

*PROCEEDINGS OF THE ATLANTIC STATES MARINE
FISHERIES COMMISSION'S
SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS
MANAGEMENT BOARD*

November 8, 2004

**Wentworth by the Sea
New Castle, NH**

Approved February 7, 2005

ATTENDANCE

Board Members

David Pierce, Massachusetts DMF	Russell Dize, proxy for Sen. Colburn
Vito Calomo, proxy for Rep. Verga (MA)	Bruno Vasta
William Adler, MA Gov. Apte.	A.C. Carpenter, PRFC
Gil Pope, proxy for Rep. Naughton (RI)	Jack Travelstead, Virginia MRC
Everett Petronio, Jr., Rhode Island Gov. Apte.	Wayne McLeskey, proxy for Sen J. Chichester (VA)
Mark Gibson, Rhode Island DEM	Wilford Kale, proxy for Catherine Davenport (VA Gov. Apte)
Eric Smith, Connecticut DMR	Preston Pate, North Carolina, DMF
Lance Stewart, Gov. Apte. (CT)	Damon Tatem, North Carolina, Gov. Apte.
Senator. George Gunther (CT)	Harry Mears, NMFS
Gordon Colvin NYSDEC	Bill Cole, USFWS
Pat Augustine, New York Gov. Apte.	
Tom Fote, New Jersey Gov. Apte.	
Bruce Freeman, Chair , New Jersey DFG&W	
Dick Herb, proxy Asm. R. Smith (NJ)	
Roy Miller, proxy for Rick Cole DE (DFW)	

Ex-Officio Members

Rob Winkel, LEC Rep.
David Simpson, Tech Chair

ASMFC Staff

Vince O'Shea	Toni Kerns
Bob Beal	Lydia Munger

Guest

Richard Sission, PRFC, (RI)
G. Clifford Hutt, PRFC, (VA)
Steve Bowman, VMRC, (VA)
Bill Windluey, MSSA/RFA, (MD)
Sarah McLaughlin, NMFS
Ray Collins, State Legislation (CT)
Don Swanson, CCA, NH
Howard King, MD DNR
Anne Lange, NMFS
Charles Lynch NOAA
Frank Almeida NOAA
Dan Mckieruan MA DMF
Gene Kray, PA
Philip Cureio, United Boatmen NY and NJ
Dan Furlong, MAFMC
Bennie Williams USFW
Kellie Place CVWA and VWA (VA)

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**ATLANTIC STATES MARINE
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SUMMER FLOUNDER, SCUP, AND
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BOARD

Wentworth by the Sea
New Castle, New Hampshire
November 8, 2004

The Summer Flounder, Scup and Black Sea Bass Board of the Atlantic States Marine Fisheries Commission convened in the Wentworth Ballroom of the Wentworth by the Sea, New Castle, New Hampshire, on Monday, November 8, 2004, and was called to order at 2:20 o'clock p.m. by Chairman Bruce Freeman.

Call to Order

CHAIRMAN BRUCE FREEMAN: Will commissioners please take your seats. This is a meeting of the Summer Flounder, Black Sea Bass, Scup Management Board. Everyone should have an agenda. If you would review that agenda, there is just one addition I would like to make.

Under public comment, we will have a review of the Summer Flounder Workshop that was recently held. You recall at the last board meeting a verbal report was given by Toni Kerns. We do have a written report of that committee.

She'll go over that briefly. With that review, it should set the information we need in front of us in order to deal with Addendum XV and XVI. Are there any other additions to the agenda? Eric.

MR. ERIC SMITH: Thank you. Under other business, if we could, I'd like to talk or get a sense briefly on some advice that we should give ourselves on how to implement the scup commercial trip limits in the January-April period.

That's the period where there is the reporting by two-week periods, and the logistics of that, as it has been explained to me by my staff, is that we have to all be on the same two-week schedule. I gather since the service is not going to implement that, it requires us to coordinate.

CHAIRMAN FREEMAN: All right, very good, we'll add that. Also under other business, we'll have nominations for the chair and vice chair. Any other additions? All right, without objection, then we'll follow the agenda we have in front of us.

You have the proceedings from the August board meeting 2004. Are there any changes, additions? Pat.

MR. PATRICK AUGUSTINE: Motion to accept, seeing no changes, Mr. Chairman.

CHAIRMAN FREEMAN: Motion to accept. Gordon, yes.

MR. GORDON C. COLVIN: Mr. Chairman, the only thing I was wondering is whether it's necessary or appropriate for the board to have some discussion about what, if anything, the board would be recommending with respect to the action plan discussion that will take place later this week, vis-a-vie Amendment 14. Is there something that we need to be prepared to communicate for that discussion? I'm just a little unsure.

CHAIRMAN FREEMAN: Bob.

MR. ROBERT E. BEAL: The draft of the action plan right now, Gordon, actually already has Amendment 14 included in it and the resources that staff envisions that would be needed in 2005 to move forward on that amendment. I don't think this board needs to take any action. It has already been accounted for. At the workshop tomorrow afternoon, you can review what is included in that.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Thanks, I'm aware of that. I'm just wondering, there's going to come a time I think when both the board and the council, pretty soon, too, will want to speak pretty specifically about how to engage the scoping process and what kind of direction we want to provide to both staffs to get this whole thing going.

It seems to me that at some point we need to have some proposals and some discussion. We need to get a plan development team started and so forth, and I'm just wondering, the board needs to talk about that and when is that going to happen?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: I agree with that, Gordon. I think direction to the staff and a time line for the development for this is critical. I guess my original comment was just with respect to the action plan, I think we're covered for next year. But, the details we definitely need to work out.

CHAIRMAN FREEMAN: Gordon, I will add also that Amendment 14, in order for that to be finalized, we need to work hand in hand with the council to make sure we implement that at the same time frame, with the same provisions. And you recognize that, I'm sure.

MR. COLVIN: I do, and that's why I mentioned the council as well. It seems to me that there are some questions. Are we going to have a joint PDT? What will the process be for soliciting members for the PDT for convening them? What process should we be following to collaborate with the council to develop how we want to go about scoping this amendment?

You know, those are questions that have been kind of on my mind, and I hope that not too much time will go by before we have that opportunity to jointly discuss them with the council and get things moving.

CHAIRMAN FREEMAN: Bob, you want to respond? Has staff had any conversation with council staff?

MR. BEAL: No, we have not talked staff to staff at all on this amendment yet, Gordon. But like I said a minute ago, I think any details we can work out as far as time line goes probably would have to be done either jointly or staff to staff, or with both bodies sitting at the same table and working out the details. It's up to this group how they want to proceed with that.

CHAIRMAN FREEMAN: Dan Furlong, would you please come up to the mike.

MR. DAN FURLONG: Just for the benefit of the group, December's meeting we're finishing up the specification-setting exercise for summer flounder, scup and black sea bass. Our January meeting, we already have tentatively set up a session for start of Amendment 14 in January of next year.

CHAIRMAN FREEMAN: Okay, thanks, Dan. Gordon, would you like to comment or does that satisfy your concerns?

MR. COLVIN: Sounds good. I assume that we'll all want to communicate with both council and commission staff about that January meeting, because it sounds like that's where we're going to get into this.

CHAIRMAN FREEMAN: Okay, we have a motion made to accept the minutes but I did not get a second. Bill Adler seconds those. **Any comments, additions, changes to the minutes? Seeing none, without dissent, the minutes would be accepted.**

Public Comment

Okay, the next item on our agenda is for public comment. Is there anyone in the audience that would like to speak on an issue concerning summer flounder, sea bass or scup? Yes, please come forward.

MR. PHIL KERSIO: Good afternoon. My name is Phil Kersio. I'm with the United Boatmen of New York and also United Boatmen of New Jersey. They have asked me to come up today and reiterate some comments that we've sent in with regard to what we're calling the "payback provisions" of Addendum XVI.

I just want to get on the record that United Boatmen of New York and New Jersey are opposed to any sort of payback or other punitive measures that are based on MRFSS information.

We've seen in the past that MRFSS has proven to be unreliable. and we believe to base something like a punitive measure on something that has been shown to be notoriously inaccurate in the past and at best is a guesstimate, this will certainly result in inequities beyond what New York has already seen this past season.

We have deep concerns with regard to MRFSS and certainly its application in any sort of a punitive context. I would also like to remind the commission that Dr. Hogarth himself has gone on record several times acknowledging that MRFSS should not be used for state-by-state management measures.

And to put a finer point on this situation, by using it for in-season paybacks or even post-season paybacks, we believe will push MRFSS far beyond its limits with regard to timeliness of data and also data resolution.

So in sum, MRFSS has already caused some inordinate economic disruption for New York and New Jersey for-hire sector. Until these situations are fixed, repaired, whatever you want to call it, or some other scheme is developed, United Boatmen will continue to vigorously oppose any suggestion of paybacks or other punitive measures.

Thank you for the opportunity to comment. It looks like you're going to be discussing possible regional measures and that kind of thing later on, so I'll reserve comments on that for later on in the discussion. Thank you.

CHAIRMAN FREEMAN: Thank you. Anyone else in the public would like to comment? All right, seeing none, we'll move on with the agenda. Phil, there should be sufficient time for additional comments from the public as we move through the agenda. Workshop summary review.

Workshop Review

MS. TONI KERNS: Thank you, Bruce. The last weekend in September we invited two industry members from each state from Massachusetts to North Carolina to

participate in a summer flounder, scup, black sea bass workshop.

The purpose of the workshop was to identify the successes and problems in the summer flounder fishery allocation process. We also wanted to develop management principles to guide the allocation decision-making process for the fishery. By applying management principles, we could develop management options that:

1. Had the potential to address issues arising from disparate state-specific quotas and discard policies; and,
2. To provide equitable allocation. We wanted to do all of these by developing a maximum consensus on all issues under consideration.

The industry members identified several different problems in the fishery. You can read through each of those individual problems on Page 2 of the workshop summary, and we ran through about 26.

But a brief summary of those is one of three main categories. The first was discards. Discards reduce rebuilding and therefore it reduces the quotas. There is also economic waste within discards, and it's hurting all the states, not just those with the high discards, but because it's slowing rebuilding and all the states are getting less quota.

Discards are driven by each individual state's landing limits and those with lower landing limits are having higher discards. They all agreed also that addressing the socio-economic needs within the states is very important.

There were different discrepancies between big boats and little boats. State managements tend to favor one or the other

but not both. The seasonal availability for a big boat versus a little boat comes into problems.

Another large problem was the high number of permits in some states. The industry members felt that this high number of permits results in a low trip limit, it's increasing the discards and there is a decrease in the economic return to the fishermen.

We also see some latent effort with high permits as well as inefficiency in fishing operations. We had a lengthy discussion on developing incentives to build other objectives through commercial reallocation.

Some of those incentives could be conservation -- if a state has stricter conservation rules, then should they be getting more fish -- or looking at effort reduction -- if you reduce your effort, should you be getting more fish, ideas such as these.

The industry members went through and explored several principles to apply to the problems, but in the end they could not come to consensus on any ideas that they would specifically use for having a principle applied to reallocation.

You can see on Page 5 some of the ones that some individuals agreed upon, including the states with discard problems should take action to reduce the permits within the state, and maybe they should give additional quota to those states or those individuals.

Also, looking at increasing the mesh sizes, having incentives to address offshore issues, whether or not economics are difficult to maximize, because we're having ten states looking at their interests, and can you have economics involved with so many states.

There are several others that you can read through.

On the second day, the industry members asked the staff to leave the room while they discussed different options for reallocation. When we came back into the room, they had come up with four options that are in the addendum, so I won't review those again.

They're here in the addendum and in the workshop summary. It is to be noted that not all the participants agreed upon each of these options, but there was some consensus for each of the options but not full agreement.

CHAIRMAN FREEMAN: Okay, any questions? All right, we will move on. Okay, Addendum XV. I'll ask Toni to review the public comments that were offered during the series of public meetings that were held, and then we can discuss what the board wants to do relative to both Addendum XV, and we'll go through the same process on Addendum XVI. Okay, we'll do Addendum XV first.

Review and Action on Addendum XV

Public Hearing/comment

MS. KERNS: Thank you, Bruce. I apologize that I was not able to give you these comments sooner, but because we ended the public comment process on Friday, I did not have time to get this information out to you before this morning.

I have a couple of little tidbits to add in some of the numbers of attendees from each of the hearings somehow got left out. In New York there were thirteen attendees. In Newport News, Virginia, there was one attendee. In Port Republic, New Jersey, there were nine attendees.

I will try to go through these as thoroughly

as possible so that you will be able to get a good general idea of what happened at these hearings.

The first hearing I had was in Maryland. The Maryland fishermen don't believe that they have much of a bycatch problem in the summer flounder fishery or in other fisheries because of the ITQ system that they set up. They thought that Option 2A was best for their state. It also was the least amount some of the other states that had larger quotas would have to give up. They didn't want to have to take away a lot from the other states.

The next state that I was going to summarize is Massachusetts. There were only two fishermen from the state at the hearing. While we had several discussions about the addendum, they were not ready to make any comments for the record there.

North Carolina held three public hearings. At those hearings it was stated that if six states stand to lose and twelve states stand to gain, then those that stand to gain are going to win the vote and the management has failed.

We should be able to keep what we catch and everything up until that point until you reach a certain dollar value. There shouldn't be landing limits. The commercial fishery had already given up 10 percent of the quota to address bycatch, and now you're asking each state permit in North Carolina to give up around 12,000 pounds.

All the fishermen in North Carolina had already been banned from fishing in all the states, especially in the northern ones, and those are the ones that stand to gain quota, and you're making it even harder on the North Carolina fishermen by reallocating the quota.

They also were against having any of the options that included putting observers on the boats. They don't like how the program is currently working because you have to call 48 hours in advance to put observers onto the boats. They also feel using a VMS to monitor the bycatch allocation will be difficult because of the price of running a VMS.

They also don't understand why they should have to give up fish for the northern states when they haven't done anything that has helped out the southern states. North Carolina was in favor of Option 1, status quo.

There's also attendees at the hearing in Washington, North Carolina, that felt that -- they are opposed to the reallocation of quota to other states, and North Carolina could actually use more quota than they currently have.

The vessels in the 1980s were responsible for establishing much of the quota that is currently allocated to many of the northern states. One of the fishermen in North Carolina felt that if the bycatch allocation was not harvested by November 1st it should be reallocated to the states on the basis of historic shares.

