN GIBSON: Nor am I. I don't have a sense for how much of a concern or an issue this is.

MR. SMITH: Well, let me make a motion and see if it can be done quickly. If a state pulls out of this agreement in a subsequent year, they will have to abide by the larger of the two reductions that would have been required, either individual state or the

region.

CHAIRMAN GIBSON: Yes, that's what I guess I was fishing at. Is there a second? No, Gordon's not seconding.

MR. COLVIN: Mr. Chairman.

CHAIRMAN GIBSON: I just wanted to see if I've got a second for the motion.

MR. COLVIN: I might be able to second the motion if it addresses what I believe is a fatal flaw in the motion as it presently stands; and that is this, as I indicated earlier, I think the motion implies that some decision has been made that would enable us to know what, for want of a better way of expressing it, share of the quota each of the four states presently enjoys.

And the fact is that requires us to make an assumption of facts not in evidence, that the quotas and the quota shares that the four states have actually fished to under the addendums adopted each of the last three years have differed.

We've essentially renegotiated distribution of catch opportunity each of the last three years so we don't have something that we're standing on that this motion can build from. I think the motion needs to address the assumption that the 2004 quota shares would be the basis for the alternative that a state would have as a penalty. Otherwise, we don't know what we're basing it on. And if Eric wants to perfect it, I'll second that for purposes of discussion.

MR. SMITH: No, I'd like to withdraw it.

CHAIRMAN GIBSON: The motion is withdrawn. I don't think we're going to resolve this issue. We have to move on to summer flounder. We need a schedule for

which the measures will be delivered by.

MS. KERNS: In order to have time for the fishermen to have notice prior to their fishery, to try to comply as best as we can with the National Marine Fisheries Service, we would need each state to give us their specific 2005 scup regulations by April 1st. Is this going to be a problem for any state?

CHAIRMAN GIBSON: I think we need to proceed the same way we did with summer flounder. April 1st is the date; and if there is a problem with that, you have to work with Toni to address it. Bruce.

MR. FREEMAN: Thank you. We've just spent the last hour talking about four states. I'd like to spend a little time talking about the other states. There was a technical analysis that was presented by New Jersey to the committee for consideration.

As indicated, 97 percent of the harvest is taken by the four states that have been involved in this discussion. The rest of us take the other few percent, but the fishery to us is important.

We have been restricted in the past primarily by size and bag limits and seasons that the other states to the north of us have been compelled to put in place to control the catch, and yet our catch is miniscule, usually 2 to 5 percent of the other states. Toni, do you want to go through the technical presentation?

MS. KERNS: I just have a short presentation. The state of New Jersey submitted an evaluation for the TC to review. In that evaluation, they looked at how dropping the size limit from 10 to 9 inches would affect the overall coast-wide harvest of scup.

And in 2002 it would have increased the overall coast-wide harvest by 1.95 percent. In 2003 it would have increased the overall harvest by 1.20 percent, so a variation from about 1 to 2 percent, it would affect the coast-wide harvest.

This evaluation was approved by the technical committee, and that's all I have. It's just the evaluation was approved. They made no statements on whether or not you should do this or not do this. It was just a technically sound evaluation.

MR. FREEMAN: In the past we've had season restrictions as well as size and bag limits. Our season has been restricted to January and February. People would ask why do we need a scup fishery at that time of year.

There is an offshore deep water fishery for sea bass, and occasionally we do catch scup and to bring these fish up from that depth and release them, the mortality is quite high. It is a relatively minor catch, but important to vessels who fish in that particularly deep water fishery.

So our season has been January and February and then July 1 through December 31 with a 50-fish bag limit. And in the past our minimum size has been 10 inches, and now we're requesting that to be reduced to 9 inches.

So I offer a motion that for New Jersey's recreational scup fishery for 2005, it be a season of January/February and July 1 through December 31, a 50-fish bag limit, and a 9-inch minimum size.

CHAIRMAN GIBSON: Was there a second to that motion? Eric, second?

MR. SMITH: Yes.

CHAIRMAN GIBSON: Seconded by Eric Smith.

MR. SMITH: If I can comment on it.

CHAIRMAN GIBSON: Sure.

MR. SMITH: I guess the obvious question is if we do this for the whole southern region, what happens to that percentage, and I wonder if the technical committee thought that. I don't know if the other states intend to do the same thing. Certainly, if something is a 1 or 2 percent change, I don't see a real problem with it, but I wonder about the spillover effect.

MS. KERNS: I can speak to the fact that the other states are actually at an 8-inch size limit, so in that sense the other states won't want to do that because then they'll be going up.

CHAIRMAN GIBSON: Tom Fote, comment on the motion?

MR. FOTE: I know this is difficult for states and I've been very understanding of the northern states not making us put a reduction in our fishery because they realize it is so small.

But, again, most of our fishery, as I explained years ago, we did have one good year where the big fish actually showed up. But for the most part we see 8-9 inch fish and actually 7-inch fish, so this would at least allow us to come home with some fish.

Again, I really appreciate the fact that the northern states have been very understanding that we do catch a small percentage and have not been reducing our catch over the time. But our southern neighbors are at 8 inches. We're at 9 inches.

We're not going to catch a lot more fish as analysis has shown. And it's a very difficult situation when we basically have people going out and they just can't keep fish when we're such a small percentage.

CHAIRMAN GIBSON: Dave Pierce next on the list, then Eric and Gordon.

DR. PIERCE: Well, Tom, again to address my question, and that is what information do we have to describe the length-frequency information of the trips that are taken out of New Jersey?

To my understanding, the scup are on the large size now, and I would think the recreational fishermen, certainly party and charter boat fishermen fishing out of New Jersey wouldn't have much difficulty catching the bigger fish.

And if indeed the bigger fish are there, then they would just end up high-grading and throwing the 9 inch back because they'd have no problem getting 10 inches and larger. So, are any data available that would enable us to get a better understanding of the nature of that fishery?

CHAIRMAN GIBSON: Eric and then Gordon.

MR. SMITH: Well, based on what Tom said, I'm only concerned that the catch might actually be more than the analysis showed. I'm assuming when Toni said the technical committee said it was a properly done analysis, if most of the New Jersey fish are eight to nine, then it's hard to understand why it would only be a 2 percent effect.

So maybe what we ought to do is do it for a year and add a proviso that if the effect on the coast-wide catch exceeds 3 percent

based on this, then New Jersey will be required to go back to 10 percent in the following year.

And if Bruce would accept that, then that gives them the opportunity to try, and it gives us the opportunity to revert if things don't go as planned.

MR. FREEMAN: I think that's very reasonable, Eric. When we started to see a recovery of the scup stock, the catches in New England really took off, and there was expectation that we would see the same results further south.

And so we had the same minimum size, realizing that there could be a huge increase. But, over the last three-four years that has not occurred, and unfortunately for Delaware, Maryland, Virginia south, they haven't seen a large increase as well. And, the reason for the 8-inch size is because they're just not seeing many fish.

We certainly don't want to compound the problem that exists. We don't anticipate our catch going up dramatically. And if we did see such a thing, we would certainly take action to bring it back, so I think we are really looking to do this for one year to see what the results are, and if we need to make adjustments, we will.

MR. SMITH: I'll read that language, if you agree with it. It will be up on the board.

If New Jersey's catch in 2005 exceeds 3 percent of the total coast-wide catch, the minimum size will revert to 10 inches in 2006.

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: I accept that as a friendly amendment.

CHAIRMAN GIBSON: I had Gordon Colvin next on the list.

MR. COLVIN: Eric's proposed amendment helps me a little bit. This would be very easy if it weren't for the existence of the for-hire fisheries, if we were just talking about what anglers catch.

But we do have a situation where we have businesses in two states that compete for a common share of customers, and it raises concerns when they're advertising in the same New York newspapers and advertising gets to nowadays come over here because we have a smaller size limit and a longer season and so on and so forth, so that's just a concern that I need to express on behalf of the businesses in New York that do compete for these customers with some of the folks in Jersey.

I will be watching carefully to see how a proposal of this nature might affect that distribution within the business sector, within the for-hire business sector, when we come to revisit this next year.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: I was going to ask Gordon what his reaction was to this 2-inch difference that there would be in minimum size between the states, and it sounds like Gordon is willing to go along with it, which is a shock to me, because 2 inches is an awful big difference in minimum size.

I would think that the New York industry would be incensed when learning that New Jersey had such a tremendous difference. As indicated by Tom, I've been pretty understanding of the situation that the states have to the south for a long time now.

I've been willing to go along with those strategies for the south, but I've always

known and I still suspect that New Jersey is and can be a major participant in the scup recreational fishery.

I mean, scup has always been important to New Jersey, and I think the resource is bouncing back. At least that's what the data show. I can't support any action that would involve our reducing the minimum size down by 1 inch or 1.5. Where is it now? Is it 10 or 10.5? It's at 10.

Okay, so reducing it down an entire inch when the other states have been inching up our minimum size in increments and now 10.5 and maybe even larger than that in some other states, maybe even in Massachusetts, and New York had 11 inches, the discrepancy is just too big.

As a consequence I can't support it. I still feel that again, from my talking with fishermen, not that many fishermen but some fishermen down in that area, commercial fisherman more so than the recreational, I don't think they're going to have a problem finding their fish that are above -- that are 10 inches and above. And anything that they get below that will just be released as somewhat of a high-grading exercise.

CHAIRMAN GIBSON: Tom Fote.

MR. FOTE: Dave, it's not a high-grading exercise. We're talking about people that fish from -- you know, I grew up fishing on the Marine Parkway Bridge in Brooklyn. I grew up fishing on piers and things, and that's where the problem arises is the inshore fishery that I'm looking at.

Again, the commercial fishery is offshore when the big fish are in. I mean, this is not going to be a big increase. This is not -- what I'm saying is it at least gives an

opportunity for somebody that fishes from a pier, fishing inshore, to get a legal fish once in a while.

You know, I fished for scup once last year and, yes, there wasn't the same amount of scup there was two years before that. We didn't have the run that we had two years before that, and the sizes were a lot different. I mean, we did the analysis.

It's not going to make that great of an increase after I'm looking at it. I'd just like the opportunity for a person to take a fish home once in a while if it's not going to make that big a difference. We're only talking about now showing about a few thousand fish. I mean, that's really what I was looking at.

CHAIRMAN GIBSON: Dave, one last comment on this, then Vince.

DR. PIERCE: Just to that point about allowing the guys on the shore to catch a fish and to bring a fish home. Well, I'm very sympathetic to that particular concern, but I can't do anything about it because, let's face it, we're trending away from that certainly from New York to Massachusetts where somebody who is fishing from shore is finding it extremely difficult, if not impossible, to catch a scup that they can actually land as a legal-sized fish and take it home.

This is not just a problem that's unique to New Jersey. It's now unique to all the states because of the size of recreational harvest region-wide, including New Jersey.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I don't know if an exception or breaking out a rule for the party

and charter boat helps us or removes the commercial competitive issue here.

CHAIRMAN GIBSON: It sounds to me like Gordon was willing to go along with this for a year, and he was going to watch this quite closely. I'm not sensing there is a big need to modify. Gordon.

MR. COLVIN: I think a couple of people read more into my comments. I said Eric's motion helped, but it didn't make it necessarily that I was going to vote for it. It just helped.

Vince's suggestion had gone through my head and it would be helpful if there was a stipulation that the for-hire fishery would do something radical like either stay at 10 inches or even better just do whatever New York did on the size limit or guarantee that they'd never advertise in the New York papers again or something.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: The difficulty we face is that four years ago the perception was that the catch in New Jersey was going to go through the roof, and we would see a tremendous increase as we saw in the four states to the north of us. And we had the same size and bag limits as was required of New York, Connecticut, Rhode Island and Massachusetts.