He was the only fishermen in North Carolina that felt that Option 3A would be a good choice. He also stated that quota increase reallocation might be a viable option once the states get closer to their historic landings. Then that might be something they can do, but until all the states are close to their historic landings, then we should not reallocate the quota.

In Connecticut there were about ten members at the hearing. There was a

commercial fisherman that supported the Option 4A which has the least impact on states with large allocations, but also gave Connecticut a sizeable increase.

The speaker from the New England Lobster Fishermen's Association supported options that included the nine-way split of the allocation.

In Newport News, Virginia, there was one fisherman there. He felt that if you change the base period of allocation for fluke, then you're setting a precedence for other species. And if we're going to start to change the allocation, then the northern states should give up something such as part of their groundfish quota before they have to give up their summer flounder quota.

They also felt that the option with putting observers on the boats is problematic due to the 48-hour call in advance. And the fishermen also felt that the northern states have higher discards because of the nature of their fishery. It's more of a mixed fishery; whereas, in Virginia they're only targeting summer flounder.

And he felt that Option 3A or 4A would be good. Both of those let states keep their historic shares but give some fish to address the bycatch issues of the northern states. And there was also some discussion that we had that maybe Rhode Island should get more fish to address their bycatch needs.

In New Jersey there were around nine attendees. They felt that most of the pressure for this addendum was coming from New York because New York is looking for some bycatch allocation. They think that an option that was left out that they feel should be considered is that each state should set aside 15 percent of their quota for bycatch, and it should be a

requirement and not a recommendation.

Some of the fishermen felt there are some state directors that are using the closed process of the commission to achieve their states agendas; and when they're reallocating the quota, you cannot use the process in this way. And they feel that because more states stand to gain in this addendum, it's not a fair management process.

The New Jersey fishermen supported, four in favor of Option 1, status quo. Those fishermen of the Fishermens.co-op said that if we're going to be outvoted for status quo, then they would support Option 2A, because it doesn't include giving fish to Maine and New Hampshire, because they have minimum landings -- or because it does include Maine and New Hampshire because the fish are moving up the coast, and so therefore they should get some of the fish.

Some of the participants in New Jersey felt that they would not like to see a vote in November or here at this time because there hasn't been significant time for the public to review the addendum, and that any reallocation has not been justified, and the rationale for getting more for other states is just not there, and because those states did not contribute to the historical fishery, they're standing to gain unjustly.

In New York there were around thirteen attendees there. Their fishermen I believe did not give me a specific option to choose from, while we had several discussions on the issue. There was one fisherman there that said that he didn't think it was in New York's best interest to increase the landings for New York fishermen.

The more fish taken in New York waters the more you take away from New York's

recreational fishermen, and the commercial fishermen are taking away everyone's rights to catch the recreational fish.

Another fisherman felt that the problem is the allocation to the other states and that's what needs to be addressed. One fishermen felt that the options with the observer programs would be good to get better observer coverage.

From the written comments side, there were just a few letters. I'm going to just pull out a couple of things from each of those letters, which are in the back of your handouts. The first letter from the Southern New England Fishermen's Lobster Association felt that they wanted to see one of the options that split the shares equally between the nine states.

They feel that Connecticut fishermen have long been on the losing end of the quota system, and this is in part due to inaccurate landing letters from Connecticut commercial fishermen.

The letter from the United National Fishermen's Association is opposed to any change. They would like to see Option 1, status quo, again, showing that vessels in Virginia and North Carolina would stand to lose a percentage of 345,122 pounds, which is about \$2,465 per permit.

The Garden State Seafood Association sent in a letter as well. They are opposed to any change and would like to see status quo. Again, they felt there was no information or rationale that would justify a change.

They are convinced that the individual states are responsible for implementing the regulatory measures that would overcome the issues associated with lower quotas and to address possible discards.

And they again would like to see this addendum not finalized at the end of this meeting. They feel that a socio-economic analysis needs to be made to complete and quantify the advantages and disadvantages of altering the historic quota allocation to determine whether or not any change would solve the issues identified by the states with lower quotas.

They also feel strongly that if a new arrangement or change to the allocation of future fluke quotas are adopted during this meeting week, that it be done in conjunction with the stipulation that those states that receive additional quota take action to address those situations that exasperated the issues associated with lower historical quotas.

This includes trip limits and permitting scenarios that have in some cases allowed new entrances into the fishery who never participated in the summer flounder fishery before. These states are obligated to address these problems to promote the efficient use of whatever quota they have and make sure that the historical participants are the beneficiaries of the recovering summer flounder stock.

Another letter from Mike Plaia is in favor of status quo. He doesn't feel that the current increases in quota is sufficient to meet the demands of the user group within the traditional fisheries as it is, and that it would be highly inappropriate to alter the current allocation increases in the TAL.

And, lastly, there is a letter from Joe O'Hara, and he recommends status quo. The captain claims that it's a significantly -- he feels that a possible increase in the mesh size would help with discards.

There is a captain that uses a 6-inch diamond mesh, and they say that it has significantly reduced their discards. And then, lastly, there is some comment from the National Marine Fisheries Service and, Harry, if you don't mind me asking you to speak on that.

CHAIRMAN FREEMAN: Harry, are you prepared?

MR. HARRY MEARS: Thank you, Mr. Chairman. We presented comments with regard to both Addendum XV and Addendum XVI. At this point, I'll restrict my remarks to Addendum XV.

The general overview of our comments alluded to the fact that obviously we have a joint plan in existence, and there were a lot of provisions that were being proposed that in turn would have an obvious impact on the ability for similar or compatible measures to be implemented in both state and federal jurisdictions.

Some of the earlier conversation during this meeting is encouraging that there appears in fact to be a very directed move to go forward near the beginning of the next calendar year so that this type collaboration can take place.

With that in mind, I'll just briefly allude to two of the issues which we commented on. One of those had to do with the quota transfer provisions under various alternatives other than the status quo.

The current FMP calls for quota transfers under very specific conditions, and I believe there are three of them. I think one has to do with unanticipated events in the fishery. Another had to do with measures necessary for conservation of the resource. And the third had to do with measures to preclude

exceeding the quota in place.

At the current time we're closer than we have been in previous years in an attempt to work with both the commission and also state and federal permit holders, so that we can shoot toward having federal commercial fishery measures in place at the beginning of the calendar year.

At the current time, we are moving towards a proposed rule, and we have received the proposed specifications for the commercial fishery from the Mid-Atlantic Council. And as I indicated before, the current quota provisions are very specific based upon a formula in terms of a state-by-state allocation of what that quota would be.

Any extent to which alternatives would diverge from the ones currently in place would essentially create an atmosphere of being in disarray as we go toward the beginning of our fishery in the next calendar year.

But, as I said before, the fact that we are moving forward in concert with the Mid-Atlantic Council in development of Amendment 14 is encouraging.

There were also some comments which we provided looking ahead to our role under the Atlantic Coastal Act in the event of a finding of non-compliance based upon potentially the reluctance of a donor state to cooperate in various of the alternatives that were identified.

And, if we were to consider a finding of non-compliance based solely on an allocation or quota transfer issue, it would put us in a very dubious position in fulfilling our role under the Atlantic Coastal Act, where any federal action in terms of a moratorium implementation needs to be

predicated on either, Number 1, measures necessary for conservation of the resource, and, secondly, for effective maintenance of the joint fishery management plan.

The second key issue concerned bycatch -- and we commented that in order to go forward on this type of alternative, we would need much more timely and expanded monitoring of relatively small-scale landings on a state-by-state basis.

This in turn would very much depend upon the prognosis for successful implementation of the electronic dealer-reporting system at the federal level, which we're certainly involved in right now. We still have a ways to go.

It looks good but at the same time there is also some anticipated reliance upon states in terms of electronic reporting as well, which would have to be in place for this to be a reasonable alternative that would vary a management measure on the basis of allowable bycatch.

The requirement to carry observers and to report on bycatch would also trigger potential concerns under the Paperwork Reduction Act, which we would need to consider prior to moving forward on a federal basis.

There was also a question to what degree the bycatch option in Addendum XV either duplicated or replaced the current recommendation that in fact establishes a 15 percent summer flounder set-aside allocation at the state level within each state to address bycatch in the fishery. That summarizes comments from the National Marine Fisheries Service.

Action

CHAIRMAN FREEMAN: All right, thank you, Harry. Any questions of Harry? Gil.

MR. GIL POPE: Thank you. Harry, was that a yes or a no? No, I'm just teasing. From my understanding, at one of the meetings Chris Moore described that there wasn't that much of a problem with the discards in the summer flounder fishery.

I don't know whether the feds agree with that or don't agree with that. Do you think that there is a major problem? I'm not trying to get too far off track here, do you think there is a problem with the discards?

MR. MEARS: I can't give a yes or a no, but I do think it would need to be evaluated in the overall context of what alternatives are identified under the forthcoming Amendment 14.

CHAIRMAN FREEMAN: Other questions? All right, you heard the summary of the public hearing and the comments made by the service and also comments previously indicated by the council relative that there is a slight divergence here. The issue of taking action is now before us.

However, before we get into that, I had a request by Connecticut to introduce a modified alternative. Eric, you are prepared to speak on that.

MR. SMITH: Yes, I am. Thank you, Mr. Chairman. Many of you got this by e-mail last week and the rest we've distributed an alternative. In looking at the addendum options, it struck me that some of them just had huge impacts across and were non-starters, and I tried to find one that had the least impact on the four states with the largest quota and at the same time provided some relief to the four states with major fisheries but relatively small quotas, and then also to address some of the other concerns states like Delaware and Maine

have expressed.

I took Option 4A in the document and made a slight amendment to it. At the end of this, I will offer a motion for us to consider that alternative as one for the commission or the board to vote up or down. This proposal is essentially the same as Option 4A with a 20,000 pound change.

Instead of a million pounds to be distributed by the status quo shares, and then 300,000 divided four ways, it would be 980,000 divided by status quo and 320,000 divided four ways with 75,000 pounds still going to Massachusetts, Connecticut, New York and Maryland, and the 20,000 divided between Delaware with 15,000 pounds and Maine with 5,000.

New Hampshire I put in 90 pounds to bring them up to what status quo would do for them, but I had a discussion with New Hampshire officials and they have a closed fishery now, so it's not an issue for them to have a quota allocation in the commercial fishery.

Delaware has expressed a need to address a small commercial hook fishery which currently they have to manage by the recreational creel limit, and that's why the 15,000 pounds was added in for Delaware. I have no idea yet whether they number is correct because I haven't been able to talk to them, but we'll get that out in the debate.

Maine simply wanted to provide a little bycatch relief in the event as the stock expanded, they began to see some minor amounts of fluke in other trips, perhaps groundfish trips. The impacts of this proposal relative to Option 4 are very low.

And if you look in the public hearing document, there is a column that has gains

and losses under each option. Under 4A there were four states with a negative amount, which is what the contribution of those states would be to do Option 4A.

If you look at the last page of the handout you received, I did that table over the same way that Toni had done it, but distributing the 20,000 pounds among those four states in the proportion that their total quota share is for the total of the four states.

As you can see, it changes their amounts by less than 10 percent. North Carolina, instead of an 82,000 pound contribution to this solution, it would be 89,000. Virginia, instead of 64,000, it would be 69,000. It's on the order of 4,000 to 6,000 pounds difference from Option 4A.

I will point out again Option 4A was the option of all of them with the least impact on the four states with the largest shares, so I tried to build this from least impact to those states.

The other things in Page 1 of the document are simply the numbers that show the differences, and I'll just use one as an example, but you can read it for each of those four states.

Under the status quo, North Carolina will have an increase of 317,000 pounds if nothing changes. In other words, that's what the stock increase, the higher quota in 2005 means to North Carolina. Under this alternative, their increase would still be 228,000.

So the point I make is that every state, including those that have to donate, if you will, to this solution still get a sizeable increase in their quo based on the status quo. And for Virginia and New Jersey and Rhode Island, you can read the same numbers there to satisfy yourselves.

The only other comment I would make on this is in part I knew one of the issues would come up is the one that has been addressed in the fisheries service's letter, and in one respect they're absolutely right.

We knew when we started this that in order for this to work, we would have to have mandatory compliance among the states, so that every state contributes by whatever, should we vote for this type of a motion, whatever alternative it is.

I continue to believe this can be done through the requirement that states utilize the transfer process in the Federal Register. I will draw from my belief on the things that Harry had said.

One of the conditions for the transfers is to preclude exceeding the quota. Well, if the commission decides by a vote that a new alternative for using the additional amount of quota above the base period is the fair way for the quota to be distributed, we would need to use that transfer process to be sure we don't exceed the quota.

Most of us have used the quota transfer and the process in the past, and we obviously had to draw on those same conditions that Harry identified, so there is one of those conditions that fits our needs.

As far as non-compliance, one of the two conditions Harry talked about was effective maintenance of the FMP. Well, if by an addendum process we change the quota shares so that the increase in the quota this year is distributed differently, then effective maintenance of the plan would require us to make sure that every member lives by that agreement; and it would seem to me that compliance or lack thereof, depending on effective maintenance of the plan, is clearly

in bounds.

Harry also talked about the discard monitoring issues, and I agree those are issues, but they're only issues for Options 3A and 3B. Since this alternative is built on 4A, I would suggest that unless we go with one of the Option 3 options, we don't need to belabor that one.

Having said all of that and so we can get the discussion rolling, **I will move that the board adopt an adjusted Alternative 4A as outlined in the discussion document that was distributed today and entitled, "Proposed Approach to Reconcile Addendum XV."**

CHAIRMAN FREEMAN: All right, Eric, that was offered as a motion?

MR. SMITH: Yes. **Also 90 pounds for New Hampshire, and I guess the sense of it is fine. The last sentence, the remainder of the 2005 commercial quota increase will be allocated using the current state shares, it's really the state shares as adjusted through this discussion document, because it's not for North Carolina, Virginia, and New Jersey and Rhode Island. It's not the current state shares, it's the state shares as adjusted by this alternative.**

CHAIRMAN FREEMAN: Okay, are you satisfied with the wording?

MR. SMITH: As adjusted in the discussion document.

MS. KERNS: If we said "using historical state shares", would that work for you?

MR. SMITH: No, because the state shares for Rhode Island, New Jersey, Virginia and North Carolina would not be used in this alternative, they would be adjusted.

MS. KERNS: Okay, got you.

MR. SMITH: Not that the base shares are changed, but for purposes of this addendum, it's really using the state shares as adjusted in the discussion document as it reads now.

CHAIRMAN FREEMAN: Okay, is there a second? I just want to make certain you're satisfied with the wording. I think it does meet what your asking. And the discussion document, was not that the wording you wanted? I just want to make sure the last sentence is what you want it to say.

MR. SMITH: We should be silent right now on whether it's 2005 only or 2005 and 2006, because that's a separate issue to be addressed in this addendum. Say the remainder of the 2005 or 2005-2006. That's fine, Mr. Chairman.

CHAIRMAN FREEMAN: Okay, the maker is satisfied with the motion. Is there a second for that motion? New York seconds the motion. All right, is there discussion on the motion? Dave Pierce and then Tom Fote.

DR. DAVID PIERCE: Regardless of the merits of this particular strategy that has been suggested by Eric to be included in this document, it did not go to public hearing; therefore, I don't understand how we can entertain this.

We have a number of other options to review and some are slight deviations from each other. It just does not seem appropriate, Mr. Chairman, to have this now discussed by this board since it did not go to public hearing, so I would think you would rule it out of order.

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Well, I'm not going to say whether it should or shouldn't be out of order, but with respect to -- you know, as David said, this motion does represent a slight modification of one of the alternatives that was brought out to public hearings.

It's somewhat up to the management board as to whether they felt that the public comment that they did receive can be applied to this option or if this is something that's substantially different from what was included in the document, and they felt you either do not feel that you received sufficient public input to evaluate what the public's impression of this option might be. So as David said, it is a slight modification of what was taken out to public hearing.

DR. PIERCE: Mr. Chairman, if I may, it's still unclear to me if this Option 4A as slightly modified by Eric is a bycatch allocation, because Option 4 is for state-specific bycatch allocations.

If the maker of the motion would elaborate, I would appreciate that since it's quite significant, and I think it will influence -- if the motion is not ruled out of order, I would think that whether it's a bycatch allocation strategy or not, that will significantly influence how the votes go on this particular motion.

MR. SMITH: If I may, Mr. Chairman, respond to the question. Yes, that's an important point. Clearly, when we started this in August, it was intended to address the purpose statement that Toni read earlier, but one of the major points was discard reduction.

And if you recall the comment I made at the time, I think every state ought to be able to show after the first year of this what they did

in regard to the additional quota to minimize discards. I've been asked already and I've answered that.

We've already taken steps to reduce the number of people that have fluke permits from a little over 900 to a little over 100, so we've done that already. We will use our increased share to avoid periods of time in the summer when we have a 50-pound limit and people are having to throw a lot of fish overboard.

That may mean that we simply fish at 150 or 200 pounds longer through the season so that we don't have these massive discards. It's a valid point, and the only thing I can't say is I don't know how other states are going to deal with this, but I know that was one of the principal intents of the addendum is to address that point.

And since you did ask another couple of questions about the process that I'm proposing, let me just answer those. You're quite right, this is a slight deviation. It's 20,000 pounds out of 1.3 million. I tried to do that long division by hand, and I got bogged down in all the zeros, but it's something like .00-maybe-another-05-or-6.

It's a very, very small adjustment from 4A. Option 4A is basically this alternative with a 20,000 pound change, so we should not feel for a moment that this is a major change in something and it was not taken out to hearing. This is fine-scale adjustment of on the order of 20,000 pounds out of over a million.

And the other point is let's be fair here. We change our plans after getting public comment all the time. That's what we're supposed to do. We get public comment; we review it. We think about it and we try and find a solution that accommodates as

many interests as possible.

That's exactly what we've tried to do here is have a solution with the least pain for the states with the large quota shares, still achieve the objectives of the addendum; and with that 20,000 pound adjustment, try and resolve the issue in Maine and the issue in Delaware. It's not a major change and it isn't something that didn't go to public hearing. Option 4A was obviously out there in the public document. Thank you.

CHAIRMAN FREEMAN: Let me just indicate that my feeling is to allow this motion to stand, whether it's voted up or down. My opinion is based on Option 2 where we talk about the nine equal shares, and they include Rhode Island – well, includes the states we were talking about from North Carolina through Massachusetts. It also includes Delaware, Maine and New Hampshire.

Now there is a different ratio provided. It would be divided nine ways, but those states were indicated in the public hearing. My feeling is that Connecticut's proposal is a modification. It actually reduces the amount that Delaware, Maine and New Hampshire would be offered on these alternatives. Tom Fote.

MR. FOTE: Mr. Chairman, I'm looking at the number of people that attended these public hearings, and I can't get a consensus of what came out. When I only get nine people in New Jersey, nine commercial fishermen to basically show up to a hearing, either the hearing didn't have enough notice or the public wasn't informed enough.

To try to make modifications on quotas that it's going to have an effect on some of these states dramatically on hearings that probably, if I'm looking at the numbers along the coast, Toni, it was about 100 total

that showed up at all the public hearings, somewhere in effect like that.

I can't do this, and I can't change right now. It's too short a period of time. The public wasn't informed enough to show up to the hearings to basically voice their opinions. For that reason **I'd like to offer a substitute motion that we stay at status quo for 2005.**

MR. MARK GIBSON: I'll second.

CHAIRMAN FREEMAN: All right, we have a substitute motion and a second. David Pierce.

DR. PIERCE: Mr. Chairman, I think the proceedings are getting a bit confusing. I thought that the maker of the motion just wanted to add this particular strategy into the mix for us to then -- so the maker of the motion, I guess I misunderstood you then, Eric. This is a motion to actually adopt that specific strategy as? Okay, all right.

MR. SMITH: If I may, let me be clear in the answer to your question. This is Option 4A with a 20,000 pound adjustment. That's the point I made to your earlier comment, that it's a very minor adjustment. I'm proposing this alternative to be the mechanism that we adopt in this addendum. The motion to substitute would clearly say, no, we'll wait another year.

CHAIRMAN FREEMAN: David Pierce.

DR. PIERCE: All right, I don't support the motion to substitute to remain at status quo for 2005 and 2006. We've already had quite a bit of discussion about the need to determine how to deal with the increased amount of quota that we now are faced with as a result of our conservation efforts region wide.

We have a number of options that we brought to public hearing with one or two that are especially attractive to me. Therefore, to stay as is just puts off the needed debate and decision about what to do with the benefits, the success that we've had with fluke rebuilding.

The statement of the problem is very specific, and that's on Page 3. Part of it that hits me hard is the part that I've had to live with for a few years now, and certainly fishermen as well in our area, in the New England area for that matter, and that's as stocks begin to increase above baseline percentages, the availability of fish increases and changes in the distribution of fish are seen.

As the stock distribution widens, fishing grounds that were once absent of fish are abundant with fish of differing sizes and year classes. So to me that's a very compelling argument for our doing something different from the way we have been doing business.

I definitely want us to vote on one of these options and not to go with status quo. I think that's very ill advised. I'll also comment on the other motion, since this is a motion to substitute and we can comment on both at the same time.

The motion that Eric made, again, I understand what he's trying to accomplish, but, frankly, I'm still very uncomfortable with any option that weds a state to some specific strategy that entails reducing bycatch in a specific way and that it can be demonstrated that bycatch is reduced in a specific way, having to report to ASMFC, for example.

Clearly, any amount of increased poundage

that goes to a state should be used creatively by a state to deal with a bycatch problem if it can be identified to reduce discards, and that's something, of course, Massachusetts would do.

I just don't like the idea of being forced to try to figure out how to make it happen in light of the nature of our inshore fishery where it's more of a mixed fishery. I much prefer a simple approach.

I much prefer an approach that doesn't complicate matters, and that would be Option 2A, the base period with the nine shares. I think it gets us away from in particular having to deal with the bycatch and discard issues specifically through a mandate, an ASMFC mandate.

One reason why I feel that way is Table 1 in the document. Table 1 in the document pretends to document actual amounts of discards in 2003 and then discards. It's a good attempt; I understand that.

We had to come up with some numbers, the staff did, and that's what they came up with. But, there is no way I can accept the numbers in that particular table as representative of discards in any of the states, never mind Massachusetts.

Discards estimated from a three-year average of the coast-wide discards from 2001 through 2003, take an average of 8 percent and apply it across all the states -- I mean, what is that? That is not accurate information that I feel comfortable using.

Dead discards as well, a certain percentage is applied to all of the assumed amounts of discards in each state to come up with those different numbers. I have no belief that those numbers are real.

As a consequence I don't like, for example, to have to adopt a strategy that would say to Massachusetts your discards in 2003 and maybe in 2004 are 75,000 pounds, and your discards were approximately 60,000 pounds. I don't believe those numbers.

I would much rather, as a state, make every attempt, working with our industry, to develop strategies that would reduce discards and acknowledge the fact that we now have many more fluke in our waters that are caught in mixed fisheries.

So, that is the reason why I can't support the motion to substitute or the original motion and why I feel that Option 2A makes a great deal of sense, and that's the one that we would support.

CHAIRMAN FREEMAN: Okay, let me go through my list. I had Jack Travelstead and then Mark Gibson.

MR. JACK TRAVELSTEAD: I had some comments to make and some questions to ask, but then the substitute motion was made, and I'm wondering if it's out of order in that we originally had a motion to do X and now we have a motion to not do X.

I think we had learned previously that you can't just make a substitute motion to erase the first motion, so it's your call. I don't know if it applies in this case or not.

But while you're thinking about that, I'll go ahead and make my original remarks that were aimed at the original motion. This addendum is as much about solving a bycatch problem as it is about allocating flounder up and down the Atlantic Coast, particularly for those states that are going to give up quota like Virginia.

Eric offered some explanation of how

Connecticut would use their increase in quota. I think it would be very important to hear from some of the other states, if the original motion were to pass or any of the other alternatives were to pass that resulted in increase in quota in some of the other states, how they might use that additional quota to solve or at least partially solve their bycatch and discard problems.

I think it's extremely important that we get this type of information on the record so that those states that are going to lose quota can at least offer those explanations back home. It's going to be very important for Virginia to hear from some of these other states as to how you're going to make use of that quota.

Right now, based on what Eric has said for Connecticut, Virginia is willing to support that original motion, provided we hear from some of the other states that they have similar plans in mind to start to solve these problems. This is a two-year plan.

I recognize some of the states won't be able to solve all these problems in that short period of time, but Virginia is willing to go forward to experiment with these options, but that would be the end of our support, the end of that two-year period, if we do not see action in some of the states to solve these bycatch problems.

CHAIRMAN FREEMAN: Jack, just from my perspective, a couple things. One, these alternatives that were put into the public hearing document could be implemented for the following year, 2005, or 2005 and '06, so there's a choice there.

If the desire of the board is to move forward it is for a one-year or a two-year period, that we have to decide what we're going to do. Secondly, one of the options, if you look at Option 2, essentially is a reallocation.

There is no attachment necessarily to reduce bycatch. It's only when you get to Options 3 and 4 that they mention a reallocation with a reduction in the bycatch. So, there is a wide array of choices in these various options that we're offering.

I understand your point is that from your perspective, if there is any reallocation, Virginia's position would be to favor one if in fact there were specific criteria set for reducing the bycatch?

MR. TRAVELSTEAD: A follow up. I don't think we're looking for specific criteria at this point that would dictate how a state would address bycatch problems. I think that's got to be an individual state decision as to how they utilize the quota, but clearly it's got to be used in some fashion to solve bycatch.

The other thing, I want to agree with Dave Pierce about the table on Page 7 in the addendum, that if we go forward with this addendum, I would strongly suggest that we take Table 1 out of there.

The figures just aren't believable to me, and in fact they argue that Virginia and North Carolina deserve more quota because they have the largest amount of dead discards.

CHAIRMAN FREEMAN: Yes, Toni.

MS. KERNS: Jack, just to speak on that table, the board asked me to come up with discards on a state-by-state level at the last meeting. And because discards are estimated by the observers and it's done by area, the best way that I could come up with a discard estimate for each state was to just apply the coast-wide discard effort to each state's landings.

That's why it's going to reflect that information. But this is the best that Mark Tesero and I could come up with to give an estimate of state-by-state discards.

CHAIRMAN FREEMAN: Jack, let me address one of the issues you raised, whether in fact the motion is in order. I rule that it is, realizing that Connecticut is asking to add a slight modification to one of the options that was already offered to the public.

The option of status quo was one which was offered in this originally, and the motion offered by New Jersey and then seconded by Rhode Island obviously is diametrically opposed to the one offered by Connecticut.

Nevertheless, it's within the realm of the options given within the public hearing document. Okay, going back to my list, Mark Gibson.

MR. GIBSON: Thank you, Mr. Chairman. Rhode Island is going to support the substitute motion, not because it keeps us in the black in terms of fish. We believe that the allocation issue is a very important one and probably the most important one the commission is going to deal with.

But we believe the process is wrong and that this started at the Policy Board instead of the management board. We believe that the instrument is wrong. It's an addendum dealing with one species exclusively, one fishery. That puts states in a position of weakness.

What I had suggested at another meeting was that all of the allocation issues, all of the equity issues and all of the problems the states have be placed on the table, in essence come with all of your fish on the table, so that if you go home and have given something up, at least you can say to your

fishermen, well, we went down there and we gave something up, but we got something in return.

This process taken to its logical conclusion will never do that. You only have to look at the electronic version of Table 3 and there's black states and there's red states. There's outright losers, outright winners. This will happen every time.

It's reminiscent of what is warned about in the Federalist Papers. The final criticism I have is the rationale is wrong. There is a pervasive argument here that discards are a problem. We have testimony from Chris Moore that discards weren't a problem.

You can see that in that the stock is growing, abundance is growing, age structure is expanding. I object to the whole process, the instrument and the rationale behind it, but we will support the substitute motion.

CHAIRMAN FREEMAN: I had Gil.

MR. POPE: Thank you, Mr. Chairman. Just to add to that, I asked a question today as far as allocation versus discards, landings and so on. I said, well, if you increase the commercial quota, say, by a million pounds, would you decrease the discards by that same million.

I think I was talking to you about that earlier, and you said no, it's a percentage of the landings, so that if you decreased, say, the discards in one state by adding allocation to, say, Connecticut and it comes from another state, then that other state, whether it's Rhode Island or Virginia, necessarily obviously is going to have increased discards because they can no longer land that amount.