During four years that didn't happen. We're less than 1 percent, around 1 percent of the catch. The other four states are 97 percent - 97 percent. And now we're finding resistance from the states that have the catch that we should not be allowed to go up.

The point is we believe the catch won't increase that much. And as Eric indicated, we're willing to agree to this because if we

see a dramatic increase, we're obligated to certainly rein that in. There's enough problems as there is.

But the way the fish are increasing, they tend to remain from New York northward. We're seeing a small percent of that increase in the stock. And, again, if we see that there is a dramatic increase that's creating a problem, we will take appropriate action and we'll do it in combination to the desires of the board.

But to continue to have people speculate that our catch will increase astronomically when it wasn't happening, we think it's totally unfair.

CHAIRMAN GIBSON: It seems to me everyone understands the proportionalities of the catch pretty well between the two regions and also the predicament of shore-based fishermen. I think we need to dispense with this motion. I'm going to go to the audience for comments. Tony.

MR. TONY BOGAN: Thank you very much, Mr. Chairman. My name is Tony Bogan from United Boatmen of New Jersey. Just a couple quick things to this motion. First of all, in all deference to Dr. Pierce -- and I have the utmost respect for a lot of arguments he has made in the past, but I would have to call your information about what kind of scup and sized scup are caught in New Jersey as anecdotal.

I speak with all of the boats that prosecute the fishery in the party boat sector in this state. Every one of them is a member of United Boatmen. Two of them happen to belong to my family. I can tell you right now I don't know what fish you catch, but we don't catch 11-12 inch scup and then high grade to bigger scup. It doesn't exist in our fishery. It never has. It never will.

As you are quite aware and a number of members of different states are aware, the way scup work typically Massachusetts and the states, actually from Montauk north, get scup as much as three months before we get scup, including the west end of Long Island, by the way.

The offshore migration of scup that is prosecuted in the wintertime down off of North Carolina and Virginia is a straight run, and the first landmass they hit is Montauk, which is why Montauk gets scup earlier in the year. They get it even earlier than the west end of Long Island gets it.

The scup we see typically show up sometime between the middle of July and the middle of August. They are not the same fish you catch. When my fish are first getting there, your fishery is over. So it is a significantly, I should say, a distinct body of fish that you fish on that we do not.

The fish that you lose -- not you, personally, Mr. Pierce, obviously -- the fish that are caught up in the New England region and the North Mid-Atlantic are not the same fish we catch. Those are the fish that we see in January and February, that we only see offshore.

Another thing, too, is New Jersey went straight from 8 inches to 10 inches with our size limit. We did not have any gradual increase. In all deference to Mr. Colvin, I understand his point, and it's well taken.

There is definitely a perception of an issue between Sheepshead Bay area and the Atlantic Highlands. Of course, the reality is that fishery in the Atlantic Highlands isn't prosecuted until sometime in October after fluke is closed as far as porgies go, and, of course, by then there isn't a significant porgy fishery going on in that area at that

time.

One thing to keep in mind is that to put Mr. Colvin's comments in perspective is in 2002 New York landed 1.09 million scup; New Jersey landed 94,000. In 2003 New York supposedly landed 5.1 million -- now, let's be a little bit more realistic and call it 2 million scup -- we landed 149,000.

This past year New York supposedly landed 1.5 million scup; New Jersey landed 111,000 so we haven't seen an increase. We've seen we bounce: 90-150-110-120-112. There was a gentleman earlier, I couldn't see who it was and I didn't recognize the voice, that said very eloquently, "Don't forget about us states to the south."

We used to actually have this fishery as well. This fishery used to extend all the way to Virginia for decades. Actually more than my lifetime, this fishery has only existed from really New York north. Those states have gotten very comfortable with having that fishery all to their own.

This is a circumstance where you are literally talking about a discard rate in the scup fishery in New Jersey at 10 inches that is astronomical, and that's not anecdotal; that's fact. Like I said, I have two of the only ten party boats in the state that prosecute this fishery at all and two of the only full-time bottom fishing boats year-round.

We don't fish for fluke in the summer like all nine of the boats in the Highlands do. We bottom fish year-round, 365 days a year, which means when scup are there we're catching them. And I'm here to tell you right now our discard rates are atrocious.

As far as the commercial fishermen, my

dock happens to be next door to the largest fisherman's cooperative in the state of New Jersey. Their size limit is 9 inches, so saying that, well, they don't have a problem catching bigger fish, well, catching fish that are keepers, well, their fish are already at a 9-inch size limit.

One of the important things that Mr. Fote and Mr. Freeman mentioned was the January and February opening. There has been a lot of talk over the years about wanting parity between the federal waters fishery and the state water fishery.

I just wanted to remind everybody at this table, as it relates just to the season aspect of this motion, that the federal waters fishery is from I believe mid-August through November 30th and January and February.

And that was done specifically to accommodate a handful of boats from Virginia to New York that fish offshore during the wintertime and interact with scup typically for between three and five weeks is about how long we see them.

By mid-February those fish are usually too far south for even us to catch. And, of course, discarding almost any fish like sea bass or scup in anywhere from 180 to 250 foot of water, obviously, those fish are seagull food after you take them off your hook and throw them away.

So we wanted to avoid -- the reason for that January and February in there was to accommodate the federal waters fishery, so you don't have a circumstance like we had with fluke for a number of years, it's open in federal waters; it's closed in state waters or vice versa.

But as far as the size limit is concerned, I can't honestly understand why a state like Massachusetts, who catches on order of

magnitude greater scup than the state of New Jersey has caught in decades, would have an issue with going to a size limit that is still greater than our neighboring state.

You've got a situation in the Delaware Bay, which we share water with Delaware just like we share water with New York, where the state to the south of us has no closed season and has an 8-inch size limit.

And at the time that we were forced to jump from 8 to 10 inches, those states were still allowed to remain at 8 inches and no closed season and 50 fish even though our share of the fishery is literally a single-digit percentage and it's less than two. I just wanted to clarify a few comments and put them in perspective, some of the things that were said around the table. Thank you very much for giving me the time, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. Pat, I'm hoping.

MR. AUGUSTINE: Thank you, Mr. Chairman. In response to a couple of the last commenters, when we start comparing sizes in different states and different species, I think we get on real thin, thin, ice.

No one around this table went back and compared minimum size for fluke in the state of New Jersey, which is 16.5 inches where New York has been 17, 17.5 and up to 18. No one is talking about percentages. We're talking about an aberration to what we've agreed to these plans would be.

We do have folks from New York and New Jersey fishing exactly the same waters for many species of fish with different sizes and creating significant problems, different seasons, different sizes and so on.

So, rather than going down that road and talking about where the fish are and where

the fish aren't and that the migration has changed and that sort of thing, so be it. I think there have been a lot of changes in recent years as to migration patterns and the ecosystem changes and so on.

So, I just think we're going around in a circle. I think the points were well taken, but I could not see supporting this motion. And, quite frankly, Mr. Chairman, I think it's time to call the question.

CHAIRMAN GIBSON: I agree, time for states to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: Okay, the motion is move to approve for New Jersey's 2005 scup recreational fishery a January to February and July 1st to December 31st open season, 50-fish bag limit, 9-inch minimum size limit with a provision that if New Jersey's catch in 2005 exceeds 3 percent of total coast-wide catch, the minimum size will revert to 10 inches.

All in favor of the motion, please raise your right hand; those opposed; any abstentions; null votes. The motion carries.

Does that take care of scup business? Thank you. Okay, Addendum XVII, summer flounder regional management multi-year averaging. I was given a note by a board member suggesting that since we had set the 2005 fishing year, it has already been decided, that we should postpone action on this, but I've been advised by Toni that we wouldn't be able to do that and she can tell us why.

Review Addendum XVII

MS. KERNS: Today we need to decide whether or not we want to put Addendum XVII out to public comment. We need to make a decision on this document today. Addendum XVII gives the board the flexibility to have a regional approach to the summer flounder recreational fishery.

The reason why we need to move forward with this document is if we want to add this tool to our toolbox, the federal service has to adopt a framework -- it's a sister document with this -- in order for us to be able to use this tool.

In order for them to put together a framework in time for the 2006 fishery, we need to start this process now. So, I am going to try to briefly -- we've gone through this document I think two times, so I will go through this very quickly.

As I said, this document gives us the regional approach. The board asked me to task the TC to look at three different things with this document. First, they asked us to give specific management measures for the 2005 fishing year if we were to have gone through with each one of these regional options.

I'm sorry to say that we were not able to give you those specific options. We lacked the proper data to go ahead and go forward with it, so instead we're going to have to just look at the reductions and liberalizations associated with each option.

I would like to make a correction on Table 2 of the document. Where it's North Carolina alone, that reduction should read just as the one in Table 1 above, just a 52.84 percent liberalization.

I'm not sure what happened there. The 2004 projected landings were not 325,000, but they were 176,000. The difference would be 29.32 percent, and it's a liberalization of 52.84 percent. All the other ones are correct.

The TC evaluated, using regional approaches as well as looking at multi-year averaging, as the board asked us to do. The board at the December meeting with the council thought that it may be appropriate to add multi-year averaging into this document. I'm going to let Dave let you guys know how they felt on those two issues.

MR. SIMPSON: Well, the multi-year averaging we've talked about already a little bit, and the bottom line is it's problematic because you're averaging across stock sizes. If you're averaging over three years, you may be going from low to medium to higher stock size, which isn't so bad.

But if you've got a declining stock condition, say, a poor year class coming through or something like that, you would be very likely to over fish if you used a multi-year averaging type approach.

The regional approach, obviously, there has been a lot of interest in doing that. The advantage of it is that you're pooling data across states, which is statistically appropriate to do, and you're doing it within a year so you're talking about the same stock size, so it's a much more -- it's a preferable way to go.

One of the technical committee members did an evaluation of the different groupings and saw that in most years the Massachusetts to Virginia/North Carolina option provided for the least range of change, the smallest range of change.

However, in 2003 it appeared that the four-region breakout was preferable, the four regions being Massachusetts-Rhode Island, Connecticut to Delaware, Maryland-Virginia and then North Carolina by itself.

I think the major point here for the addendum is that right now the choice is either state by state or coastwide, and approving the addendum and moving on with the framework would give you at least the latitude to combine states into something other than a coast-wide level.

CHAIRMAN GIBSON: Okay, questions for Toni or Dave, and I saw Pat Augustine.

MR. AUGUSTINE: As soon as you're ready for a motion, Mr. Chairman, I'll do it. There may be some comments from the board. If none, I would move it.

CHAIRMAN GIBSON: I had Jack Travelstead and then Gordon.

MR. JACK TRAVELSTEAD: Toni, there had previously been some discussion about an option that dealt with a voluntary combination of states. Any two or more contiguous states that wanted to look at the identical measures could join their data and do so without -- all of these are mandatory situations. Did the technical committee have a problem with that one or did they look at it?

MS. KERNS: No, I don't think that the technical committee has any problem with anyone joining together. The discussion on the voluntary was based on a way to do this for the 2005 fishery. That's what had initiated that discussion.

It was a way for us to maybe take it to the service to circumvent the federal rule saying that we weren't allowed to have a regional

approach under conservation equivalency for summer flounder.

But if you wanted to deviate from the groupings that are in this document, that's a potential ability to do so, and it's even an ability to add some caveat to the document that you would want to decide what the regional approach is that you wanted to make up on a year-to-year basis in your toolbox.

I think the main thing that we need to know today is we're debating whether or not we want to add this document itself into the toolbox, and you can make adjustments to it as well.

CHAIRMAN GIBSON: Jack.

MR. TRAVELSTEAD: Could I just follow up. I can't support this going forward unless there is a voluntary option, if that's the right term. You know, Virginia doesn't have any interest in being lumped in with most of these northern states to figure this out.

But, if three or four of the states want to get together and think they can improve their position by voluntarily doing this, I don't have a problem with it. But, to mandate that a particular state now has to be lumped in with a particular region, I can't support it. We've tried it in the past and it didn't work, and I just don't think it will work now.

CHAIRMAN GIBSON: All right, Gordon Colvin.

MR. COLVIN: Just a question. I'm trying to understand where we are and what the process might be, how it might roll out. We've begun the development of an addendum that includes a regional approach on alternatives. The council has begun a framework that goes to multi-year

approaches.

MS. KERNS: The council has not started a framework. And when they do start a framework, it would be to be the exact sister of this document. They are waiting to decide what they want to do after this meeting.

They want to see how the board is going to move forward and then they will move forward in accordance to the way we have moved. But it's not set in stone on a multi-year. They have not done that.

MR. COLVIN: All right, I have a recollection of a motion that suggested moving in that direction. But, my suggestion would be -- you tell me if I'm getting outside the bounds of what the staff is recommending -- that we proceed through the further development of an addendum that includes both a multi-year and a regional options.

I agree with Jack's suggestion that an alternative be added to those that are indicated here that includes, for want of a better description, a voluntary aggregation of states.

I think it's good to have that option as one of those that we look at in addition to those that are indicated here, and that we make a recommendation to the council that they accompany us through the development of a framework that covers an equivalent range of alternatives.

If that is what I'm hearing being recommended, I'm willing to offer that as a motion, Mr. Chairman. I guess the expectation is that we would attempt to work with the council towards the development of a joint framework and addendum that could make available to us

choices for 2006 should we choose to implement any of them.

CHAIRMAN GIBSON: Bob, do you want to speak?

MR. BEAL: I didn't hear the last part of Gordon's comments or questions, but one of the concerns that I have is the details of the multi-year averaging approach are not included in the draft document as it's presented today, nor is the voluntary option.

If staff and the plan development team is charged with going back and including a multi-year approach as well as that other regional option, will that slow down the timeline beyond what is acceptable to the Mid-Atlantic Council to allow them to finish Framework 6 in time for implementation on January 1, 2006, is my concern.

If the document is limited to the regional approach, I think we can get things squared away with the council for implementation or to allow the board and council to have another tool by January 1st, 2006. But if we slow down the process and we move in lock-step with the council, it may prevent implementation for the 2006 year if we use the multi-year averaging approach.

CHAIRMAN GIBSON: Pat, I couldn't see what you were waving but please tell me.

MR. AUGUSTINE: Point of information, Mr. Chairman, thank you very much. The January 5th Amendment 14 planning meeting notes compiled by Jessica Coakley; under Amendment 14 versus Framework 6, Item 3 was ASMFC is developing a discussion paper about averaging and sub-regional approaches for summer flounder before the February board meeting. I thought maybe that encompassed what we were trying to do here by adding this multi-

year thing. Would that not be the same thing?

MR. BEAL: Well, the multi-year averaging paper hasn't been developed based on the advice from the technical committee that due to the concerns that the tech committee chair listed, the tech committee had advised not moving forward with multi-year averaging.

But, if the board wants to move forward with the caveats that the technical committee has presented, obviously, that's their prerogative, so it's just a timing issue now as much as a workload issue.

CHAIRMAN GIBSON: So we would need a motion to drive this forward further. Gordon.

MR. COLVIN: Well, I guess I would move that we continue development of Addendum XVII with the addition of an option for voluntary multi-state proposals and subject to the favorable action by the Mid-Atlantic Council at its March meeting the incorporation of multi-year averaging as well.

The reason I make the motion that way is that it's my understanding that the council's motion to develop the framework was tabled until the March meeting, and the council will decide at that time whether or not to include the multi-year approach.

But I can tell you that my recollection of the discussion suggests that there is considerable interest in that option among members of the council, and they may choose to proceed accordingly, in which case I would suggest that it be included here.

I would also suggest that if this motion passes, that the board make a

recommendation to the council and a request that the council work jointly with us in the development of a compatible framework and addendum to cover the same terrain.

CHAIRMAN GIBSON: So your motion includes the addition of multi-year averaging, despite the technical committee – - okay, go ahead.

MR. COLVIN: Yes, it does, Mr. Chairman, only on condition that the Mid-Atlantic Council, after they hear the same information, decides that they do want to do a framework that includes it. I think that's a fair recommendation to be made in the spirit that we will be asking the council, should this motion pass, to take up the regional approaches in their framework as well.

CHAIRMAN GIBSON: Okay, understood. Was that motion seconded? Seconded by Eric Smith. Dave Pierce.

DR. PIERCE: Bob, I understand why some states might not want to be in the combinations that are in this document. We discussed this document at previous meetings. We now have it before us. There are different combinations by region.

That's what we have to work with. If there are any states now that don't like this particular arrangement, then why not make a motion to add another option to the document that would accommodate their specific needs?

By making this voluntary, it seems to me that it throws it up in the air. How do we do the analyses? All the numbers change in the tables depending upon what state or states decide to opt out and to go in some other direction.

So, to me this motion just muddies the water

tremendously and really doesn't give any clear guidance to ourselves or to the Mid-Atlantic Council as to which way we're going with this. I would think that today or at another meeting the state or states that object would offer up an alternative.

CHAIRMAN GIBSON: Tom Fote.

MR. FOTE: Being on a state that usually winds up between the north-south mix -- I mean, whether it's red drum where we have to put a red drum regulation in that really shut our fishery down altogether, and other states are harvesting and where we used to have somewhat of a harvest all because we're on this end of, say, winter flounder we get -- we want to opt for the region because - - or make it voluntary because sometimes because of the location -- I'm not blaming anybody, it's a fact of geography -- we wind up in a mess and a real mess with this.

I mean, I have a hard time supporting this. If states voluntarily agree, that's a different story. But to force states into it – and, you know, the votes have been interesting lately, north-south, states going on states. I really could not support this unless it was voluntary just because of what has happened in the last couple of months with other species in the last year and a half.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I have a question on where we are with the averaging. I guess I'm thinking ahead. If we have advice from our technical committee today not to go forward with multi-year averaging, unless I misunderstood that, I'm wondering what would change by the council deciding to go with multi-year averaging in March, how that would supercede or address the technical committee's concern, and maybe

Dave Simpson could answer that.

CHAIRMAN GIBSON: I don't sense the technical committee is going to change their opinion on what advice they've given. Unless the council has some independent body that's going to re-evaluate it and advise them, the technical committee's advice I would think would stand.

MR. SIMPSON: I mean, unless there's some new light that is shed on the issue that you would persuade us differently, I don't see where we would change.

EXECUTIVE DIRECTOR O'SHEA: So then a follow up, Mr. Chair. So we'd be setting ourselves up to go forward with an action that was contrary to what our technical committee had recommended?

CHAIRMAN GIBSON: As I understood what Gordon said earlier, that would only be the case if the Mid-Atlantic Council concurred, having independently evaluated what the technical committee had provided them. Jack Travelstead next, then Bruce and Eric.

MR. TRAVELSTEAD: I'd just like to clarify one thing. Is there a rule in place now that prohibits two or more states from pooling their data for this purpose?

MS. KERNS: Yes, there is. We discussed with the service this year whether or not we could pool our data to have a regional approach and then see if they would approve those approaches, and it was brought back to me that they would not be able to approve approaches in that manner. Harry, if you want, you can speak further on that.

MR. MEARS: I can just comment what I recall from the initial scoping document that led to Framework 2, I think it was, that

speaks to state-by-state conservation equivalency. I believe one of the alternatives that was rejected was doing it on a regional basis, if I remember correctly.

So, if one were to look at the history, I think probably -- if I had to guess what a lawyer would say, I think the answer would probably say it was once considered at that time and rejected. It would have to be reconsidered through public comment, probably through a framework type of approach. That would be my best insight on that.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: Dave Simpson, I'm trying to understand a little better the objection of the technical committee. You indicated that by multi-year averaging, the feeling was that the number would be much more liberal, or it would be greater than we would normally see. Was that a function of the fact we're looking backwards in time and the stock is increasing or is there some other reason for that?

MR. SIMPSON: Yes, the biggest concern is that you're averaging across stock sizes, and for some of these species stock sizes are changing pretty rapidly. As I said before, it's not so bad from a fish conservation, hitting your management targets perspective if the stock is increasing.

If you average, you actually set lower targets, than you would otherwise, but if the stock is on the decline, you have a failed year class or something like that, you're still saying, well, there are plenty of fish out there, but there aren't.

MR. FREEMAN: So as the stock is increasing, you would be conservative; and as it's declining, you'd be very liberal. Is

there some way to factor in stock size? I think we recognize that difficulty, but there must be some way of overcoming that. Was that looked at by the technical committee? Any suggestions on how that could be done?

MR. SIMPSON: I think a lot of it has to do with the estimates, the estimates of catch, where are we relative to our targets and the averaging is happening, say, with MRFSS estimates and the greater uncertainty there. I mean, that would be the reason to want to try to average.

MR. FREEMAN: Well, I don't think any of us are looking to abuse the resource. I think the issue is -- at least what appeals to me as multi-year is to moderate some of these great fluctuations.

We've seen this in scup. Several years ago the survey showed an extremely high quantity of scup and we could have -- this is on the commercial side and recreational side -- we could have increased it considerably, but all of us indicated that survey was just artificially high, and we really didn't increase the harvest either commercially or recreationally in the amount we could have.

But the fact that you get these wide fluctuations then creates problems because, as you recognized, one year you're way under; the next year you're way over. And, it's very, very difficult to manage a system like that where fishermen are told year by year these very restrictive catch limits or very liberal catch limits is a real problem.

I think we're trying to accomplish the goal of multi-year averaging. The question is how best to do it. If we could find a way to factor in predictions in the stock so we don't overestimate or underestimate, that's really what we're looking for.

I think there's appeal to the concept. We don't want to abuse the resource, and there should be something available that we could use to allow us to use the concept but not abuse the resource. But that's something the technical committee has yet to discover; is that correct?

MR. SIMPSON: Well, I think the technical committee was responding to the inherent problems with averaging across years. It's preferable to stay with any year, which means you're staying within a stock size by pooling across states.

But you're right, we know more about summer flounder stock status than scup, our target is a three-year moving average of the survey index, so it's a matter of I suppose how desperate you are for data and a basis to manage off of.

CHAIRMAN GIBSON: I'm developing a list. I have Eric Smith, Rick Cole, A.C. Carpenter and Gordon. Eric, you're up.

MR. SMITH: I hope somebody can enlighten me because hearing all of this, I can't find an upside to this proposal. The two big features I see in it are the multi-year averaging, which the technical committee says is a bad idea when the stock is declining and it's a good idea when the stock is increasing.

Yet, if the trend was consistent over the three-year period, a manager would want to average when the stock was increasing -- would not want to because the earliest two years are the worst.

You want to pick your most recent one.

And on the other side of the curve, the manager would not want to average -- would want to average when the technical committee says no this is when you're

getting into a tough time.

So I see that issue if we follow the technical advice that -- I thought we could develop this. I was going to vote for it to let it get developed, but I can't see how we can do either situation and be consistent with the advice we're getting from the technical group. That's one flaw.

The other flaw is -- I mean, maybe I don't understand the voluntary, multi-state approach option. Jack thought that was something that maybe made it more palatable and New Jersey thought it made it less palatable.

In my view, you have a vision of there are ten states in the region, the five states that have a gain year coming up, they all get together and pool their resources and the other states are in a real pickle because they're never in a pool where any of the states didn't catch their target the last year.

So I'm not sure the voluntary, multi-year state does any better for us than the condition we're in now which is a poor one, I grant, you every state for themselves and you use MRFSS on a year-to-year basis and you accept the flaws in that.

But unless we can figure out a bio-geographic region and Virginia is always happy in the one they're in and Connecticut is always happy with the one they're in, so that you have regional management and you proceed with it, that's the only way I could support this.

The voluntary year-to-year thing is no different than we have now, so I'm having a hard time finding anything in this motion to support, quite frankly.