Now that's the logic that I see on this, so I

don't see how you can tie the two together just by saying if we transfer it, that it's going to change the discards in one fashion or another.

So, if we could separate these a little bit more and go after these in a different way -- and when I was reading the minutes from the last meeting, because I didn't attend, at the end of the meeting, Gordon Colvin stated that he wasn't sure what are the rules.

That itself could easily be the subject of another addendum, certainly at least another -- we need at least clearly articulated, consistent technical guidelines which we have not readily done as thoroughly as we might have.

I have to totally agree with Gordon on that. We are putting the cart before the horse here. For the last five years, I've been talking about an allocation board to where we set up a standard of principles where all of the fish are guided this way, not just the fluke, but striped bass, scup, all of them so that when you say what was the rationale behind doing this, it wasn't just we felt we were treated unfairly, because the word "fair" has so many other different reasons.

So, the reason that I want to remain status quo, but that doesn't mean that I don't want to do anything, that I don't want to solve the perceived problem in fairness, but I just don't think that this particular vehicle or this particular addendum is the way to go about doing it because it doesn't address the core problem, which is what do we call fair?

And we have to define that as best as we can before we go about just saying, well, we're going to take it from here and put it over there, because that's not fair. That's basically just reallocation. Thank you.

CHAIRMAN FREEMAN: All right, Pres Pate.

MR. PRESTON PATE, JR.: Thank you, Mr. Chairman. I, too, support the substitute motion much on the same arguments that Gil and Mark Gibson have made. It becomes less and less clear to me as we discuss this matter.

I'll read and reread the information that has been given to us to explain these various options, that this isn't an approach to solving the bycatch and discard problem, and it becomes more of an allocation issue.

And, that being the conclusion that I have reached, I have to also argue that this is not the proper mechanism for the reallocation. Mark Gibson's comments were very pertinent to the idea of a much more comprehensive approach to look at all of our allocated fisheries.

Otherwise, the people that lose will never have an opportunity to gain anything back in the other fisheries because, quite frankly, in most of those cases, the winners will outweigh the donors.

We talk about ecosystem management a lot with regards to predator-prey relationships, and I submit to you the same principle exists in looking at the allocation of the various species. We have to consider state fisheries in their total context and not species by species.

I'm honestly not comfortable with the idea of going forward with this with the approval of anything other than the substitute motion unless there are some very specific measures that, like the transfers, will also be compliance measures that are adhered to by the recipient states for reducing their discards.

CHAIRMAN FREEMAN: Other comments? Harry.

MR. MEARS: Mr. Chairman, I think this discussion and the upcoming vote would benefit by a clear clarification of what you see as the ultimate outcome of this meeting today.

Is it in fact to approve Addendum XV or is it rather to approve a preferred alternative to take to a joint process with the Mid-Atlantic Council to go forward together as they do Amendment 14 to their plan and as we work toward finalization of Addendum XV to our plan? I'm unclear what the expectation is of this discussion when we conclude here today.

CHAIRMAN FREEMAN: Well, I can't answer that, Harry. It's really a decision by the board, but, hopefully we'll get the answer to that. Other comments by board members? Tom.

MR. FOTE: I'm just going to agree with Gil, Mark, and what Preston said. I mean, when I looked at this discussion, when we talked about this at the Policy Board, we talked about dealing with a bunch of issues, scup, sea bass, even looking at groundfish, and none of that has been addressed here.

And to tell me that this is going to reduce bycatch by giving a couple thousand pounds or ten or fifteen, it is not going to do that. As somebody pointed out, they'll just basically have the same bycatch it had before unless it can be proven to me that would reduce bycatch.

Also, when I basically looked at 15,000 pounds for a hook-and-line fishery, we have a hook-and-line fishery that we take out of the commercial quota in New Jersey. That's

the way we handled it.

They come under the same responsibility of the commercial fisherman, and there is less bycatch in their fishery. I mean, I couldn't justify that because we already took it out of our commercial quota to establish that. Most of the people have dropped out because or the paperwork involved is so difficult that they quit it.

CHAIRMAN FREEMAN: Pete Jensen.

MR. W. PETE JENSEN: We're going to vote against the substitute motion. I don't think that we came all of this way and evaluated all of these alternatives if we didn't think there was some good, strong reasons out there for addressing bycatch and equity.

I understand the argument of states that think they're losing something. In fact, everybody gains, but let me give you a little different perspective. It's a little bit difficult to go home and talk to fishermen that have paid the price of reductions over the years, and then to look at a state that is getting a 1,400,000 pounds increase under status quo and our state gets maybe 30,000 pounds.

I know everybody has their own perspective, but I think we've come far enough that we need to make the decision on the alternative and move on with it. Status quo I don't think was really intended here when we went through all of these alternatives.

CHAIRMAN FREEMAN: Pres.

MR. PATE: Thank you, Mr. Chairman. Pete has just given a very good example of how this is not a bycatch issue, and it's clearly reallocation by the testimony given by his own fishermen. They don't have a discard problem in Maryland because

they're an ITQ-based fishery.

That supports my argument earlier. We're riding the wrong vehicle here to address discards when it's becoming more and more clear to me, with statements like that, that it's an allocation issue.

It needs to be considered in the context of allocations of all species, because I can assure you were we talking about striped bass, I could probably make the same argument that Pete just made and the reverse would be true.

CHAIRMAN FREEMAN: Other comments? Eric.

MR. SMITH: I actually agree with the comment that Gil and Mark Gibson and Tom Fote made, that I think we need a larger look at how we deal with this whole thorny allocation problem as a commission. I endorsed that in August as well.

I don't think the two things are mutually exclusive, though. The ideal thing I like about this addendum -- and it was one of the things we said right at the outset at the Policy Board meeting in August -- is that it's temporary.

It is a year or its two years. What I view that to be is a model or a trial-and-error learning period to see just what it means when we do this in one of our commission plans that has been built for a long time on history-based shares.

We're going to need to know how these things work as we scope Amendment 14 of the joint plan and as we get down the road and maybe talk about scup and other things.

To me, the advantage here is we try this; and if it doesn't work, as Jack Travelstead

pointed out, if it doesn't work to his satisfaction after the time definite, that's the end of it for him. That's the end of his support.

You stop and rethink and you say, well, okay, it didn't work the way I thought it should. This has a lot of attractive features. And to Pres' last point, if you think back to the problem statement in the plan, I was asked about the discard issue and that's what I answered.

There are other parts of the problem statement in the addendum that talk about states' feelings about the whole system. So, this addendum tries to accomplish a couple of things. It tries to do it in a temporary basis.

It doesn't get in the way of establishing that longer-range, more holistic process that Rhode Island talked about. I endorse that, but I also endorse the main motion so I have to oppose the substitute. Thank you.

CHAIRMAN FREEMAN: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I must have read this paper the wrong way if we're talking about Addendum XV. It appears to me on Page 3, as Toni described the statement of the problem, in the paragraph above that, it specifically and clearly states this addendum establishes an allocation program for the increase in commercial total allowable landings in the summer flounder fishery in 2005 or 2005-2006.

I don't see bycatch in there at all. The board and industry members developed options to this addendum. Two industry members each, from Massachusetts and North Carolina, were asked to participate and so on and so on and so on.

Then we go on down a little further, and it says the differences of opinion exist among commercial fishermen concerning quota allocations. So far I haven't seen bycatch yet.

But toward the end it says, as the stock distribution widens, fishing grounds that were once absent of fish are abundant with fish of differing sizes and year classes.

States are now beginning to see a population of summer flounder that can support a limited, directed fishery -- I still don't see anything about bycatch yet, until I get to the next part -- yet their quota allocations will only support bycatch levels of fishing throughout much of the year, resulting in persistently -- top of Page 4 -- high levels of regulatory discards.

Recent discussions have highlighted the increase in quota as an opportunity to address allocation and discards issues. Now in my mind, the discard we're talking about are those folks who are out there fishing in a limited situation discarding an awful lot of fish.

I don't see where, as it's been described, it's going to do anything other than what the effort that the staff, technical committee, advisory panel, and the board have asked Toni Kerns to do.

It appears that the response has been something different than what we're looking for in an outcome. It further goes on to say the industry workshop -- I don't have to read it word for word -- identified commercial discards as a major problem in the summer flounder fishery. Industry members found discard data is not, and it goes on and on and on.

But, you go down to the next paragraph, this addendum has been developed to allow for possible changes in the allocation scheme for the additional commercial quota from 2004-2005, approximately 1.3 million pounds, as well as the additional quota from 2004-2006, which is approximately 1.6.

So, I guess I must have missed it or I read the wrong piece of paper. Quite frankly, I think the approach that Eric has taken is not only in line with what we put out to the public, it may be an aberration of it, but it still gets to the same target and goal.

And it seems to me whenever we get into a tight decision-making position where we have to go back and face our constituents, we kind of say, well, let me take the easy way out. Now there are comments that were made around the table that are very valid. We take heat in New York just like everybody else. We've taken a lot of heat in the last year.

This is a case where the quota is increasing to a point where we have state directors who have agreed to try to come up with a new way of solving and addressing an issue, allowing those states that historically were not catching fish, to give them an opportunity to start landing fish as the fishery expands. So, having said all of that, I would support Eric's motion to go with the new scenario. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: Pres Pate.

MR. PATE: Thank you, Mr. Chairman. Pat is reading the right document. He just didn't read far enough because when you get down into the explanation of the options, it's very clear that it's the intent of these increases to go to the bycatch provisions that the states would ostensibly put into place.

One issue that hasn't been brought up -- and

it relates to or it hasn't been discussed very much -- goes back to the statement that Mark Gibson attributed to Chris Moore, and that is that discards are not a big problem in this fishery.

There has been no technical evaluation by our technical board or the monitoring committee of the council to give any indication whatsoever that the reallocation that's applied to discards is going to have any measurable or appreciable opportunity to improve the status of the stock and enhance the rebuilding schedule that we're on.

It's just another example of how I think we are proceeding with this based on the premise of one argument when in actuality it's nothing more than a simple reallocation of resources among the states.

CHAIRMAN FREEMAN: Okay, Everett, I had you and then Roy Miller.

MR. EVERETT A. PETRONIO, JR.: Thank you, Mr. Chairman. I have learned a few things from Pat in attending these meetings so far, and one of them is that once I finish my comments I'm going to ask that maybe we call this because I think at this point we're kind of going around in a circle.

At the end of the day -- this is one of my very first meetings here, and I can't imagine making a decision of the magnitude that we're talking about, when the meeting schedule is such that I can get no attendees from any of my people that I'm supposed to be representing here today.

This time frame was exceptionally condensed. We have a meeting in Narragansett, Rhode Island, where no one comes. They're not aware of it. Rhode Island and all of the states here are

tremendously impacted by what is going to happen here today.

I'm supporting Mr. Fote's motion because I don't think that you can do this in such a compressed time frame. And then we come here today, and I'm handed a piece of paper, and, well, we're going to make this other little adjustment as well.

I can tell you in my other profession that's absolutely going to get you bounced out of court, so I'm going to ask that perhaps we call this question, and I'm going to support Mr. Fote's motion.

CHAIRMAN FREEMAN: Thank you. We do have several other people who asked to speak, and then I'll go to the audience and we'll decide what we want to do with this. I had Roy Miller.

MR. MILLER: Thank you, Mr. Chairman. I just wanted to clarify a little bit. Although Delaware is appreciative of Eric's efforts to increase our quota to 15,000 pounds, I just wanted to clarify that we have no directed commercial fishery for summer flounder within the state of Delaware.

We have a small bycatch fishery that takes summer flounder in the gill net fishery. We have no commercial hook-and-line fishery to speak of at present because they're bound by the state minimum size limit of 17.5 inches and the four fish a day creel limit.

If we were truly going to have a commercial hook-and-line fishery we would probably need more than 15,000 pounds. In fact, as a de minimis state under the ASMFC plan we're allocated 16,000, so Eric's motion doesn't really change anything in regard to Delaware. I just thought people would want to know that. Thank you.

CHAIRMAN FREEMAN: I had Gordon next.

MR. COLVIN: Thank you, Mr. Chairman. I'm sure it will come as a big surprise to the members of this board to know that I will not support the substitute motion.

At the same time, I don't know if we're going to get into a discussion of this in more detail if the substitute motion does not carry, but let me offer a couple of thoughts on the underlying issues.

Frankly, I disagree with Chris Moore. I think that for years, literally years, trawlers from New York and I think from some other states have come to this board, and they've come to the Mid-Atlantic Council.

They've sat at advisory panel meetings. They've come to the council sessions. They've spoken to their anger and frustration about the discards that they are compelled to make as a result of the small trip limits that are in effect in their states.

They've also made it clear that the BTRs do not show those discards. I think those viewpoints are expressed and conveyed in the comments in the summary of the industry, the facilitated industry meeting that took place.

I think my reading of all that is that a group of industry leaders conceded that there's a bycatch issue and attempted to come up with some ways of facilitating getting at it.

Now, nobody's going to dance a jig over 75,000 pounds of fluke, not in terms of a reallocation and an addressing of other grievances that have been out there and are on the record for years and years about allocation and not about fixing all the discard problems.

But it's a start. I guess, kind of getting back to where Jack Travelstead was coming from, if this were to go forward, it would give us something to sit down with our fishermen and talk about what can we do with 75,000 pounds to show that we're going to try to make a dent in this to maybe get us another 75 or 100,000 pounds in the succeeding year and keep trying to build momentum to address a problem.

It's the best we can do. But, you know, I don't think anybody is going to get totally excited if I go back to New York and make some phone calls and say, well, guys, we've got another 75,000 pounds. I think they're not going to be dancing on the docks in Montauk, believe me.

It's a start, and that's all it really is. It's tempting to say, well, let's just put this aside then and deal with it in Amendment 14. I could probably agree with that if it weren't for this.

It has been years. These guys from New York and Connecticut and I think Massachusetts, if I recall, have been coming to us for years and years. We had an annual meeting up in Connecticut a while back, followed a few weeks later by a Mid-Atlantic Council joint meeting with this board in Port Jefferson, New York.

I remember a bunch of fishermen coming, sounding off about how angry they were about all this. How many years ago was that? I just don't want to wait another three years for Amendment 14. I think we've got to get started.

And, frankly, the motion that was offered by Eric is a painless enough way for everybody to get started and to try to come up with something that will move us in a

constructive direction. Thank you.