CHAIRMAN GIBSON: Rick Cole.

MR. COLE: These arguments that you hear today are the same arguments that we heard back when we initially did Amendment 2 back in the '90s. From the concept of the technical committee, this is certainly not the first time the technical committee has told us these exact recommendations.

And as I recall, the monitoring committee has also told us the same thing over the years. But, nevertheless, I'm afraid that given the way that this motion is currently worded, that the time schedule that would be necessary in order for the council to implement Framework 6 could not possibly be met because the first framework meetings would have to be scheduled for May and then the second meeting in June.

And in order to come up with the necessary changes in the amendment that have been included here between the voluntary multi-state option proposal, which would have to be analyzed -- that would certainly be an interesting analysis -- and the multi-year averaging approach, which there is apparently no technical basis for, I think essentially this language kills any chance for the council to be able to formulate any kind of Framework 6 and have it in place in 2006.

CHAIRMAN GIBSON: All right, thank you. We've got A.C. and Gordon and then we've got to come to some closure on this addendum.

MR. CARPENTER: Mr. Chairman, I'd like to ask a question about the downside of the averaging issue. If I understand the argument the technical committee is making, one of the assumptions that you have to come to there is that the total harvest in any given calendar year is essentially on that one year class of fish in the fishery that year.

Because, if there are multiple year classes harvested within a given calendar year, doesn't the argument of averaging work going up and down the same way? I mean, if all of the fish that you are taking come from a single-year class, I can see the argument that it's not good.

But if your fishery is harvesting year classes from three- or four-year classes, the buffering effect that we are looking for I think is much less troublesome than it would be if there were a single-year class fishery.

MR. SIMPSON: Yes, it's probably less so, but I think the issue is still there. And the other part of it that I hadn't mentioned is I think the general concern that if there is a choice every year between using a multi-year average or using a single-year average, if both of those tools are in your toolbox, so to speak, the temptation to pick the number that works better for you as opposed to a more technically sound number is great.

I think that's another concern that you take the three-year average when it works for you and you take the single-year average when it works for you, and that can only lead to a higher likelihood that we're going to over-harvest, so that's another complicating factor here.

CHAIRMAN GIBSON: Gordon, you were next.

MR. COLVIN: Why do this? To avoid the problems that have been discussed for a lot more hours than I care to contemplate around this table and around the council table that result from the current state-by-state approach. And you know who the poster child of that is in the last couple of years.

And the public has a lot at stake here. I

believe that the public wants us to bring them something to comment on and that is all this is about. It's not about making final decisions, it's about putting something together that proposes some different approaches that solve those problems for the public to review and comment on and for us to decide on later, after they've done so. I think we should continue along that course.

A couple of things I'm not quite sure I understand. Again, I don't want to prejudge this for the council. I heard the technical committee's concerns about multi-year, and I'm personally not persuaded that they're fatal to where we are right now for two reasons.

First of all is we are in fact in a period of increasing biomass, and our management program is dedicated to keeping us there until we hit our target, which we're not at, so for the next few years it's a non-issue or should be if we continue to do our management program the way we're supposed to.

But even if we get into a period where biomass is declining, I'm not convinced that a mechanism can't be created to provide an appropriate safeguard for that in however we choose to implement this.

The other thing is I'm not sure I see the downside that Eric spoke to, to including as an option, again, an alternative to be put in the document to be subject to public comment and to be decided upon later that enables two states, if they choose to do so, say, New York and Connecticut, to take their quota shares, their miniscule quota shares, add them together and figure out what works jointly for the anglers in their two states.

I don't see what's wrong with that as an

alternative. I don't see where it harms anybody else and could affect something that's mutually beneficial to the anglers in those two states.

I'm not sure at the end of the day, sitting here today, that I prefer that option to one of the regional options that's in the plan, but I do see the merit of keeping it out there for further development and discussion. I don't really think that it hurts anything. I'll leave it at that for now, Mr. Chairman, but I may have some other comments, depending on what else I hear.

CHAIRMAN GIBSON: Thank you. Harry Mears and then I've got to go to the audience.

MR. MEARS: I have a comment and a request for clarification. The comment, I as well as I think a couple of other board members find it very difficult to presumably objectively take a proposal to the public for comment when we've already heard comments from our technical committee.

I haven't heard any uncertainty there that under certain conditions, multi-averaging would be good other than when the stock is increasing. I think in terms of trying to reach a stock rebuilding goal, again, part of the approach should be to maintain the productivity of the fishery, yes, but to continue on essentially a risk-averse approach to manage in the best way you can with the best chances of restoring the stock.

I just find it very awkward to go to the public for comment on something we've already heard from our own technical committee is really, from their perspective, not a wise thing to do.

The request for clarification is this, if you strip away the part about the multi-averaging

– essentially, the motion would read move to continue the development of Addendum XVII. I'm not sure what that means.

Does that mean the next step would be for the Commission to go to public hearing with Addendum XVII, find out the results, then vote for it or disapprove it and then go to the council and then request them to do the framework?

It would seem to me that the council would probably prefer that since they probably look at this as somewhat of a state issue, whether it's a state-by-state or it's a group of states. But, again, I was wondering what the clear intent might be, what the very next step would be if this motion were approved?

CHAIRMAN GIBSON: I'll ask Toni to respond to that, but I think if you strip away the multi-year averaging, you still have to add in this multi-state, voluntary option proposal to Addendum XVII.

MS. KERNS: Thank you, Mr. Chairman. If the board were wanting me to add in the voluntary approach, it would be up to the discretion of the board whether or not they could work with me offline and go ahead and approve the document as is, work with me offline, and then I'll send that out for public comment and that would be the intent for this would be to move forward for public comment and/or public hearings. Then at the next meeting in May, we would make a final action on the addendum.

If the board was not inclined to work with me offline to add in the voluntary approach, then we would have to wait until the May meeting to approve the document for public comment and/or hearings, and then make a final action in August.

If we push off the document until that second schedule of events, there would not

be time for the Mid-Atlantic Council to put together a framework in order to have this tool for 2006.

CHAIRMAN GIBSON: Thank you, Toni. I'm going to go to some comments from the audience. Tony.

MR. BOGAN: Thank you very much, Mr. Chairman, Tony Bogan from United Boatmen of New Jersey. I can't say that United Boatmen of New Jersey would support this addendum in any form at this point, certainly not what I've seen so far.

But, Mr. Mears made a comment before and the first thing that popped to my mind, he said now I want to know what would happen if you took out the multi-year averaging approach, and I immediately in my mind said then throw this addendum in the garbage because without it, it's worthless. Without multi-year averaging, you've changed nothing. What did you do? You took state-by-state MRFSS numbers, which it's still going to be -- if you don't have averaging, you're still going to collect each state's data individually and total them up at the end of the year just like is done now.

The difference is you're going to say, but we'll take these five and pull them together. This was not about trying to say, well, if I go over and you go under, we both come out even. That's not what this was about, at least not in my mind and not what we've been pushing for for several years now, and people long before I came on the floor have been pushing for as well.

This was about when there is a number that just no one can reconcile, no one can reconcile it, New York's number for fluke for 2003, that blackfish number that I presented to this board, that was just the most ridiculous number you've ever seen in

your entire life, at least it was for me, that cannot be reconciled, an aberration, how do you smooth that out?

Well, if you don't do multi-year averaging, all you're saying is then, fine, we'll take a region, be it two, five, seven, ten states, whatever it is, and say, well, hey, if one state has got some whacked out MRFSS number, then maybe enough other states will have another whacked out MRFSS number in the opposite direction and it will even out.

Otherwise, all you're doing is hurting a lot of people for one state's unfortunate problem, which to me is no better than hurting one state for an unfortunate problem.

And when I hear the technical committee and members of the board -- I don't want to pick on the technical committee, they're just doing an analysis and presenting their findings for it. I do not fault them in the least for doing an analysis.

But I cannot, myself, reconcile when somebody will say, hey, we've got real problems with the data, MRFSS data is a big problem. Then we turn around and say, okay, you know what, we can't do multi-year averaging because you've got a problem with the MRFSS data, but we don't like using it year by year or state by state because we've got a problem with the MRFSS data.

That's like saying the best available data tells me the shortest distance between New York and New Jersey is a straight line, but you can't drive in a straight line. You've got to go on a road. But you can't drive on a road because the data says you've got to drive in a straight line. That's what I'm hearing.

I mean, it's literally getting ludicrous.

We're talking about the data, you can't use it this way, but you can't use it that way. We can only use it the way that we use it unless we don't use it that way, and that's literally what we're hearing in the back of the room here.

At this point, without putting multi-year averaging in to compensate for the aberrations -- you know, we hear a lot of talk about PSE. We never hear any talk about bias except for when I was at the MRFSS constituent data review.

And I learned that bias is just as important as PSE is, yet we base a lot of our management decisions solely on the proportional standard error.

Then we turn around and we talk about, well, we can't do multi-year averaging, but we don't want to do just one state at a time, but if you look at a time series that's more accurate than just one year at a time where you can have much, much bigger fluctuations, at least that's what MRFSS told me themselves, but we don't want to look at them on a multi-year average.

I don't understand where this Commission is going other than in circles. As far as I'm concerned, if you don't put in multi-year averaging and you leave regionalization on its own, this addendum is worthless, and I could never support it under any circumstances.

I don't have a problem with the concept of putting another tool in the toolbox. I have a real problem with putting a tool in the toolbox that's broken before you even stick it in there. Thank you very much, Mr. Chairman, I appreciate you giving me the time.

CHAIRMAN GIBSON: Thank you, Tony.

I'll take one more comment from the audience, and then the board needs to act on this motion.

MR. KANYA: My name is Dennis Kanya from United Boatmen of New York. It seems amazing that every one of you gentlemen sit around this table, when you're not sitting around this table do nothing but knock the MRFSS data, how inaccurate it is. MRFSS itself, Dr. Hogarth himself says it was never intended to be used what you gentlemen have decided to use it for.

We all know there are many ups and downs in it. Yet when it comes to averaging it, all we keep hearing from technical, it's not accurate; we can't average because it's not accurate. Well, it's not accurate in the form it's in.

I mean, we met with Dr. Hogarth in the state of New York at the end of September-October, I forget which month it was. We met with Mr. Van Voorhees at the same time. Both of them liked the idea of averaging the MRFSS data and using a regional approach.

I mean, these are gentlemen that do this for a living. I mean, how could they be wrong? I mean, the MRFSS data was never intended for what you're using it for. I mean, we went to Connecticut in I think it was October.

We met with industry members from four states. The most important thing every industry member said from the four states is we need some stability. We can't have these -- Mr. Smith, Gordon was there. They all said the same thing.

We need stability. We can't have these giant ups and downs. We can't make these major changes. By averaging the data, we

would get some of the stability that we need. Yes, maybe one year we'd be taking too many fish, but the following year we may be not taking enough fish. That's averaging it. It all averages out.

The fisheries are all rebuilding. One bad year class is not going to kill what we've done for the last eight years. And we've suffered. I mean, New York suffered immensely last year under regulations that made us cut by 50 percent.

So, I mean, I can't see how you people could be arguing about averaging because it may hurt the recovery of the fish. The fish is already being recovered, fluke, sea bass and scup. We have to change the system or there will be no one left fishing or making money and making a living off of this. People have done it for years, and we hope you take this into consideration. Thank you.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. As a follow up to the last two commenters, there is no question that we need another tool in the toolbox, and I don't see this taking away from either of the options that we have.

For the Mid-Atlantic, we have state by state, which as it is set up right now for individual quotas, individual MRFSS, whatever it happens to be. The idea of developing this, as I understood it, was to give us that third tool in the box. That's all it was, to give us a third tool in the box.

And whether it's viable or not, we all agreed around the table

-- I know at the council we thought this was the right way to go. Now, if when the council and the Commission get together in the near future, it's determined that it is not

doable without having gone out to the public for a final pass over, one way or another, I think we're doing them a disservice and we're not living up to what our obligation is. So unless there is further comments, Mr. Chairman, I'd like to call the question.

CHAIRMAN GIBSON: Thank you. I agree, we need to do that. We need to dispense with this motion. If it passes, then we then need to give Toni guidance as to how to prepare the additions in a timely fashion to mesh with the Mid-Atlantic framework, so the states should caucus on the question.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: I'll read the motion: Move to continue development of Addendum XVII with the addition of the voluntary multi-state option proposal and subject to favorable council action at the March meeting, the multi-year averaging approach. Motion by Mr. Colvin; seconded by Mr. Smith.

All those in favor, raise your right hand; opposed; abstentions; null votes. The motion is approved. Now, Toni needs guidance and perhaps latitude as to how to incorporate these other elements and move it forward in a timely fashion.

MS. KERNS: I'm going to need specific guidance from Jack. I won't need it right now, but I'm going to ask that I get specific guidance from Jack on the voluntary approach, and then I'm going to need specific guidance on how to put together multi-year averaging.

There is a million and one scenarios that we could come up with, so I would like to maybe reserve lunch with several people on this board tomorrow to discuss this, because

I'm going to have to get a document together in time for March.

I can do my best to get a document together in time for March. That would require us having another joint meeting with the council, so that would be a joint meeting at the council meeting in -- Jessica, where is the next meeting?

MS. COAKLEY: North Carolina.

MS. KERNS: It's the week of March, I believe, 7. It's in Kill Devil Hills, North Carolina.

CHAIRMAN GIBSON: Bob.

MR. BEAL: Well, I don't think we have to have necessarily a joint meeting. The Commission has to get a signal from this management board that we're pretty close by the time the council has its first scoping meeting for the framework, which I think will be in May.

We don't necessarily -- since we can implement our addendum relatively quickly and the council is going to need at least four to six months lead time for the regional office to address their framework and submit it, I think if this board got together or had some e-mail correspondence that were pretty close, have a relatively complete suite of options for the council to consider in May, that should be adequate.

And then when this board gets back together in May, which I believe is later than the council meeting, we can approve our document for public hearing at that time. And as we're out for public hearing, the council will be between their two framework meetings.

Our final action on Addendum XVII will be

in August. The council's final action will be prior to that, most likely in June. So we will have a little bit of a disconnect on final action, but this board will know where the council went at its last framework meeting and they can react to that in August.

CHAIRMAN GIBSON: I saw Jack nodding he would assist with the voluntary multi-state option, and Gordon you wanted to speak to the averaging.

MR. COLVIN: I do, Mr. Chairman. As I indicated, I'd strongly suggest that Toni grab a hold of Tony Bogan before he gets away if that's possible because -- oh, maybe he did already -- he made the motion that was tabled I believe at the Mid-Atlantic Council meeting.

Between I think Tony and Jessica and a couple of the council members, we can probably get some idea of the intended scope. But I would also suggest the staff not go into great detail yet on those multi-year averaging things pending action by the Mid-Atlantic Council because the council may in fact choose not to go down that road.

The other thing I just wanted to kind of return to is that when I offered the motion, I think I said it would be my expectation or I think consistent with the spirit of that motion that should it pass, and it has, that we would communicate to the council the board's hope that in addition to revisiting the tabled motion, that they would also consider this broadened scope consistent with the motion we passed for the framework.

And, of course, the council may choose not to do that, but I think I would hope that even though we don't necessarily meet jointly -- and I agree with Bob, I don't think we need to -- that at least a request from the board to

broaden the scope of the framework would be made to the council at that time.

CHAIRMAN GIBSON: Okay, anything further on Addendum XVII? Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I have a question and then maybe a comment based on what was just said. Bob might have not heard all of what Gordon just said, but your comment about the staff not putting too much into the multi-year averaging approach until after the council takes action, what would you have in mind? I mean, what would you have in mind for us to do?

MR. COLVIN: Well, I think Toni was asking for guidance as to what specific -- out of the potentially infinite array of multi-year averaging options, which ones might make some sense to identify, and what I'm suggesting is that a couple of the council members I think have some sense as to what kinds of multi-year options the council was mindful of when the motion was offered, discussed and tabled.

And other than those, I don't think I would go any further in terms of defining a lot of other options, and I would not go into a lengthy and detailed analysis of the effect of those options pending council action. I think the council staff will also want to be involved in that analysis, should it go forward.

EXECUTIVE DIRECTOR O'SHEA: Yes, then a follow up, Mr. Chairman. You know, in order for us to go forward with this, we're going to need support at some point from the technical committee. I'm going to maybe perhaps interpret from this vote an implied commitment from the states to put the resources into the technical committee to help us with this.

I'll probably offer my assistance even further. When I see that assistance is not forthcoming, then I'll take this vote as an interpretation that I should be calling you all and gently asking for that help.

Quite bluntly, one of the reasons you didn't get a more complete discussion of the complexities of the multi-year averaging was because of the tasking on the technical committee already, stuff already on their plate, so I'd just like to put a marker down to be able to get that from you all. Thank you.

Discussion on Addendum XV

Implementation

CHAIRMAN GIBSON: Okay, Addendum XV. I just remind everyone it's now after 6:00 o'clock. I'm not very good past 5:00. I wasn't very good up to that point, but we'll proceed anyways.

Addendum XV, you received a memo from me which listed two major issues relative to Addendum XV, those being states coming forward with an outline as to how they would modify their management programs for summer flounder so as to use the additional quota to minimize discards, and board consideration of a time certain for implementing the transfers with the possible arising of compliance issues.

Okay, and we have I guess two letters, one from Connecticut and one from New York which speak to the first issue I spoke of. I guess we could start with the states and their approaches to discard minimization and use of the additional quota, so if the state representatives want to speak to those. Eric.

MR. SMITH: Thank you, Mr. Chairman.

Very briefly, you're quite right, the plan does say let's have some discussion and notification of what would happen. This one-pager suggests -- it actually says what our plan is.

We're in rulemaking now. Essentially, I won't go through and read the whole thing. We're not proposing that directed fishery limits be increased at all. There are times in the summer when we have a 50-pound limit, 75-pound limit or closure.

What we're trying to do with the increase that has been approved in Addendum XV is to make all those periods 150 pounds which is, if you will, in the summer when July 1st comes and we open at 150 pounds until the trigger is reached and then drop down to 50, we would try and make it 150 pounds throughout the summer.

So it's not really a directed fishery as much as it is trying to minimize the wastage of discards that is the thing that fishermen and, frankly, we find to be so problematic now that the stock has increased.

That's it in a nutshell. We also had adopted a -- and you'll see two other periods in there where we're basically using the same strategy, in other words, changing some percentage allocations within our own quota to shift some fish to the summer, again to minimize those periods of closure or 50 pounds.

The last point, Number 8, is a different point than how you would manage that increase due to Addendum XV. That's a summer flounder limited entry re-qualification process we went through in the past year to basically remove all the latent fishing effort that was embodied in the system that we had adopted ten years ago, so we've dropped down from 1,000 people that could take

fluke to under 200.

We've constrained trawler-authorized licenses so that the only people that can trawl for fluke, which is how the lion's share of our catch is taken, they can only do that if they had a history prior to the cutoff date of trawling. So a guy with a license that would allow him to trawl and a license that allows him to hook fish that actually didn't trawl in those years, he can't go out and trawl now.

The final thing we did in that regulation was to cap the size of the vessels so that when you transfer a license, which can be done under Connecticut law, a guy with a skiff license can't transfer it to somebody else who then goes out and buys a 75-footer.

He's limited to within 10 percent of the size of the vessel of the person who transferred the license. So we've tried to constrain effort within the context of the limited access system, and we've tried to provide for the trip limits to not allow so many good fluke to be thrown over. That's the substance of what we're into now.

CHAIRMAN GIBSON: Okay, thank you, Eric. Are there any questions for Eric or comments on Connecticut's proposal or their strategy? Bruce Freeman.

MR. FREEMAN: Thank you. Eric, do you know what the discard rate would be in your state between the 75-pound limit you have now in May and June and if you move that up to 150?

MR. SMITH: No.

MR. FREEMAN: You have no indication from the fishermen what they would be?

MR. SMITH: I can't think of a specific answer to that question that I've ever heard.

It minimizes the amount that goes over wasted. I mean, if there was a larger increase and you could make the limit 200, you would further limit the wastage.

Essentially, at some point you cross the line where you actually become a real directed fishery, and that's what we're trying -- right now under current rules, in July we have 150-pound limit until you hit a certain percentage and then it drops down.

We're simply trying to maintain that 150 pounds. Somewhat arbitrarily, we don't want to increase above the 150. We don't want the 50 to prevail where they're throwing back that other 100.

MR. FREEMAN: Of the fluke catch that can be made, is this a directed fishery itself or is it a bycatch through some other directed fishery?

MR. SMITH: Which?

MR. FREEMAN: Well, the 75 or the 150. Let me just indicate in our instance, in the state of New Jersey we allow 100 pounds of summer flounder to be landed with any vessel, whether it has the limited entry permit for summer flounder or not. We set aside about 200,000 pounds to account for that.

But, that amount of fish can be no more than 10 percent of other species on board, so it's not a directed fishery. It has to be taken incidental to something else, and I just don't know how you handle that in Connecticut.

MR. SMITH: Okay, in one sense we're more conservative because we don't allow boats to land unless they have qualified previously, unless they have the endorsement to their license that allows fluke. So in that sense, we don't have a lot

of people coming in to land the 100 or 50 or 75.

We have not set aside a certain portion of the quota in the past to say this is our bycatch allocation because we don't make a bycatch allocation. What we have said is if we keep our trip limits low enough, there won't be an incentive for a directed fishery and you can try and eek out through the year, when you have hit your 15 percent or so trigger, what they land at 50 or 75 pounds, de facto, that's your bycatch limit.

That's what amounts to the bycatch, and it's a fairly large proportion because they don't fish very long. You know, if they start in July, most years in the third week of August they're down to 50 pounds.

CHAIRMAN GIBSON: Tom Fote.

MR. FOTE: Eric, could you just give me the number of permits that you do have?

MR. SMITH: We now have just under 200 that have an endorsement on their commercial fishing license that allows them to possess fluke. Previous to this regulation change, there were 1,000 of them.

CHAIRMAN GIBSON: Other comments or questions for Connecticut? My intention was to move on to the other states, poll them. I know New York has a letter that has been provided to the board. Gordon, did you want to discuss that?

MR. COLVIN: Well, I won't go into it in any great detail, Mr. Chairman. People can ask me questions, if they wish. We've responded to the board chair's memo with an outline that identifies three different strategies.

The first is a strategy to manage the level of

effort in the fishery. The second involves obtaining enhanced information on discard rates. The third involves active management of a supplemental quota, should we receive it, focused on addressing enabling individuals in the fishery at a time when trip limits are low to land some supplemental fish that they take incidental and would otherwise discard, details to be worked out with the industry. Thank you.

CHAIRMAN GIBSON: Thank you. Questions for Gordon. Tom Fote.

MR. FOTE: Gordon, how big is your hook-and-line commercial fishery on summer flounder? How many permits is hook and line?

MR. COLVIN: It varies. And you can't really go by the number in the hook-and-line category because it doesn't include everybody who uses hook and line. We set aside a small percentage of our quota, about 5 percent, for a hook-and-line category.

People who wish to fish only with hook and line can opt into that category if they choose, but they don't have to, so the answer is we really don't know how many people fish for fluke with hook and line. Nor can I tell you today of the 347 permits how many of them are active, but I know that many are inactive.

CHAIRMAN GIBSON: Other questions or comments for New York? The other potential recipient states are Maryland, Massachusetts, Maine and Delaware. Representatives from those states want to speak to this issue? Dave Pierce.