CHAIRMAN FREEMAN: Any other comments from the board? Gil.

MR. POPE: Thank you, Mr. Chairman. I have to disagree with Gordon's last statement there. I don't see it as a start at all. I see it basically as an allocation. I wish it were a start of something.

I wish it were something that I could recognize as a start to try and solve a problem. But just reallocation is going to also reallocate the discard problem from one state to another state.

I don't see any real measures in here or any kind of teeth in here to actually change the amount that's going to be discarded one way or another. It's just going to be shifted from one section to another.

I really would love to have seen us start. I would love to have seen it five years ago, started with some kind of allocation workshop, because that's what this is all about, and just purely a discard workshop and not try and link the two. Thank you.

CHAIRMAN FREEMAN: Okay, we're halfway through our time period and this is only one item on the agenda. What I want to ask for, is there's any additional information we haven't heard either pro or con to this motion from the board, anything new? Tom.

MR. FOTE: Gordon is not saying that it would be an allocation. What I'm looking at is what you're saying to New Jersey fishermen, that you should give up quota and don't worry about addressing your bycatch issues.

If you had told me that every state that basically did a concerted effort and could

prove they could reduce bycatch was rewarded in more of a part of a quota if you did a reduction in your bycatch, that's something different.

That's a reward for something, for action taken. This is not a reward for an action taken. This is strictly an allocation, no matter which way you dress it up, because the states that are giving up are going to still have the same bycatch.

And you're not rewarding them for reducing their bycatch because they're already allocating for somebody else so they can reduce their bycatch. It doesn't make any sense.

CHAIRMAN FREEMAN: Again, any other issues that haven't been raised either pro or con? I think we've been through this. Let me now go to the public. Any comments from the public on this? Greg, would you come forward, please.

MR. GREGORY DiDOMENICO: Thank you, Mr. Chairman, commissioners. My name is Greg DiDomenico. I represent the Garden State Seafood Association. As most of you know, I participated in the industry workshop in Philadelphia.

While I absolutely believe and agree that it was a productive discussion, I will tell you that we could not agree on the two major issues that are being dealt with in this addendum. We could not agree on one option or method by which to address discards.

Now those discards occur outside of the directed fishery for summer flounder. They don't occur in the directed fishery in summer flounder. That was made clear by fishermen from many of the affected states.

As for the issue of changing the current state's quotas, there was no new information or rationale given that would allow me to justify change or to support a change that would change the historical allocation percentages among the states.

I made it perfectly clear on behalf of our organization that the discussions during that meeting would be brought back to my board and fishermen and we'd consider it. But at this time, we do not support any changes. We support status quo.

I spoke with fishermen from Connecticut, from Rhode Island, from Massachusetts. I've spoken, of course, with our fishermen from New Jersey. I've learned a lot about this issue in a very relatively short period of time. I've been forced to.

One of the things I've learned is that I'm convinced that the individual states can implement regulatory measures to deal with these issues.

For example, please consider the actions taken by the state of New Jersey. The state of New Jersey sets 10 percent of their quota, not to exceed 200,000 pounds, to be allocated for bycatch landings. That system works.

Furthermore, according to the proceedings of the summer flounder bycatch and regulatory discards workshop, which is a final report convened by this commission, it recommends currently that a 15 percent bycatch set aside for each state is recommended in the FMP, but states are not required to implement the set aside to be in compliance.

We believe it's this type of approach that should be implemented in all the states and become a regulation of the FMP. But let me

tell you what we do support. We do support some type of scientific analysis that would determine the problem of discards outside the directed fishery.

If in fact a discard problem exists, I know that we'd be more than willing to consider a solution to that problem, perhaps a dedicated coast-wide set aside of summer flounder and an appropriate way to monitor those landings.

I will also like to say that -- and I'm echoing some comments from the states I described before. I've talked to fishermen again from Connecticut, Massachusetts, Rhode Island. Conditions exist in those states that have taken the benefits of a recovering summer flounder fishery away from the historic participants.

There are too many permits in some cases. There are situations where an open access system has exacerbated the problem of low quotas. This is directly from fishermen outside my state. So, again, whatever you do here today, will it benefit the right people, historic participants?

Lastly, I'd like to say that again while there is no option we can support here today, and we request, respectively request, that no action be taken here until there has been a sufficient time for the industry and managers and scientists to sit down and discuss these issues associated with a recovering summer flounder resource.

I believe that would allow us to arrive at some fair solutions that would adequately address these issues associated, again, thank God, with a recovering summer flounder resource. At some point it's a good problem to have, but this is not a solution to it. With saying that, I conclude my comments and will answer any questions. Thank you.

MR. BEAL: Thank you, Greg. The chairman had to step out of the room for a minute so he asked that I take over until he gets back. Are there any other public comments on the motion to substitute? Yes, Sidney.

MR. SIDNEY HOLBROOK: Thank you. My name is Sid Holbrook. I'm from Connecticut, and I work for the Southern New England Fisherman and Lobsterman's Association of Stonington.

And as I was sitting here, I didn't plan on commenting today because I think everything that probably should have been said about this has been said by the members sitting around this table.

But I did want to clarify. I was at that meeting in Philadelphia also. When Greg stated that discards were never referred to as a problem of allocation, I felt it was necessary to say that, yes, it was. It is a question of allocation.

I traveled to Philadelphia with a fisherman that is allowed to catch 50 pounds of fish because of the allocation in Connecticut in the summer. He is what we call an inshore fisherman. With an allocation of 50 pounds, he finds that he is shoveling back off the boat probably double that number because of the allocation.

This is something that we are basically stuck with as a state because of the low allocation we have. I listened to Gordon speak about the meeting in Port Jeff. I was there. At the time I was the Commissioner of the Department of Environmental Protection in the state of Connecticut.

And, yes, there were a lot of angry fishermen there, angry fisherman not only

from Connecticut but New York and Massachusetts. And the question at that time was a question of equity.

The boats from New York, Connecticut, Massachusetts would be out and there would be boats next to them that were loading up and steaming south as the boats from the northeast were forced to go in because of the allocation.

So at that time, the cry was let's establish a coast-wide allocation as far as the resource. Well, it's been a long time since that meeting, and I believe it was some time around 1996 that brings us here today.

So to argue that there hasn't been enough time to discuss this issue or there hasn't been enough input regarding the issue, I don't think really bears merit at this time. We could go on about fairness.

I look around the table, and I guess fairness is how you perceive it to be and how much fish your states gets. You know, I was legislator at one time and I know when I went to the general assembly, I felt it was paramount that I represent the people that elected me and the people that sent me to Hartford.

But once in a while, it was imperative also that I act responsively and I act with the best interests of all those concerned. I would ask that this commission please consider this amendment very seriously, as I'm sure you do, but to support Eric's motion.

It isn't the best we feel as a fishing industry in the state of Connecticut, but I believe it's a good compromise and it's something that we can all live with as a coast-wide group. Thank you.

CHAIRMAN FREEMAN: All right, thank

you, Sid. Any other comments from the public? Greg, do you have something new to add?

MR. DiDOMENICO: Please, Mr. Chairman, don't perceive this and commissioners don't perceive this as a rebuttal. I want to clarify what I said. The gentleman fisherman from Connecticut was a new participant.

He had been in the fishery admittedly for the last five years. And his discard issue is in, I assume, a large mesh fishery. He's fishing for skate. Again, this gets back to the issue of where does the discard problem exist. It doesn't exist in the directed fishery. Thank you.

CHAIRMAN FREEMAN: Okay, any other comments from the public? All right, we've heard the pros and cons. We'll take a vote on the substitute motion. Is there a need for a caucus. Caucus? All right, we'll take a one-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Okay, commissioners please take your seats. Ready for the vote? We'll do this by show of hands. This is on the substitute motion and that reads, "to remain status quo for the 2005-2006" -- I'm assuming it's fishing year. Thomas.

MR. FOTE: I would request a roll call vote, please.

CHAIRMAN FREEMAN: All right, a roll call vote. Okay, Toni.

MS. KERNS: All right, The Commonwealth of Massachusetts.

MASSACHUSETTS: No.

MS. KERNS: The state of Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: No.

MS. KERNS: New York.

NEW YORK: No.

MS. KERNS: New Jersey.

NEW JERSEY: Yes.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland.

MARYLAND: No.

MS. KERNS: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: No.

MS. KERNS: State of Virginia.

VIRGINIA: No.

MS. KERNS: North Carolina.

NORTH CAROLINA: Yes.

MS. KERNS: U. S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN FREEMAN: The tally is four yeses, six no's, two abstention, no null votes. The substitute motion fails.

Okay, we're back to the main motion of adding an additional alternative. Is there any need for further discussion? A. C.

MR. A.C. CARPENTER: I have a question. It says that the remainder of the 2005 and/or the 2006 commercial quota be increased. Is this motion a one-year or a two-year motion?

CHAIRMAN FREEMAN: This motion is to include this along with the other motions.

MR. CARPENTER: It says a motion to adopt an adjusted alternative.

CHAIRMAN FREEMAN: It's to adopt it as an alternative amongst others.

MR. CARPENTER: No.

CHAIRMAN FREEMAN: I'm sorry, was that meant to be the --

MR. SMITH: Mr. Chairman, yes, I had said that before in clarification. I thought everybody understood that. What I said in response to the question was this would be the alternative that we would adopt in this addendum and A.C.'s question is quite right, '05 or '05-'06, but that's a question to be answered perhaps in a subsequent motion to tease that apart.

If you would like it in this motion, I could do that, but I think it's more important to pass the motion we've debated and then deal with that issue as an either/or afterwards.

CHAIRMAN FREEMAN: All right, to answer your question, then, A.C., if this passes, it's going to take an additional action, to answer your question.

CHAIRMAN FREEMAN: Gil.

MR. POPE: Thank you, Mr. Chairman. Will this go out to public comment since it is a change?

CHAIRMAN FREEMAN: My understanding is no. If this passed, this would be what the board essentially would approve.

MR. SMITH: I agree, Mr. Chairman, and that's my intent. And, frankly, if you think back over the history of the actions we've taken, probably every single plan we've ever adopted, we've adjusted at the final meeting after getting public comment. There is no reason to think that this one alone for much a minor change would have to go for further public comment. Thank you.

CHAIRMAN FREEMAN: Harry.

MR. MEARS: Mr. Chairman, I have two comments. One has to do with the and/or language. To me that could mean 2005, it could mean 2005 and 2006, or only 2006.

My second point is that out of context, the words "as adjusted in the discussion document" has no meaning, because it was a document brought forward on the table here. And in terms of history of this addendum, it doesn't exist unless you look at today's discussion.

MR. BEAL: Well, to Harry's first point, it's true the board will need to take subsequent action to clarify that. And then to the second point, it's up to the folks around the

table whether they feel that they're comfortable with the wording of the motion and they feel that they understand what is intended by the language that is up there and the description that Eric has given on the record of how the remaining quota will be allocated for '05 and/or '06.

CHAIRMAN FREEMAN: Okay, I have Vito and then Tom.

MR. VITO CALOMO: Mr. Chairman, I feel we've danced enough with this. We've spent enough time in deliberations and I feel I'd like to call the question, Mr. Chairman, because I think it's fair and just. Thank you, Mr. Chairman.

CHAIRMAN FREEMAN: All right, we do have other speakers. Tom, you had raised your hand.

MR. FOTE: I haven't commented on this motion. I was commenting on the substitute motion. Now looking at this motion here, I basically am confused. I'm not sure what exactly it means. This is actually in place for the remainder of 2005 and 2006; this is what we would actually have in place.

Then do we have to go to the Mid-Atlantic Council, get them to resolve and join in with us before this can be implemented; or, this would be the quota set up by the Atlantic States Marine Fisheries Commission?

And so what we would have to do now is go out and reallocate for 2005 and change the quotas we had already set up in the August meeting?

CHAIRMAN FREEMAN: Well, that is a good question. Let me ask Bob to try to respond to that. That's some of the comments that the service had early on in their response. Go ahead, Bob.

MR. BEAL: I think to the point or the question of will this go to the Mid-Atlantic Council, my understanding of the answer to that is no it will not.

The way that the document describes the implementation of this motion would be that once the state shares are decided or the allocation system is decided for 2005 and/or 2006, the states that are affected by that change will then go home and initiate transfer of quota as is allowed under the current joint management plan that will be approved by the federal government, assume they would be approved by the federal government.

And that would adjust the federal shares as well as adjusting the state shares, consistent with the language that's in this motion or whatever the alternate allocation scheme ends up approved by this management board.

CHAIRMAN FREEMAN: I had Pres Pate.

MR. PATE: Bruce, just a couple of points of clarification on the procedure since it looks like North Carolina's interests are circling the drain on this issue. I'm not really clear about how the transfer is going to work and how this becomes a compliance measure in the plan.

To whom do we send our quota? North Carolina's largesse is not enough to satisfy the whole demand, so do we divide this up proportionately according to the table that Eric has created?

CHAIRMAN FREEMAN: I'll ask Bob to respond to that.

MR. BEAL: Thank you, Bruce, I think. Pres, I think there's a number of different

ways that the letters could be written that will ultimately get you to the same point.

For example, once we go back and kind of do some spreadsheets and analysis, North Carolina could write one letter to the National Marine Fisheries Service stating that you will be transferring a certain number of pounds to Massachusetts, Connecticut, New York and Maryland and then proportionally an amount to Delaware and Maine.

And the other states that will be the donor states, if you will, will be writing similar letters that will give proportional transfers to those states. So one letter could come from each donor state that would give fish to all the states that are listed up on the board right now. That's one scenario.

Another scenario is that the letters could come from all the donor states and give all the fish to one sort of recipient state. That recipient state could then transfer back out. So there's a lot of different scenarios that could happen.

I think probably the cleanest and the politically neutral way would be that the donor states would write letters transferring a proportional amount of quota to each of the recipient states.

You know, either way it goes, it's probably a pretty significant burden on the Northeast Regional Office to transfer potentially 25 to 30 different transfers. One state is giving fish to five or six different states, and then that will happen five or six times, so it's a pretty significant burden on the regional office to handle all that paperwork.

CHAIRMAN FREEMAN: Let me ask Harry to respond.

SENATOR GEORGE L. GUNTHER: Point of order, Mr. Chairman.

CHAIRMAN FREEMAN: Pardon?

SENATOR GUNTHER: Point of order. I'm sitting here. I'm wondering if Vito actually had moved the question. Do we have a different -- is that not his movement?

CHAIRMAN FREEMAN: Well, I would have to rule it, Doc, relative to this motion there is additional discussion. Obviously, there is a lot of confusion how this is going to actually operate and I think that's being clarified. I don't want to prolong this and we're going to have to move on.

We've already spent two hours so we're going to have to bring this to an end. But there are legitimate questions as to exactly how this will take place, the mechanism, and in fact how the service is going to review this.

Bear in mind, if this action is taken now, it puts us out of phase with the federal plan. I think Harry is going to respond to that so let me ask him to answer that question.

MR. MEARS: Thank you, Mr. Chairman. Yes, it will, to be sure. To be a little bit longer, I can't support this motion, yet I won't vote against it because it's an allocation issue.

But I'll repeat the comments I made earlier, that as written I certainly don't have any comfort factor whatsoever that states should be going back home doing rulemaking on the assumption that the current transfer provisions under the FMP would allow a transfer as we've discussed here today.

At the very least, I believe from my point of view, it's absolutely apparent this needs to

be discussed in concert and in partnership with the Mid-Atlantic Council. Thank you.

CHAIRMAN FREEMAN: Okay, I had Gil and then Gordon.

MR. POPE: Thank you, Mr. Chairman. From my understanding, this is not an allocation issue, this is a discard issue. I would like to -- if this does pass, I would also like to ask the technical committee to give some kind of review as to how much this does lower the discards because that's the reason that we're going down this road. Thank you.

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: Thank you, Mr. Chairman. I believe it was two meetings ago the Mid-Atlantic Council addressed this issue and actually passed a motion recommending that the states, through this board, consider exactly what is proposed by this addendum.

Harry's suggestion that we confer with the Mid-Atlantic Council, maybe there might be some reason to do that for process, but in terms of the Council's intent, that's already been communicated.

CHAIRMAN FREEMAN: Dan, did you have your hand up?

MR. FURLONG: I have in my hand that letter. Yes, we moved that the council and the board support and encourage state directors to transfer commercial fluke quotas in quantities that result in 2005 and 2006 increase being allocated in nine equal shares, so clearly there was an attempt to do something.

I think Harry Mears has it right. In the context of the commission's plan, there are only certain qualifying conditions under

which a transfer should be executed, and that's where the rubber hits the road.

I don't know how that comes about, but certainly the council and the board or the council and the commission support this approach.

CHAIRMAN FREEMAN: All right, we're running low on time, but we have some other issues we have to deal with. Is there anything new and different than what we've discussed already today? Tom.

MR. FOTE: I'm trying to figure out if this is a compliance issue. If my governor does not decide, or acting governor because it is going to be different next week, decides not to sign this letter, then is the National Marine Fisheries Service -- I mean, we can fish in federal waters, are they going to be able to shut down New Jersey because we're in compliance with the federal plan?

All we're doing is we're not transferring. I mean, this is what I'm really -- unless the state really supports this with not buying into it, I don't see where you can make them do it since it's a federal plan. It's going to wind up in the appeal process in the commission anyway if this goes forward.

CHAIRMAN FREEMAN: All right, I stand to be corrected, it is my understanding that this would be a cooperative -- let me say the right word -- a cooperative effort between the states. Pres Pate.

MR. PATE: That's not my understanding. Right from the outset, this has been talked about a compliance issue. This is very, very important that I understand this if this motion passes, believe me. Is it compliance or not?

CHAIRMAN FREEMAN: Okay, we're

going to get an answer from Mr. Beal.

MR. BEAL: To answer Pres' question, if you look on Page 7 of the document under implementation, it reads in order for some of the options in this addendum to take effect in 2005, compliance criterion would be required. All donor states would have to employ a quota transfer provisions of the FMP. So based on that language, it would be a compliance criteria. I'll just leave it at that.

CHAIRMAN FREEMAN: Other comments? Pres, go ahead.

MR. PATE: Does the fact that language was included in this addendum add a compliance measure to the plan, and can that be done by an addendum instead of an amendment?

MR. BEAL: Yes to both of those, Pres.

CHAIRMAN FREEMAN: All right, any other questions? Is there need for a caucus on this. All right, there is a request for a caucus. Two-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: All right, we're going to vote on this motion. We've completed our caucus. **Okay, the motion is move to adopt an adjusted alternative Option 4A with the modification that Massachusetts, Connecticut, New York, and Maryland will each receive 75,000 pounds; Delaware will receive 15,000 pounds; Maine will receive 5,000; New Hampshire will receive 90 pounds. The remainder of the 2005 and/or 2006 commercial quota increase will be allocated using the state shares as adjusted in the discussion document.**

MR. FOTE: Mr. Chairman, request a roll call vote.

CHAIRMAN FREEMAN: All right, there has been a request for a roll call vote and we'll do so. Toni.

MS. KERNS: The Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: The state of Rhode Island.

RHODE ISLAND: No.

MS. KERNS: The state of Connecticut.

CONNECTICUT: Yes.

MS. KERNS: The state of New York.

NEW YORK: Yes.

MS. KERNS: The state of New Jersey.

NEW JERSEY: No.

MS. KERNS: The state of Delaware.

DELAWARE: Yes.

MS. KERNS: The state of Maryland.

MARYLAND: Yes.

MS. KERNS: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. KERNS: The Commonwealth of Virginia.

VIRGINIA: Yes.

MS. KERNS: The state of North Carolina.

NORTH CAROLINA: No.

MS. KERNS: U. S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN FREEMAN: **All right, the vote is seven yeses, three nos, two abstentions and no null votes. The motion carries.** Now the issue of the time period, Eric.

MR. SMITH: Mr. Chairman, I would move that we apply this to both years 2005 and 2006.

CHAIRMAN FREEMAN: All right, there has been a motion for a two-year implementation. Is there a second to that? Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I second that motion.

CHAIRMAN FREEMAN: All right, we have a motion on the floor. Discussion on the motion? Mr. Pate.

MR. PATE: Thank you, Mr. Chairman. I'm going to vote against the motion, because I think there is enough lack of clarity in how it's going to be implemented, what the compliance issues are, what the benefits to the stock are going to be, to not support the idea that we perpetuate this mistake for two

years and at least limit it to one.

CHAIRMAN FREEMAN: All right, Mr. Fote.

MR. FOTE: I can't support this motion. It's going to be interesting to see what happens. This is supposed to be a cooperative group of states working together. It's been interesting listening to the discussion, but this is not cooperation.

It's also going to be interesting to see how the compliance works out on this. This is going to probably make interesting time for attorney generals and for lawyers in states because I can see those letters not coming out.

CHAIRMAN FREEMAN: Other comments on the motion? Is there a need for a caucus on this? No comments. Well, let me ask this. Are there comments from the audience?

I neglected to ask the audience. Is there a need for a caucus? Need for a caucus, anyone? Seeing none, we'll take the vote. Is there a need for a roll call vote on this? Seeing none, we'll just take a hand vote.

All those in favor of the motion to implement the reallocation for 2005 and 2006, please raise your hand; those opposed, same sign; abstentions; and null votes. All right, the motion carries, seven yeses, three nos, two abstentions and no null votes. Okay, the next item on the agenda is the Addendum XVI. Toni.

Addendum XVI

Public Hearing/Comment

MS. KERNES: Thank you, Bruce. I'm going to now go through the public comment for Addendum XVI to the Summer Flounder,

Scup and Black Sea Bass Plan, the delayed implementation management strategies.

Staff is passing out the summary of the public comment to you as well as a copy of the addendum if you have not received it. And again, sorry some of these tables lost the number of attendees.

There were 16 attendees in New York; 1 in Rhode Island; 11 in Maryland; 1 in Virginia; 9 in New Jersey; 15 in total for all of the North Carolina hearings; 10 in Connecticut; and 2 in Massachusetts.

The first issue deals with the minimum notification period for the commission to notify states of necessary management changes. In New York they preferred status quo.

First let me say that several states did not provide specific, definitive pros or cons towards either status quo or one of the options. Many people decided they either wanted to comment later or did not comment at all.

And Issue 2, in New York, which deals with the minimum period for a state to notify the commission of any regulatory changes, they preferred status quo. Issue 3 dealing with the recreational measures for summer flounder, scup and black sea bass, they preferred status quo.

And then Issue 4, which deals with summer flounder overages, having the paybacks defer for going over your quota, they preferred status quo. Issue 4 dealing with summer flounder size limits, they preferred status quo.

Issue 5 dealing with scup overages, they preferred status quo, although one fisherman favored Option 2 to have increasing

payback.

Issue 5 underneath the size limits for scup, they preferred status quo. Issue 5 concerning trip limits for scup, they preferred status quo as well, as well as status quo concerning black sea bass overages.

In New York some of the additional comments came that managers should not make penalties using the MRFSS data. The data is not accurate and should not be used for management. You must fix MRFSS before you do anything.

Paybacks are a violation of the Magnuson-Stevens Act. Maybe we should look at regional measures. They also wanted to know why you would punish a state that makes a change to their measures but does not go over their target or even under their target.

A state should get credit for going under their target. They also felt that you should look at the economic impacts of all the management changes for both recreational and commercial. The trip limit on fluke is so low that it costs more in fuel to catch the fluke than the price you'll get for your fish.

And you cannot take away fishing days from fishermen. There are already so few as it is, and with weather it's just not fair to take away any of the days. They'd like to point out that in several of the states the recreational fishermen saw these penalties as paybacks.

I tried to make it as clear as possible that we weren't making a payback for going over your quota just because you went over your quota. It was just a specific penalty for not following the rules of the federal management plan.

In Rhode Island there were no attendees. In Ocean Pines, Maryland, the fishermen of Maryland were in favor of seeing penalties for states that made changes that were different from the federal management plan in all cases, so they preferred the second option for each of the alternatives.

They felt that penalties could even be harsher so that it would prevent states from making improper changes to the FMP such as having states payback two days for each day they changed their size limit.

They really wanted to make it hurt for the states that violated the FMP. They also felt that in the commercial fishery the poundage that is penalized from one state should be given back to those states that haven't had any of the violations.

In Newport News, Virginia, where there was one attendee, he preferred status quo for all of the payback or penalty implementations. They also wondered if in-season adjustments for the recreational fishermen would be harsher.

Is it possible for the states to choose whether or not they wanted to do an in-season adjustment or a post-season adjustment? They also indicated that they felt that the black sea bass potters should have to bring their gear in at the end of the season.

In New Jersey the fishermen preferred all status quo for all of the delayed implementation measures. Additional comments came in as well. If a state comes in under target and you want to punish them, that should not be allowed.

In-season adjustments cannot be made. The data is not set up for this type of adjustment. The target is not implemented for quota management. You cannot take away quota from a state that the federal management

plan says they can have.

Some of the fishermen believe that conservation equivalency should be in place for all three species. They also believe that if the data collection was in order and useable, they would like to look at some of these options, but until someone puts the effort into fixing the MRFSS data, these options cannot be put on the table.

One of the fishermen could support paybacks for the black sea bass commercial fishery because it could help them from not losing their quota when they're following the federal management plan and other states are not.

But he would only be in favor of this option if the other states that were not violating the federal management plan were given the fish that was taken away from the offending states.

In North Carolina the fishermen preferred all status quo for each of the options except for Issue 3, the recreational summer flounder, scup and black sea bass measures. One fisherman preferred Option 2, to have in-season adjustments, and another fisherman preferred Option 3, to have post-season adjustments.

Additional comment in North Carolina was that you cannot take away fish from the fishermen because of the damage that the managers are doing. You should punish the managers and not the fishermen.

The recreational fishermen should have to pay back just as the commercial fishermen do. North Carolina managers have kept their fisheries following all the rules. Other states need to follow their lead and develop a system that allows their managers to get their jobs done.

In the Connecticut hearings no comments were made on Addendum XVI, and no comments were made in Massachusetts for the record. But the gentlemen that were there agreed that some changes needed to be made to make sure that states complied with the federal management plan.

Additional written comments that were received, the United National Fishermen's Association is opposed to having commercial fishermen payback 1.5 percent of the overages due to the state management mistakes.

This is a reallocation of the quota. The recreational sector should pay back overages the second year, and thus the loss of commercial quota from the TAL would increase in the second year. Flawed management should not harm either sector of the harvesters.

The United National Fishermen's Association also believes that any regulations that go into effect should have to wait 18 to 24 months for both the state and for the commission. They don't feel that an in-season adjustment can be done for the recreational sector until the MRFSS survey is corrected.

The North Boat Captains' Association feels that under Issue 3, the recreational measures, they support status quo. They strongly object to any form of paybacks or any other mechanism that essentially results in paybacks until the MRFSS data collection and processing system is corrected and replaced.

To impose penalties on the recreational fishing industry that has already been severely damaged in New York and other states is not appropriate. Paybacks were

defeated last year at the Alexandria meeting because MRFSS has problems.

They'd like to see the commission implement averaging of the recreational harvest over three years to improve the means of assessing the fish stocks so that the user groups can have faith in the system.

The Recreational Fishing Alliance also sent in comments. They believe that for Option 1, 2, and 3 we should remain status quo because many of the provisions in the document are unnecessary, and many of the provisions in this document are punitive in nature and against recreational fishermen and the associated businesses that support the commission.

They feel that some of the provisions in Addendum XVI could bring public mistrust of fisheries management to an all-time high, and respect for the fisheries management system are already at an all-time low.

They feel that being labeled out of compliance with the federal management plan and facing a federal moratorium on all fishing for summer flounder, scup and black sea bass are sufficient sanctions for states to face.

Lastly, there are comments from the Council for the United Boatmen. For Issues 1, 2, and 3 they support status quo for all issues and oppose any measures that incorporate paybacks or penalties for non-compliance.

In-season and post-season adjustments for non-compliance is unacceptable because advantage determinations for those options are based on the MRFSS data.

It has been stated on record by Dr. Hogarth that MRFSS data is not to be used for quota management and that using MRFSS to impose penalties is baseless and will result

in greater inequities than have already been incurred.

Harry has some further comments on this addendum as well from the National Marine Fisheries Service.

CHAIRMAN FREEMAN: Harry.

MR. MEARS: Thank you, Mr. Chairman. One of our comments had to do with those options dealing with in-season adjustments. We believe it's a stretch that the technical committee would in fact logistically and technically be able to judge what the impacts would be in season of a deviation from required management measures.