DR. PIERCE: Yes, thank you, Mr. Chairman. I don't have anything written to present regarding what we would do with that modest amount of transfer from the

different states; however, I did bring with me a notice that went out to our commercial fishermen, those holders of our fluke or commercial fishermen.

It went on December third. It was sent out to them indicating that we had increased the landing possession limit up from 300 pounds to 1,000 pounds. That was to deal with the discarding that was occurring as reported to us by the fishermen themselves.

We've got a good relationship with the fluke offshore fishermen, the trawlers, specifically. And, they worked with us over the years regarding the sorts of restrictions we have implemented, considered and implemented for the winter fishery.

And, they reported to us this year in particular, last year somewhat, but more so this year, meaning 2004, very high catch of fluke in their winter fishery, December, January and February -- that's January and February of last year, but certainly December of last year as well -- with the majority of their catch of fluke having to be discarded over the side because of the low possession limit.

They were out there fishing for yellowtail flounder and other groundfish and getting fluke as that bycatch and then, of course, it had to be discarded. Last year we were in a position to increase the landing possession limit from 300 to 1,000 because the amount of fluke that we had available to us through our state quota hadn't been taken by the time we got to the mid-December.

There was some left over so we took it and used it to increase that landing possession limit, hence discards were addressed to some extent. Obviously, it's not a problem that can be completely resolved because of the way these fishermen fish, when they fish

and where they fish, but nevertheless we're all aware of the fact that fluke abundance has increased dramatically.

The fluke in the offshore wintering grounds is in great abundance and, of course, they're caught when fishermen, ground fishermen, in particular, pursue other species catching fluke as a bycatch.

So, with the amount of fluke that we will receive from the states through this particular addendum, we will be working with our fishermen, those offshore fishermen who take fluke as a bycatch, to modify our landing possession limit during the winter season, during the winter season when they're offshore fishing for these other species.

It's not an amount of fluke that we are setting aside in any way to spur on increased directed fishing. That's not the case at all. It's to be used as an increased bycatch allowance.

CHAIRMAN GIBSON: Thank you, Dave. Any other states wish to brief the board on what their intentions would be relative to reallocated 2005 and 2006 quota? Pete Jensen.

MR. JENSEN: Well, our approach is fairly simple. We would simply allocate 20,000 pounds to the bycatch category.

CHAIRMAN GIBSON: Thank you, Pete. Tom Fote.

MR. FOTE: Pete, how many permits do you have?

MR. JENSEN: Counting the bay and the ocean, we have limited entry in the ocean where we have seven. In the bay I think we probably have about 400 permits.

MR. FOTE: Where does the majority of the catch come from?

MR. JENSEN: It comes from the ocean.

CHAIRMAN GIBSON: Other comments or questions relative to Maryland? If not, do Maine or Delaware representatives here want to speak to this? Rick Cole.

MR. COLE: Thank you, Mr. Chairman. Delaware is on record as indicating that, I think it's 15,000 pounds that would be allocated to Delaware will not have any impact on any of our fisheries. It's not enough poundage for us to be able to alter any of our current restrictive commercial management measures.

CHAIRMAN GIBSON: Thank you. Comments or questions on Delaware's intent? Okay, I think that concludes the — Bruce Freeman.

MR. FREEMAN: Just for the record, there are two letters that have been handed out to each of the board members, one from our delegation representing the division, legislature and the public at large, indicating that for us to consider allocating any of the quota under Addendum XV, five conditions would have to be met prior to us transferring allocation.

I want to be very specific. If we do have proposals, and they don't cover these, our position would be unless they do, we would not transfer. There is also a letter from our fishery management council that has concerns over this transfer and lays out several concerns that they have.

This issue has created a tremendous interest and concern to our commercial fishery, and on the council side was supported also by a

recreational fishery of not making a transfer until these conditions are met so far as bycatch is concerned.

CHAIRMAN GIBSON: Thanks, Bruce. I wish I had had that in hand at the time I was sending out my memo requesting things from the board. Be that as it may, are there comments on either one of these letters from the board? Eric Smith.

MR. SMITH: Thank you. I'm not surprised at receiving the letters because I had heard enough of the comments to understand New Jersey continued to be concerned by this. I would point out that these are the kinds of considerations that should have been debated and been in the addendum and been passed.

They are three months late. We have a temporary system, a two-year program, to try this out and see how it works. There was debate on having standards in the addendum and that didn't pass. That was not included as a provision.

Instead, the plan said we'll get people to report progress-wise. Now is a good time, and that was a healthy interchange a moment ago in a descriptive sense. But there were no hard standards in Addendum XV as to how states should meet this obligation, and it was intentional. We debated the point. We decided not to do it.

I thought that was an appropriate discussion to have a minute ago because it was required by Addendum XV to have that discussion. But, it is also even not withstanding the questions from the New Jersey representatives, it did take a little bit of time for probably less than a perfectly good reason, because the letters were already on the table and they have already telegraphed that they have no intention of complying

with Addendum XV. It's 6:30.

The other issue on the agenda for this subject was the compliance schedule. Addendum XV did have a paragraph in it, which was approved, which was the process by which the transfers would occur.

What we need to do now is to adopt a compliance schedule which is a deadline by which these transfers must occur; and beyond that deadline, effectively states would be found out of compliance.

I would point out that the precedent for doing it that way was set last summer when New York, Connecticut and Massachusetts, either for black sea bass or scup, at the May meeting we were given a deadline of July 1st to get into compliance by that date.

We didn't have to meet again. If we were not in compliance by that date, then we were automatically out of compliance, and then that whole process would proceed. So all of that said, we shouldn't be redebating Addendum XV.

We should just be talking about implementation of the addendum as it was voted and as it was intended. And after the two-year period, if we don't like how it looks, we can debate it further and do something different or just revert to what was there before.

So having said all of that, Mr. Chairman, I'll move that states that are required to transfer quota according to Addendum XV are required to do so by March 15th or be, de facto, found out of compliance.

And somebody who is an attorney can tell me if I used de facto properly. We do not have to meet again to make that determination. It would be automatic.

March 15 comes and the transfers have not been requested by the donor states, they would be out of compliance. That is my motion, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Eric. Is there a second to that motion? Seconded by Pat Augustine. A question for Bob Beal in terms of the procedure. This automated out-of-compliance finding, first is this doable and does it require a Policy Board and Commission concurrence this week? How does this work?

MR. BEAL: Well, it can actually work two different ways, Mark, and the motion probably needs to be clarified. The intent could be to send this motion forward to the Policy Board this week. The Policy Board would then take action saying that if a state, by March 15th, hasn't made the transfer, an out-of-compliance finding could be made or would be made.

Or, the motion could read that after March 15th if a state has not made the transfer, then the Policy Board would take action. So the question is -- and the motion needs to include language that should the Policy Board act on this or is the intention for the Policy Board to act on this this week or wait until a subsequent meeting in May?

CHAIRMAN GIBSON: Eric.

MR. SMITH: I would add to the motion, then, this motion should be forwarded to the ISFMP Policy Board for action at this winter meeting.

CHAIRMAN GIBSON: Is that okay with you, Pat? My follow-up question is how does the Commission know -- what will be the process by which the Commission knows whether the Policy Board can act this week?

What will be the process by which the Commission knows the transfers that have or have not taken place? There still has to be some follow up to this regardless what the ISFMP Policy Board does.

MR. BEAL: Yes, absolutely. Yes, the notification to the Commission that the transfers or the request for the transfers to be made will be received -- or a copy of the letters that are sent in to the National Marine Fisheries Service. For all of these transfers to take place, the Northeast Regional Office has to receive letters from both the donating and the receiving states.

CHAIRMAN GIBSON: Eric.

MR. SMITH: Actually, that reminds me back when Addendum XV was passed, Toni and/or Bob, or both, we discussed an efficient process to do this whereby the letters would be sent to the Commission.

The Commission would put them all together and prepare one letter from the Commission saying here's the donor states transfers, here are the recipient states. How it shakes out, send that one letter to the service. It would be easier for them to track if the staff put it all together in one letter that tracks what Toni had in the final addendum.

CHAIRMAN GIBSON: And New Jersey is waiting to jump into this. Tom Fote.

MR. FOTE: Well, I wished to jump into this and explain the letters before we made motions on the table, but this was not voluntary. The way the vote went was very interesting. This also did not go out public hearing.

It was an interesting process that we saw a motion at the beginning of a meeting that

was supposed to be a workshop, and it was a workshop with people working together to come to some solution, set up some guidelines, set up some parameters, before we made this motion, but that was all bypassed by a quick vote at a meeting where the states that basically wanted the quota voted against the states that had the quota.

Having said that, I have talked to the National Marine Fisheries Service, unless I understand this differently than what I was told, that the Commission cannot do that because the states are basically the ones that have the letter that have to basically send it to the National Marine Fisheries Service, and that's the way the transfer has to go.

It can't be with a bundle that comes from the Atlantic States Marine Fisheries Commission, unless I have been misinformed. That's the question I've asked on that. Second of all, it will be interesting to see how this is a conservation measure, because we're asking to show where it's a conservation measure -- that's why we put the criteria here -- or if it's not just a reallocation measure, especially when you look at most of -- I think one state's fishery is seven boats, and so it gives them a benefit where we're dividing under numerous permits. I mean, these questions are going to be interesting for the National Marine Fisheries Service to debate and issue.

CHAIRMAN GIBSON: Thank you, Tom. Other board comments on the motion? Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, before you get into debating the motion, maybe just a clarification which may suggest a perfection, and you've alluded to it, but I think the key issue is to request the transfer of quota to National

Marine Fisheries Service as opposed to actually effect the transfer by the 15th of March.

I guess what I'm saying is if you want to continue to call on others, from the staff standpoint, we'll be happy to give you some bracketed text that reflects the action I think that you want to get at is to get letters in by the 15th of March. And we'll put that in brackets and then consider a perfection of the motion once you have a chance to look at it.

MR. SMITH: That's fine. The intent is that those states have made the affirmative action to comply with Addendum XV. If that's best done by a letter to the service and a copy to the Commission to create one table that would help the service, that's fine, but we can work that out. As long as it's the affirmative action it's non-revocable, games aren't played, then that's fine.

CHAIRMAN GIBSON: Thank you. Okay, they're working on that. Bruce Freeman.

MR. FREEMAN: I'm not at this point interested in the technicalities of how the motion is going to read. My concern is the process in which we got to where we are. There were two aspects in Addendum XV.

One was a strictly an allocation issue argued based on some inadequacies of historical data and increase in the range. The other aspect had to do with the bycatch issue which was raised at the workshop. And, quite frankly, much of the results of the workshop dealt with the bycatch.

The letter that Chairman Gibson had sent to all of us dealt with plans that state had to reduce the bycatch issue, and what I've seen here are two states responded to that. The others haven't. And as I understand the

motion, regardless of whether states has responded or are dealing with the bycatch issue, this motion would compel the transfer under any condition so long as it was indicated in Addendum XV. I just want to make sure from the mover of the motion that's his intent.

CHAIRMAN GIBSON: Eric.

MR. SMITH: Actually, Bruce raises a real good point. Compliance should be an obligation of all the parties, and I think Massachusetts and Maryland and Maine and Delaware need to send a letter to the Commission by the same date saying what they intend to do with the quota increase.

You know, it's a valid point. We heard a discussion of what they intended to do, but, see, the plan doesn't say that we have a right to -- after hearing the state's discussion, that we can say, okay, then we aren't going to go ahead with Addendum XV.

It purposely didn't say that. What it really said was the states are going to report on their progress. I would expect they could do that now and then they could do that in the fall and tell us what they actually did.

But there was nothing in Addendum XV that says come February we can decide not to do Addendum XV if we don't like what we hear. It didn't say that, and the point was debated. So, to Bruce's principle point, yes, I think the states who just gave verbal reports but didn't submit a summary in writing, they should have to do so by that same date.