On top of that, the proposal to develop a mechanism to allow states to modify their measures based upon available data during the season would likely require enhancements of the existing recreational fishing surveys, as well as full implementation by NOAA Fisheries in cooperation with the states of other data collection that would be necessary such as electronic data reporting.

Again, we feel as though this issue would best be addressed and would most appropriately be addressed in conjunction with development of Amendment 14 through the Mid-Atlantic Council. And, secondly, we had a concern over overages and pay-back proposals to the extent that the pay back was not advocated to be a one-to-one pay back. It was advocated to be a 1.5 times pay back for a certain overage over a certain poundage.

We feel that if there were non-compliance issues reported under the Atlantic Coastal Act, that we'd have a hard time predicating non-compliance measures on the basis of punitive measures rather than those that

were necessary to conserve the resource in question.

These concerns are based upon our initial review. We would have others as the review completed. However, I would stress we are not discouraging consideration of the type of issues that we're addressing today, and we feel as though the time is right to do that but only in conjunction with the joint plan provisions. Thank you.

Action

CHAIRMAN FREEMAN: All right, thank you, Harry. Other comments? Any questions of Toni relative to the public hearings that were held? All right, any action the board wants to take relative to Addendum XVI? David Pierce.

DR. PIERCE: Well, first, Mr. Chairman, I would like a clarification first. In going over the document again, I don't understand why for the minimum size, the size limit options for fluke and for scup, why we have options that relate to paying back overages -- I'm sorry about that -- a state paying no penalties for allowing smaller size limits than required by the FMP.

That indeed is status quo? My understanding always has been that if a state has not implemented the appropriate minimum size limit, then some actions could be taken to rule that state out of compliance.

I thought this was a compliance/non-compliance issue as opposed to somehow getting a state to compensate for what it did or did not do. So my question is, this Option 1 for both of those species, it's appropriately worded, yes or no?

CHAIRMAN FREEMAN: Okay, Toni.

MS. KERNS: David, I'm not sure if I fully

understand your question. Status quo for implementing -- yes, you would be found out of compliance.

DR. PIERCE: Can you give me an example, a statement of the problem relative to these two species and size limits. Where has there been a problem that we have been unable to address with the status quo that we have now?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Well, David, without giving a specific example, the concern is that if a state were to be required to hypothetically increase their minimum size limit by one inch in any given year, and for whatever reason that state is unable or unwilling to implement that increase in minimum size limit and the fishery opens, they fish for a month or two months and the commission may or may not initiate the normal non-compliance finding and forwarding their recommendation to the federal government.

And then after one or two months of fishing or some time period, that state then does come back into compliance and increases their minimum size limit by one inch. During that time when they did fish on the smaller size, they had a competitive advantage over their neighboring states.

The concern and the whole motivation for the development of this addendum is to prevent the states from delaying implementation on the short term, you know, one-two-three months -- time periods short enough to not allow the normal non-compliance process to occur, but long enough for the state to gain a competitive advantage over its neighboring states and the other states that are in the fishery management program.

So, that's the whole motivation for the development of this addendum. There may be some wording problems. There are some other issues that need to be ironed out, but I think the overall reason that this was developed was the short-term non-compliance.

DR. PIERCE: It's this timing, then, it's not an absolute refusal to adopt a minimum size. It's just as you described. Okay, that clarifies it for me. Thank you.

CHAIRMAN FREEMAN: Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. Certainly, I've been one over time who has advocated doing something about delayed implementation, and I really think we need to do something about it.

Let me say at the same time that I'm not ready to make a motion or to vote for a motion to adopt Addendum XVI today. I think what we've got needs work. I think the public comment we got makes that clear. I myself have a lot of comments on the draft.

I'm not going to go through them today. I think whether we do it in the context of Amendment 14, as Harry suggested, or in the context of further development of Addendum XVI, I think we need to address the many issues that are clearly the source of confusion and misunderstanding about what we're trying to do that have come out in the public comment record.

Somehow this thing got tangled up in people's minds with Addendum VIII. That's unfortunate because it really is a different issue. To some degree, we've contributed to that by using the word "payback", which was a hot button issue, so that's part of the problem.

I think the examples need to be made much more tightly framed and scoped to focus on the issue of delay, on delayed implementation, on delayed compliance, so there's no possibility of creating confusion or questions about non-compliance, which this isn't.

I just think it needs more work, and I'm certainly willing to spend time with the staff to offer them my own suggestions. I suspect other people may be as well, but I do think we need to back away from this today, Mr. Chairman, put some more time and effort into it.

CHAIRMAN FREEMAN: Mr. Fote.

MR. FOTE: My concern is if somebody delays by two months and it doesn't really make a difference but we have to put the staff time into basically coming up if it is a difference or not, I don't see that as the productive use of staff time.

You know, I have some questions. I think Gordon is right, we need to basically look at this and fold it into either addendum or the amendment to the plan. It did get confused with paybacks.

People looked at it in the states and I don't think -- that's not the issue we're trying to deal with here. It's a whole, entirely different issue, but I don't think it was clear to the public. I think we need to address that.

CHAIRMAN FREEMAN: Other comments?

MR. JENSEN: Mr. Chairman, if you need a motion to defer action, let's do it and move on. We're running out of time and we need to move on.

CHAIRMAN FREEMAN: Well, what I'm looking for is the opinion of the board as to whether we take action or not on this. Gordon Colvin indicated that it could be addressed, if there is no need to take action at this time, in the next amendment that we'll be working on together with the council, and that was the suggestion I think of the service as well. Is that correct, Harry? It is. Gordon.

MR. COLVIN: Yes, I seem to recall that the chairman and the executive director had communicated a desire to see some action on this. I appreciate that and I understand why. Believe me, I understand why.

But my suggestion is not out of anything other than a recognition of the public comment record suggests this just isn't ready for prime time yet. It needs more work. I don't necessarily think it has to go to Amendment 14, but I'd like to see the staff solicit detailed comments from board members, maybe put forward another iteration of it down the road and we go from there.

CHAIRMAN FREEMAN: Is that the opinion of the board is what Gordon had suggested, have staff go back and redo this, and then take appropriate action as we deem necessary, whether it's an addendum or whether in fact it's blended into the amendment? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I agree with what Mr. Colvin is saying, but it puts us back in the same box as we were -- well, maybe not quite the same box we were in the last couple of years, including what we did in New York to postpone the inevitable with our summer flounder, implementing the bag and season and quota.

The latest document that we put out through the board or through the executive committee, will that control to any better degree the states from doing what we did this last year until we get a document like this in place?

Bob, you might have an answer to that. I'm just concerned as we go down through each one of the species again this year, that we find ourselves in a similar situation with some state who believes again that there's either MRFSS or some data or something isn't quite right, and they decide to do something different. Is there anything we have as a stop measure gap to cover that gap until this happens? Bob, can you help me on that.

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Thank you, Mr. Chairman. The only thing that the board can do more efficiently is probably review the status of the state, for example, recreational management measures, earlier in the year than they have been in the past.

The time line of developing recreational management measures in December and then reconsideration of those through the February meeting and then final approval this year I think was in April or May.

That time line sets up a situation where a state can go pretty far along through the year without the board actually reviewing the compliance with the recreational management measures, for example.

So I think the board has every ability and the flexibility now to review recreational management measures and get them set earlier in the year is I think a symptom of the process that is causing this problem.

While I have the microphone, the whole notion of delayed implementation and addenda to address that was approved by the Policy Board, and the Policy Board recommended summer flounder, scup and black sea bass as a pilot program for development of similar addenda across all of the species that the commission manages.

So, Gordon's comment that this isn't ready for prime time probably means that this pilot program needs to be worked on some more, and you've got to get this one right if we expect to get the other twenty-some species that the commission manages, to get those right.

So, the chair and the executive director were urging this board to move quickly on this, but obviously they want to see the product done right and make sure the pilot program can be applied to the other species.

MR. AUGUSTINE: A response, Mr. Chairman. So I guess from what you said, Bob, we will task the staff to assure that as the commitments for regulations that the states want to implement come in, that they will be addressed in a relatively short period of time to highlight any discrepancies or any changes?

MR. BEAL: Yes, that's the most efficient way to do it, and the very next agenda item is the consideration of doing business a little bit differently for 2005 for the recreational fishery.

And, the board, if they can, should move that along as quickly as possible through the public process and through the approval process, so that the states know as early in 2005 or preferably by the end of this year what they're going to have to do for their '05 recreational fishery.

CHAIRMAN FREEMAN: All right, Harry.

MR. MEARS: Mr. Chairman, just picking up some comments Mr. Beal just made, it is apparent that a lot of the reason we're being faced with Addendum XVI is because of implementation time frames and what the impacts have been across the board of not being able to accommodate those in the past.

Yet at the same time Framework 2 is very clear in terms of the time. It anticipated what the impact of delayed implementation would be, and it sets out a fairly clear schedule in terms of months and activities that would have to occur for the fishery to occur smoothly and in an effective manner.

If I remember, last year part of our dilemma was the inability to hold a board meeting in the early months following the December monitoring committee that is coordinated with the Mid-Atlantic Council in developing recreational fishery specs.

And if this board, while it works on Addendum XVI, tried to maintain or at least on a pilot basis try to see if we can in fact follow the time line in Framework 2, a lot of the problem we're discussing here today could in fact be alleviated. Thank you.

CHAIRMAN FREEMAN: Other comments? All right, it appears to me that the board wants to continue dealing with this issue but has made no recommendation at the present time. What I'll do is direct the commission staff to contact each of the states to better describe issues in Addendum XVI and then raise these at the joint commission-council meeting early next year. Is that reasonable from the board's perspective? Any objection to that? All right, we'll move in that direction.

Now one other issue I need to ask Toni that

under our existing system, states are required to submit copies of the regulation to the commission staff. I think that's somewhere June or July of a year. So I'll ask Toni, what is that date for summer flounder, and can we change that?

MS. KERNS: This year we moved that date to, I believe it was May 7th for summer flounder, scup and black sea bass for the recreational measures. We can change that to earlier in the year.

I can look at the calendar and see how the meeting schedule is and then what would work best for that so that the states would all have equitable time to bring back their regulations to their state, have their public hearings that need to be taken, and then regulations will be in to me.

CHAIRMAN FREEMAN: All right, is there any objection from any of the board members that we ask staff to review that and then make a recommendation if there needs to be adjustment for the future years? Seeing no objection, we'll do that. Okay, any other action necessary on Addendums? Gordon.

MR. COLVIN: Mr. Chairman, I just want to offer a personal comment and observation on one possible interpretation of some of the public comments on this matter. It's something that concerns me, and it may be something that other members of the board may want to think about.

It almost seems that part of what we're hearing in the public comment is a desire being expressed in some way, shape or form on the part of major parts of our constituency that compliance isn't that important. Because if it were, then there would be a strong belief in it and a belief that the playing field needed to be level.

But it almost seems that what I'm seeing in a lot of this comment over and over again is that it's not important, and that it's not important to hold other states accountable, because in the long run then we don't have to be accountable. I'm very concerned about that. I think that's something that the board and the commission needs to give some thought to.

CHAIRMAN FREEMAN: All right, I think it's a good comment. Any further comments? All right, seeing none, we'll move on. Summer recreational management, Item Number 6, Toni.

Summer Flounder Recreational Management

MS. KERNS: Thank you, Bruce. At the last board meeting the board asked me to put together a document looking at the potential to have regional summer flounder recreational management measures.

So, with the input from some of the board members, I've drafted Addendum XVII to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan.

If this were to be adopted as an addendum, then we would bring this out to potential public comment in November and then vote on this, so we would be able to implement it in the 2005 fishery at the joint meeting that we have with the Mid-Atlantic Council in December.

The purpose of this addendum is to establish a program where the management board could subdivide the recreational coast-wide allocation. This addendum has come forward due to concerns from the managers in the summer flounder fishery.

In 1999 the board adopted regulations that allowed for state-by-state summer flounder recreational management measures due to the reasons of the coast-wide measure was being fished excessively and several overages were occurring.

Since state-by-state management has been put in place, overages have still continued to go over, have occurred and some states have had to take reductions as high as 48 percent in the following year's fishery.

The MRFSS data used to set the specific conservation equivalent measures produces more variable results when it's used on a state-by-state basis. As the coverage area increases, the variability of this data decreases; therefore, adopting regional or coast-wide approaches would give more credibility to the MRFSS data.

There has also been concern, when adopting state-specific conservation measures, that water bodies fished on by more than one state that have multiple regulations becomes confusing for the fishermen.

Regional approaches to the summer flounder management plan could potentially minimize differences in adjacent states fishing on the same water bodies.

The first option in this addendum would be to remain status quo. The board and council would continue to be able to specify either coast-wide measures or state-by-state conservation equivalent measures to achieve a recreational harvest agreed upon by both bodies.

Option 2 is to have two regions, one a northern region, including the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware,

Maryland, Virginia; and the second region would be just North Carolina.

In order for North Carolina to have their own region, a conservation program for all flounders must be developed by the state and approved by the technical committee. This would be true for all options in this addendum that give North Carolina their own region.

Region-specific tables would be developed by the technical committee and would be used to determine which possession, size, and closed seasons would constrain the recreational landings to the region and to account for past effectiveness of regulations.

The states within the region would choose a specific size, possession and closed season that would constrain landings to the appropriate level. There would be no conservation equivalency within the region.

If this alternative were chosen, the regions would not be allowed to implement measures by mode unless the percent standard error of the mode or area for that region is less than 30 percent.

Option 3 would again divide into two regions. This time the northern region would contain Massachusetts, Rhode Island, Connecticut, New Jersey, New York, Delaware. The southern region would contain Maryland, Virginia, and North Carolina.

Again, the same standards would apply that the region-specific tables would be implemented or developed by the technical committee and then the region would implement a specific size, bag and season for the region and conservation equivalency would not be allowed within the region. And, again, if you were to split by mode,

you would have to have a percent standard error of 30 percent for that region.

Under Option 4 we would divide into three regions. The northern region would contain Massachusetts and Rhode Island. The mid-region would contain Connecticut, New York, New Jersey, Delaware. The southern region would have Maryland, Virginia and North Carolina.

Again the tables would be developed by the technical committee. There would be no conservation equivalency within the region. And if you were to split by mode, then you would have to have a 30 percent standard error.

Option 5 divides into three regions as well. The northern region contains Massachusetts and Rhode Island. The southern region contains Connecticut, New York, New Jersey, Delaware, Maryland and Virginia.