CHAIRMAN GIBSON: Okay, so is that the understanding of the board, that those states that gave us verbal representations today would supply a letter to the Commission, to this board, similar to what Connecticut and

New York has done? I had Dave Pierce and then Pete Jensen.

DR. PIERCE: Certainly, I don't mind doing that, that's fair. However, I do object to my having to follow the instructions provided by the state of New Jersey regarding what I must provide.

This is a decision that was already made by the board relative to how we should proceed with an allocation of a certain amount of fluke from these states for us to deal with a discard problem.

I will describe what we will do with this amount of fish, this modest amount of fish to deal with reduced discards, but I'm not necessarily going to be in a position to provide everything that is requested.

The emphasis will be on reducing discard, as I said. And, clearly, New Jersey knows that reducing discard is important. I mean, we just reduced the minimum size on scup in their recreational fishery in order to deal with what they say is a discard problem in their recreational fishery. I mean, we did that. Well, I will provide that which the board has requested.

CHAIRMAN GIBSON: Eric.

MR. SMITH: I was only going to make the point that David misunderstood what the requirement is. It's not to send a letter answering the questions New Jersey has raised. In fact, if New Jersey had raised those questions during the addendum development process and we had voted to include them in there, then we would have to obey them.

So, it's really nothing more than a written description of how you intend -- on your own state's interest how you intend to deal

with it; and if you want to answer those other questions, that's fine but it's not obligatory.

CHAIRMAN GIBSON: That's my sense of what we're trying to get to. I had Tom I guess first and Bruce and Dave again.

MR. FOTE: I would understand to reduce bycatch, but remember Bruce just talked about it. We have a smaller trip limit than some of the states do. We have a 100-pound trip limit which probably has the same amount of bycatch and discard, which we could have used the transfer of quota to basically help us raise the trip limit to produce the same discard. Again, it just doesn't fly. It doesn't pass the smell test.

CHAIRMAN GIBSON: I'd like to remind everybody we're trying to debate this motion, not the past addendum, which is already approved and authorized. Dave.

DR. PIERCE: The reason why I mentioned the letter was that Bruce Freeman made it very clear that in order for New Jersey to transfer anything to any state, these questions must be answered. Maybe I misunderstood, but I thought he made that very, very clear; hence, anything short of an answer to these five questions will result in no transfer. That's why I made the point that I did, Eric.

CHAIRMAN GIBSON: I think it's clear that is New Jersey's position, but it's not this board's position. And, we've made the request -- the board chair has made a request for descriptions.

Written ones have come forth from several states, and there is a commitment from the other states to supply similar information. I think that's certainly satisfactory to me as chair, and I think that's the sense of the

board. If they choose to answer New Jersey's questions, they can. Bruce.

MR. FREEMAN: We must remember the reason for this addendum. And what it's going to do, the way we're proceeding, we're going to just alienate our commercial fishermen, one against the other. If we can't address the bycatch issue, which everyone agrees one exists, if it's not satisfactorily addressed, then all we're doing is transferring dollars from the pockets of one state's fishermen to the pockets of another's.

And that's the way our fishermen see it, and I'm sure we're not unique in that situation. If we go back and look at the way this addendum was brought forth, it was a vote made at the Policy Board to direct the management board to do this addendum.

And the discussion was very limited. The public hearings were very limited, a very short period of time. And if we did have more time, as was suggested when we were debating this, I think these problems could have been addressed.

I don't think there's any resistance on the commercial side of addressing the bycatch. We have it in all the fisheries. If this is the first -- if we can start the process and we could follow through in other fisheries, there is support.

The one commercial fisherman who raised this issue at the Mid-Atlantic Council was a fisherman from our state looking for ways of addressing this problem and is adamantly opposed to the way this process has finally ended up.

The person who made the suggestion, the commercial fisherman, talked about getting something on a coast-wide basis. And all we're going to do is create animosity

between our fishermen. This is not going to solve a problem.

CHAIRMAN GIBSON: I'd like to hear some comments from the audience. It seems to me we're just debating the issues of the addendum over and over again, which has already again been approved. We have a motion up here as to how to proceed. Do I have comments from the audience on that? Greg.

MR. GREGORY DiDOMENICO: Greg DiDomenico, Garden State Seafood Association. I guess I want to just say a couple things, first, about our intentions in going ahead with this addendum and how we were involved in the workshop and how we have taken comments from other commercial fishermen in other states.

And let me just tell you that our organization and our fishermen and our board did not take this decision very lightly to request that our state does not transfer this fish. We know there's compliance issues. We know there is going to be some animosity issues among commercial fishermen in other states. We discussed them at length and did a fair amount of research into this issue.

CHAIRMAN GIBSON: Greg, do you have comments on this particular motion? Again, I can't have everybody from New Jersey debating an addendum over and over, it's done.

MR. DiDOMENICO: Sure. Well, okay, then I will say three things. I will say at this time our organization would not support this motion or Addendum XV. And if you would allow me a little latitude to just ask two questions, if I could, Mr. Chairman.

CHAIRMAN GIBSON: I'll hear the first question, then I'll decide how much latitude

after that.

MR. DiDOMENICO: Okay, thank you.

CHAIRMAN GIBSON: It's almost 7:00 o'clock and we've got to end this.

MR. DiDOMENICO: Okay, the first thing is I'd like to know if this voluntary transfer is a compliance measure of the fisheries management plan. And, Number 2, through some research that I did, because I'm kind of brand new to this issue since I've arrived here in New Jersey, we're aware that, as everybody is, the state of New Jersey sets aside 200,000 pounds of summer flounder to be dedicated to a bycatch provision.

At one time that implementation was a mandatory measure of the FMP that states do that. Now that is no longer mandatory, but now that's voluntary. I want to bring that up because I was surprised that our state implemented those measures while other states have not. And those other states who have not are asking for more fish. I guess that concludes my comments unless there's any questions. Thank you.

CHAIRMAN GIBSON: For the first question, I think this is a compliance issue and this will set -- this motion, if it passes, will set out the timeline and the process by which the Commission assesses and implements compliance. Anyone else from the audience wish to comment? Seeing none, Everett, back to the board.

MR. EVERETT PETRONIO: Just a real quick procedural question, which may or may not have been answered, but I will admit that I'm new to the process. My concern is regarding finding a de facto -- someone being found de facto out of compliance.

I will admit that I don't understand the rules or are not as familiar with the rules as I could be, but I would ask either Bob or Vince to advise as to whether it's possible for something to happen automatically.

I thought a compliance finding was something that was exceptionally serious and is something that the board would need to do, so I guess I would ask quickly if this is something that can happen on a March 15th date, which I think kind of came out of whole cloth, if it's possible for this to be done this way.

CHAIRMAN GIBSON: Bob.

MR. BEAL: Well, you're right, a non-compliance finding is an extraordinary measure, and it's taken pretty seriously. But, with that said, the Commission in the past has set up a system where upon a date certain, if the states haven't taken very clear action, then that starts the 10-day clock that the Commission has to send its letters to the Secretaries of Commerce and Interior.

MR. PETRONIO: Thank you, just a procedural question.

CHAIRMAN GIBSON: Are there other board comments? Gordon Colvin.

MR. COLVIN: Mr. Chairman, a couple of things in response to comments that I heard earlier. Just one point, on this issue of -- and I think Bruce gave a good description of New Jersey's 200,000 pound set aside and how that's used. You know, different things work differently in other places.

I think I've pointed out to folks on the council and the board over the years that for all intents and purposes, New York's trip limits end up amounting, with probably the exception of the handline fishery, which is

directed at times, as a bycatch as much as 12 months of the year.

I think it has eased up a little bit here in the last couple of years to where from time to time some of the boats can direct on the trip limits. But, when you're managing trip limits in the 100 to 200 pound range and sometimes smaller for ten months of the year, that's a year-round or darn near year-round bycatch fishery for everybody.

Now, we have tried at different times in recent years, when we feel we have to fall below a certain threshold, of going to this percentage issue that Bruce described for New Jersey where the bycatch trip limit may be so many pounds provided it doesn't exceed X percentage of the total fish landed.

We have stopped doing that and I'll tell you why. What was happening is that we were encountering instances where fishermen were keeping other fish, skates, dogfish and other fish that had little market value, landing them and sending them to the dumpsters just to keep the bycatch of fluke.

We decided that we didn't want to participate in or sanction that kind of a wasteful operation, so we stopped doing that. We don't do it any more. You know, questions are asked here about describing the bycatch problem.

The fact is that none of us, not one of the fluke states that I know of has any significant amount of detailed numeric information that quantifies the bycatch and describes the discards in the fluke fishery in a significantly quantitative way.

We all need to get better information, but we need to listen to what the fishermen have said, and what they've said is reflected in the proposals that have come forward I think

from the states that I've heard them come forward today, and certainly what I've read from New York's and Connecticut's.

They are, in the case of New York's proposal and from what I can read of Connecticut's, good-faith proposals to attack discards, and I don't think they should be characterized on the record of this meeting as not meeting the "smell test", and I take exception to that, Mr. Chairman. We can debate things, but I would not like to see things characterized in that fashion. Thank you.

CHAIRMAN GIBSON: Thank you. I'd like to call the question. Pres, you have the last word, sorry, didn't see you.

MR. PRESTON PATE, JR.: Thank you for indulging me. I've been sitting here trying to decide what to say. Emotions are running pretty high on this issue, always have and always will I guess. I wish we weren't here having this type of discussion, quite honestly.

I think it underscores the concern that I had right from the very start that this whole addendum was not thoroughly enough debated and thought through. I had come into the meeting today with intentions of taking the information that was requested by the chairman of this board back to the industry that I'm having to deal with so emotionally and explain to them how the decision by the board will ultimately result in the benefit and hopefully continued recovery and growth of the stock.

Unfortunately, the information is incomplete, and it's not going to help the arguments that I've been trying to make to justify the transfer of 85,000 pounds of flounder to other states, because in a lot of respects what Bruce said about taking

money out of our fishermen's pocket and putting it into another state's fisherman's pocket is true.

It's going to be particularly difficult when we have information that is saying that the allocations are so small in some states that it's not going to help the discard problem at all or that the number of fishermen that are in some states is so small that it's going to inordinately increase their opportunity to land, whether bycatch or directed fishery, more flounder than they can now at the expense of fishermen in the donor states.

I'm particularly concerned about the tone of the motion that is on the board being a further threat and measure to hold the donor states feet to the fire before there is a complete understanding of whether or not there is going to be voluntary compliance.

I underscore the word "voluntary" because that's what this is. I don't think it would be a matter of compliance with the federal plan. The federal plan says don't go over your quota. It doesn't say anything about not giving your quota to other states.

So in that regard, I don't think there is any sanction to any of the states for not following through with the transfer. We're operating, once again, as we do in so many other instances in this board, on gentlemen's agreements and negotiated settlements to problems.

This has gotten so emotional and so contentious for seemingly so little benefit to the resource that it's becoming counterproductive for the whole process that we work within. I don't know what to do next. I'm torn between being chairman of the Commission and being the hard-ass -- oh, excuse me, strike that -- that I can be sometimes.

Again, I had resigned myself to and made the decision on behalf of my state, in spite of the criticism that I know I'm going to get, not ignoring but in spite of the criticism that I've already gotten, to move forward with the transfer once we had the specific information about how much was to go to the individual states.

But I can't support this motion because we haven't received the information yet that I think is necessary for us to make an informed decision and necessary to equip me to go back home and explain to my critics why we made the decision that we did.

CHAIRMAN GIBSON: Thanks, Pres. As chair of the Commission, since you hadn't spoken yet, I thought some latitude was due. I'd like the states to caucus now. We need to call the question on this.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: Okay, are we ready? I'll read the motion: Moved that states that are required to transfer, in brackets, submit letters to NMFS requesting transfer of quota according to Addendum XV be required to do so by March 15th or be de facto found out of compliance. This motion should be forwarded to the ISFMP Policy Board for action at this winter meeting. Motion by Mr. Smith; seconded by Mr. Augustine. Bob Beal.

MR. BEAL: Just to confuse things at the eleventh hour, well, two things. One is that the bracketed language that we said we'd recommend to Eric, I don't know if he's ever commented if that's acceptable, and the seconder, Pat Augustine. Maybe you want to do that one real fast.

MR. SMITH: It was acceptable to the maker of the motion.

MR. BEAL: And Pat's nodding his head also. The other issue is that for non-compliance motions, we also, usually when it leaves the management board, include the notion of what a state needs to do to come back into compliance if they are found out of compliance.

I think with this motion, obviously, this one is relatively straightforward, and the notion is that the states must -- you know, once a state makes its transfer, then it is back in compliance, but usually we spell that out very explicitly in the motion just to be square with the Commission process.

CHAIRMAN GIBSON: Are you suggesting we need to add to come back into compliance, states need to submit the mentioned letter. It would seem to me it's pretty well understood in there, but I'm not adverse to adding that to the motion if that's what needs to be done.

MR. BEAL: Yes, it's most likely just another sentence saying in order to come back into compliance a state must submit the necessary transfers required in Addendum XV, something along those lines.

CHAIRMAN GIBSON: Okay, Eric and Pat.

MR. SMITH: That's acceptable.

CHAIRMAN GIBSON: That would be a sentence at the end of the motion. Pete Jensen.

MR. JENSEN: I think there's another little problem with this; and that is based on what I think Eric was talking about before where all of the states have to have their letters in

before you have a final transfer, if one state does not come in with their letter, they're out of compliance, but now they've held up the whole works.

The other transfers can't take place is the way I'm understanding this motion based on the "let's do it all at once" concept. So, in order to avoid that from happening, it seems to me there has to be a date certain.

MR. SMITH: Actually the language that was in brackets that is now up there, that has obviated the need for the "let's do it all at once." These are individual letters that go to the service, so theoretically you have the three states that voted against Addendum XV, two of them could be in compliance by meeting the March 15th deadline, and the other one could not, might not.

CHAIRMAN GIBSON: I'm going to read the motion: Moved that states that are required to submit letters to NMFS requesting transfer of quota according to Addendum XV be required to do so by March 15th or be de facto found out of compliance. In order to come back into compliance, states must submit letters to NMFS requesting transfer of quota according to Addendum XV. This motion should be forwarded to the ISFMP Policy Board for action at this winter meeting.

Moved by Mr. Smith; seconded, Mr. Augustine. Any need to further caucus on the perfected motion? Do we need a roll call vote on this one?

MR. SMITH: Yes.

CHAIRMAN GIBSON: Roll call vote request. Toni, call the roll.

MS. KERNS: The Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: No.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: No.

MS. KERNS: New Jersey.

NEW JERSEY: No.

MS. KERNS: Delaware.

DELAWARE: No.

MS. KERNS: Maryland.

MARYLAND: Yes.

MS. KERNS: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Abstain.

MS. KERNS: Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina.

NORTH CAROLINA: No.

MS. KERNS: U.S. Fish and Wildlife.

U.S. FISH AND WILDLIFE: No.

MS. KERNS: National Marine Fisheries

Service.

NATIONAL MARINE FISHERIES
SERVICE: Abstain.

MS. KERNS: That would be four yes; six
no and two abstain.

CHAIRMAN GIBSON: The motion fails.
Gordon Colvin.

MR. COLVIN: Mr. Chairman,
notwithstanding the board's action on the
preceding motion, I would still suggest that
the board might want to consider
establishing a deadline for action pursuant to
Addendum XV and just ask the staff if that
is something that ought to be done.

I think we're at a point now where there is
no clear indication on the record of the date
by which compliance with the provisions of
the addendum is required, and therefore no
basis for future review under the standard
Commission compliance process.

**I'm seeing people nodding, so I would like
to offer a motion, Mr. Chairman, which is
basically just take that motion, go back to
the top of it, and I will move that states
that are required to submit letters to
National Marine Fisheries Service
requesting transfer of quota according to
Addendum XV be required to do so by
March 15.**

CHAIRMAN GIBSON: Is there a second?

MR. SMITH: Second.

CHAIRMAN GIBSON: Eric seconded the
motion. Okay, I don't think there needs to
be a long debate about this motion. I'm
going to call the question on this and we'll
repeat the roll.

MS. KERNS: The Commonwealth of
Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: No.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: No.

MS. KERNS: Delaware.

DELAWARE: No.

MS. KERNS: Maryland.

MARYLAND: Yes.

MS. KERNS: Potomac River Fisheries
Commission.

POTOMAC RIVER FISHERIES
COMMISSION: Abstain.

MS. KERNS: The Commonwealth of
Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina.

NORTH CAROLINA: No.

MS. KERNS: U.S. Fish and Wildlife.

U.S. FISH AND WILDLIFE: No.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN GIBSON: The motion ties. It fails by virtue of a tie. Dave Pierce.

DR. PIERCE: That was fun. Where do we stand with this addendum? Is it dead in the water? Should we just put it on a shelf somewhere?

CHAIRMAN GIBSON: An addendum with no time certain.

DR. PIERCE: It's an addendum with no time certain, no teeth, nothing. I guess that means there will be no transfer according to that which is required in the addendum. At least that's the way it comes across to me. Please someone correct me if I'm incorrect.

CHAIRMAN GIBSON: Eric, do you want to speak to that?

MR. SMITH: It's probably too late in the day to speak coherently on the implications of what David Pierce just asked, but I would ask everyone here to think very, very carefully about what it means to this Commission process to go through a proper legal process last fall and have a vote of 7 to 3 for an addendum and not be able to make it happen.

I understand there are three states that are upset with that. Well, I've been upset before -- Connecticut has -- to be on the losing end of a vote.

But, this speaks very badly of a Commission process that can't honor the obligation that it voted for, and I would urge that the Policy

Board and the Commission itself really look inside itself and see, you know, do we rule ourselves by majority rule or something else.

Because, if this dies here after the process we went through last fall, that's more distressing than whether you're on a winning or a losing side of a 50,000 pound quota shift, quite frankly. Thank you.

CHAIRMAN GIBSON: Eric, there was a question posed I think by Dave Pierce what happens next. It seems to me there would be a plan review team review of this at some point, at the August board, and there would be a report back to the board as to whether or not this addendum was being complied with.

There would be a potential for board action at that point. That's what I would understand would be the next review opportunity when you've heard information from the PRT. Tom Fote.

MR. FOTE: In my 15 years of sitting here since about 1990, yes, I've seen a lot of votes go one way or the other. What I have never seen is where states -- we always worked in cooperation and transferring quota.

I think there would have been -- if this process had gone through and we had set up some criteria where this transfer takes place, there wouldn't have been this strong objection. I don't think in my 14 years where I ever saw where we actually went after the quota involuntary of another state by a vote like that when it had nothing to do with conservation.

I think it sets a precedent and a precedent where you could basically -- more states, because they out number you, can basically

take away your quota. That's I think what the precedent was here.

We agreed to do that. There was a workshop. Our fishermen were going along with it. We basically sent a letter. I think if anybody follows that letter and tries to put the information together, New Jersey will consider it because our fishermen have said they are willing to agree to that.

But that's a process. That's what we were trying to do with the workshop. That's what we were trying to do with the addendum. I think that's why the feelings are so strong, Eric.

CHAIRMAN GIBSON: Bruce Freeman.

MR. FREEMAN: So far as we're concerned, I think some states have made a good will effort to do exactly that. I think Connecticut is certainly a good example. We would not be opposed to transferring quota to those states that we thought did make that effort.

And this vote just taken doesn't mean that we don't move forward with the provisions of Addendum XV. My statements were not intended to indicate that we would not take action, but we did have some concerns about how it was moving. But, we will make a commitment to move forward as we can on these issues.

CHAIRMAN GIBSON: Vito.

MR. VITO CALOMO: Thank you, Mr. Chairman. I think Eric Smith has hit it in the head perfectly. I think the transfer of quota is bull as far as I'm concerned. I think the process that we went through all these months, I think we've just shot the Atlantic States Marine Fisheries Commission in the foot and I'm very surprised that this happened.

I agree with Eric. There are times here my stomach turns over because I lost a vote, but the process is the process. And if you believe in what you've done and are doing in the future, boy, this has just been a disaster. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Other comments or somebody want to take another crack at it? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. There's always room for one more comment and then end this meeting I guess. It just seems to me that we did lose sight of what we were trying to accomplish.

We were all hot and bothered about doing this. We all came to consensus. There was a meeting. We went through the whole thing. Vito hit it right on the head. It is a total affront to the process.

You either believe in it or you don't, and this vote became personal. I understand giving up, states giving up, but I also understand it was for two years. And this was the first step in trying to address bycatch from a different point of view.

And it's interesting that we all agreed, 7 to 3 or whatever it was, to go forward with this thing and now here we sit embarrassing ourselves.

And if there was any way to recreate this without going back to a PRT and going through that whole mess again, I would make a motion to do so, but it doesn't look like we're going there. So unless there's further business to come before this board, I'm ready to make that motion.

CHAIRMAN GIBSON: We had two other agenda items. We're going to put those off. Toni can brief the board via e-mail and other

conversations this week. So, Pat, you have a motion to adjourn?

MR. AUGUSTINE: Yes, Mr. Chairman, move to adjourn.

CHAIRMAN GIBSON: I'm sure there's no -- sorry, Pres.

MR. PATE: Thanks again, Mark, for recognizing me at the late hour. I don't want to prolong the debate unnecessarily, but I want to make some comments about the concern that people have expressed about how we have undermined the process, and Eric's statement particularly that some of the votes in the negative of these last two motions are by those states that have been disadvantaged by the decision.

Speaking from one of those states perspective, that is the farthest thing from the truth. It is not the reason that I opposed these motions. There was no indication on the record or otherwise that North Carolina was not willing to comply with the addendum, nor have I heard that from Rhode Island nor have I heard that conclusively from New Jersey.

They were just asking for some more detailed information about the fate of the quota in the states to which they were transferring the quota. We can still work through this process on much the same basis that we use in compliance and working out problems in other boards on other issues.

I objected to these motions because they implied otherwise. They implied that we were not -- we, North Carolina, was not willing to work within the process that has worked so successfully through the years.

I don't feel as dramatic about the implications of this one incident on the

operations of the board as others that have stated their feelings this afternoon. It has just been a difficult process for us all.

There are some emotions involved with those states that are giving up the quota, but that's only natural to protect your resource and protect your fishermen. But there is also a strong commitment to this process that all recognize and I think all are loyal to.

I hope that the states that are asked to transfer quota in this addendum will move forward positively and in that spirit of cooperation after this meeting. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Pres. Any other business before the board? Eric.

MR. SMITH: Very briefly, Mr. Chairman. If I genuinely or if I offended anyone with my comments, I don't think that I did really, but if I did I apologize. My point stands that we have a process. We need to follow it.

Right now there is no way to follow it until apparently a report in August, which means 2005 is largely gone. I mean, frankly, I asked in November, okay, how do we make this happen by January first, and I was prevailed upon, quite frankly, to give it some time.

The states had to work things out and go back home and explain it to people. Okay, I shouldn't have done that. We should have put it right in there and made it January 1st. I regret that and we all have our regrets.

I didn't mean, and I don't think I did really offend anybody. My full remarks on this I'll have to commit to writing and send to every commissioner. Thank you very much.

CHAIRMAN GIBSON: Thank you, Eric.

We stand adjourned. Thank you for your patience.

Adjourn

(Whereupon, the meeting was adjourned at 7:15 o'clock p.m., February 7, 2005.)