The third region would contain North Carolina alone. And, again, they would have to have a conservation program for all flounders that was developed by the state and approved by the technical committee.

And again the TC would set up tables for the region and then decide for a specific size, bag, and season within that region and no conservation equivalency would be allowed. If we were to split by mode, you would have to have a 30 percent standard error.

The last option, Option 6, under this alternative, they would be divided into four regions. The northern region contains Massachusetts and Rhode Island. The mid-region contains Connecticut, New York, New Jersey, and Delaware. The southern region contains just Maryland and Virginia. There is a typo. You should cross out North Carolina in that.

And the last region would contain North Carolina alone. In order for North Carolina to have their own region, again they would have to develop a conservation program for the flounders.

Again region-specific tables would be developed by the technical committee. The region would then choose a size, bag, and season. No conservation equivalency would be permitted within the region, and the percent standard error would have to be less than 30 percent to achieve a modal split. Are there any questions of me on this addendum?

CHAIRMAN FREEMAN: Questions? Gil.

MR. POPE: I don't know if this is the proper place to talk about it, but in this addendum is there any way that we could have a discussion on going back to using numbers of fish versus pounds to try and lower some of the PSE numbers?

Because, a PSE of 30, if you're going to talk about using one or two states, the MRFSS data is definitely going to get worse as you do that.

Part of the problem that we've had with the management of summer flounder, especially in the recreational part of it, was the fact that we convert back into pounds once we do the numbers and the F values; and therefore when you convert back into pounds, you're using just one more calculation that could have error.

I don't know if this is the place, but I've always been looking forward to the time when we could get away from pounds and all of the problems that has created up and down with all the different size limits. You know, one state has as much as a two- or

three-inch size limit differential from the state next to it.

So what I'm trying to do is lower this error and make it easier for the recreational community to do -- for us to do the job for them and not make them feel like we're punishing them for anything and using words like "they abuse the process" is something that I'm hoping we will get away from as well.

So, I don't know if this is the spot to do that and I don't know how the board feels about that, but I've always wanted to talk about going back that direction. Thank you.

CHAIRMAN FREEMAN: I had Tom next and then A.C.

MR. FOTE: My problem with looking through -- well, there's a couple of problems. One began with basing this on MRFSS. And when I'm looking at MRFSS -- and that's what we're stuck with right now. It's the only process we have.

If we look that we have four states lumped in, three states went under and one state went over, now all the other four states will get penalized, and it's going to be interesting to see how that works out. Right now you know you're responsible for coming into compliance with your individual state.

The other thing I'm looking at if we basically -- we really have to group these states and what's going that way by what the seasons are, because we're going to wind up then in fights over seasons.

As a matter of fact in New Jersey it's hard enough to get an agreement between Cape May and North Jersey, Raritan Bay, how do we open -- when do we open the season, what's the best advantage?

Now we're going to be getting four states in a grouping and the fish are south at certain periods. The fish aren't up north in certain periods. How do we come with a season that basically addresses those problems for the state so that we don't advantage one state over another or disadvantage?

You know, these are things that are just running through my mind as I'm looking at this. I remember years ago when we did striped bass and we divided between the north -- and we set up a northern region and a southern region.

And one of the states basically shut down their fishery during certain periods of time. The tables were based on it, which really had no consequences because they never had any fish, but they basically relied on the other three states in there because that's when they did have fish.

And that can't be allowed to happen here. So, you know, it's going to be interesting to see how we can try to go through this process to come up with a regional. I mean, when we had one size limit fits all coastwide, and that's what we went to every year, certain states got disadvantaged over the period of time that we've started up all these state-by-state quotas, and they have never gotten that back.

I'm not sure, I'm just trying to think through some of the problems. And one of the I guess most serious problems I have is how do you address seasons, because that's going to be the real sticking point.

CHAIRMAN FREEMAN: Okay, I have A.C.

MR. CARPENTER: Thank you, Mr. Chairman. PRFC was not listed in any

region, but I was grateful to see that Maryland and Virginia were consistently in whatever options that were chosen, so I'm assuming that we would fall between.

But, if this comes down to a regional issue and I'm assuming the region is then going to have to pick and choose options, is there any thinking here as to will that be a majority vote of the region that would be used to implement, and would the PRFC be involved in that? I feel like we should be.

CHAIRMAN FREEMAN: Good question, A.C. I'm not sure we have the answer for that, but we'll work on that. Staff doesn't have an answer, but obviously we'll have to make that consideration. You'll definitely be part of the process. Mark.

MR. GIBSON: I absolutely support some regionalization approach going forward to resolve some of these thorny issues that evolve around using MRFSS data by state.

However, in order to evaluate any of these options, I'd need some strong technical information on things like distribution of catches within season, size composition of catches, independent abundance levels of fish.

You know, we're not going to be able to have a sense of whether these groupings make any sense without some supporting information to get at some of the issues that Tom was raising earlier, like the appropriateness of seasons, size limits and so on.

CHAIRMAN FREEMAN: All right, Toni.

MS. KERNS: Mark, I am very aware that technical data would be very informative. Due to the time frame of me having to develop this addendum, the TC would not

have time to have done it for this meeting, but I do believe that we would be able to put some data together based on at least through the Wave 4 that we have right now, possibly Wave 5, before the next meeting to support the document.

If the board would like, I can have Dave Simpson give the information that we discussed at our last TC meeting on the effectiveness of putting the regions together versus not putting them -- or putting the states together as a region versus not.

CHAIRMAN FREEMAN: Dave, would you be willing to just briefly address this issue to the board?

MR. DAVID SIMPSON: Well, just generally, I think the idea is to get away from some of the variability inherent in MRFSS survey estimates when you break it down to a state level, and in some cases we try to break it down even below that to within state, within modes.

The more we lump this data together, either spatially or temporally, the more stable the estimates are going to be. I think these high estimates and low estimates and so forth that we live and die by every year, try to minimize some of that by grouping it up by region.

I think Mark had a good point about needing to see any kind of seasonal variability within these regions that might be considered, size composition, and then catch frequency. It's a good idea.

CHAIRMAN FREEMAN: I have Jack Travelstead and then Dave Pierce and Gordon.

MR. TRAVELSTEAD: I actually had the same question that A.C. Carpenter had. It seems to me we've got to have an answer to

that before we go forward with anything like this. It's very difficult just within Virginia to arrive at an agreed-upon bag limit, size limit and season.

Now you're suggesting that we have to get fishermen from Maryland and Potomac River and perhaps North Carolina to all agree on the same measures. That's virtually impossible. I just cannot see that happening.

And to suggest that it's now going to happen amongst the states between Massachusetts and Maryland or Virginia, what are we talking about, little subgroups of new management boards that will try to figure this out? It looks good on paper and it sort of sounds reasonable, but to actually put it to practice, I'm not sure how it will work.

CHAIRMAN FREEMAN: Thank you, Jack, that's encouraging. Harry.

MR. MEARS: Two comments from the point of view of compatibility with federal regulations. One has to do with the question can regional quotas be accommodated under the current joint plan?

This is the first time I've seen the proposed addendum, but we have discussed the topic internally, informally, and certainly it needs a legal review.

I guess I would raise how different is it if states two-by-two or three-by-three come to the table with identical proposals within regions. Is that in fact still construed as a state-by-state approach?

I think the answer possibly could go either way. I think the thornier issue is the implications of having a regional management regime whereby potentially overages in one year in accordance with the

addendum would be subtracted from the region the next year.

Very clearly, the plan does not accommodate regional quotas versus other type approaches where in the past it has been on a state-by-state versus regional-by-regional basis. It's also interesting to note in the very beginning, when Framework 2 did go to scoping and public hearing, regional quotas was in fact an alternative as well sub-regional quotas.

It would be interesting to look at the record of why the ultimate management regime was established on a state-by-state basis.

My final point is just to comment again what we're talking about on a regional basis to me is somewhat similar to what we do with northern shrimp where you have three states get together with a common technical committee, you have a section that kind of recommends the management measures and each state individually goes home and implements them.

I know it's a lot different, but yet there seems to be some similarities with that type of approach. So once again I do think there needs to be some intensive review from a legal perspective whether or not what's envisioned by this addendum would be within the context of the current plan.

I suspect it's not, and I would suspect again that it be very convenient and opportune to combine this with the upcoming full amendment of the Flounder Plan, again in collaboration with the council. Thank you.

CHAIRMAN FREEMAN: Thank you, Harry. Dave Pierce.

DR. PIERCE: Well, I missed the last board meeting in Ronkonkoma. As a

consequence, I must have fallen out of the loop because I was unaware that this addendum was being developed. I assumed that at your last meeting, the last board meeting, the charge was given to the staff to develop this addendum; am I correct?

I have never seen it. Today was the first time I have seen it unless it was on the disk and I missed it, so this is a surprise to me. I must agree with Jack Travelstead that there is a lot of history behind recreational fishing measures for summer flounder. We have spend hours and days, it seems, on this particular issue and this is so ambitious I think it's doomed to fail.

I would much rather do something slightly different, and let's try a pilot study of sorts, and that pilot study would involve scup. We're going to talk about scup, I'm sure, for next year.

We know we would like to have a set of consistent measures between the states that are principally involved in the fishery for scup. I would much rather wait and see what develops with that particular species before we jump into summer flounder and are back with the sorts of discussions we had in '93, '94, '95, '96, '97, '98, year after year, how do you do it?

I'm not prepared to offer up any support for this particular addendum. I don't mind going back home and submitting some comments to staff to help them -- and other states as well, of course to help them improve it, reflect back on what has already transpired, how what has already transpired might affect how we wish to proceed in the future.

I don't mind doing that, but for today our actually approving this addendum for further development, to me it's just premature. I

assume that's your charge or your intent, Mr. Chairman, to have us actually approve this for further work by the staff?

I hope not because, again, I haven't even read it. A presentation was given, and that's fine, but I haven't read it, and I would rather wait and see what develops with scup before we leap into summer flounder.

CHAIRMAN FREEMAN: Other comments? Gordon, I had you on the list.

MR. COLVIN: Thank you, Mr. Chairman. I believe that this addendum grows out of informal discussions that originally took place at the August board meeting in Alexandria. A great deal of it was informal.

I think staff has done an excellent job of beginning to get the ideas that were discussed at that time and have been discussed on and off the record at board meetings since then onto paper. I think what we're getting here today is a progress report. I think that this discussion has brought forward some very good questions that address issues about how regional decisionmaking would occur, incorporating seasons and so forth.

Obviously, the next big step is to look at how the 2004 landings look at the end of the Wave 5 period and to translate that into numbers for the alternatives so we can all see what the different options would look like.

You know our position on continuing to manage on an individual state basis. I'm not going to waste everybody's time by repeating it here today, but if I have to at the next meeting, I will.

This is an approach that addresses those problems or tries to, and it needs to be

considered by the board. It needs to be considered by the commission. And it needs to be considered with scup, too, and I think some of us are looking forward to trying to put something together on that basis.

I don't think it has to be done first and independently. I'd rather be ambitious, frankly. One other point, just remember where we've been. We've only been managing individual state fluke quotas for, what, three years, maybe four. I think it's three.

Before that we had one set of measures coastwide, one. So it wasn't a matter of three states trying to figure out what to do, it was a matter of eight or nine figuring out what to do.

In one respect maybe we went too far from one extreme to the other and now we're looking to come back into the middle a little bit, and I don't see why we can't do that, why that's more difficult than the process was of having everybody with the same size limit and the same creel limit.

I've always felt that the issues and problems that have been pointed out with that have been difficult to understand when all was said and done in that size limits, with the exception of North Carolina, which has an obviously complex issue because of the coincidence of the two flounder fisheries, but outside of North Carolina it seems that the states down south, a couple of them chose to raise size limits much higher than they had been under the old system once we went to state-by-state quotas.

I just think there is reason to believe, based on everything we've observed in the management of this fishery, that a regional approach or even a coast-wide approach again with the possible exception of North

Carolina can work.

I think it's essential that we take a hard look at it. Again, I commend the staff for getting us this far. I think we have a lot more to do before we get to a decision point. I don't think any motion was necessary or intended today, only that the staff would get some feedback. Thank you.

CHAIRMAN FREEMAN: Roy.

MR. MILLER: Thank you, Mr. Chairman. I just want to say I absolutely support the concept of regional management of this resource. I've stated this before, that we have the nonsensical situation, as you're well aware, Mr. Chairman, of neighboring jurisdictions sharing a resource in the Delaware Bay and having a different suite of recreational size limits and creel limits because of the state-by-state approach. It's time we fixed that.

I do support a regional approach. One of our colleagues suggested maybe another option, as yet unlisted, might be to include consistent size and creel limits for shared internal waters like Delaware Bay, Chesapeake Bay; in other words, the three jurisdictions in the Chesapeake system have the same shared regulations.

I don't know whether you would want to also consider Long Island Sound as well, but I think that concept might be -- you might throw that concept into the mix as one that should be discussed. Thank you.

CHAIRMAN FREEMAN: Thank you, Roy. Pete.

MR. JENSEN: I had thought about this a little differently, and maybe I'm just misunderstanding this. But when we originally talked about this, I thought this

was to add another option to the play book. Right now we have coastwide or conservation equivalency.

As I'm understanding this, this now says there won't any longer be coastwide, it will be divvied up by region. But I was thinking that there would still be coastwide, and the choices would be made.

Then there would be a regional choice where the states would simply say we all agree to go with a regional approach or we don't; and if we don't, then the option of conservation equivalency kicks back in.

But the way this reads now is once you have the regions, you can't employ conservation equivalency even if you disagree in the region. I think that's what's throwing this concept for a loop, in my mind, that it should not be an either/or kind of approach, but three options or three choices.

CHAIRMAN FREEMAN: Toni.

MS. KERNS: Pete, it's not meant to say that it's only regional. You should still be able to have the options of coastwide or conservation equivalency. And if that's the way it's reading, then I can adjust that.

CHAIRMAN FREEMAN: So, Peter, relative to your comments, the intent was to give that option, not require it. So, what you're asking for essentially was the intent, but apparently it's not clear.

MR. JENSEN: Okay, well, then I'm misreading or misunderstanding it, and I think maybe some other people around the table are, too.

CHAIRMAN FREEMAN: Right, I mean, it was a good point because obviously you were confused. Other people were as well,

I'm sure. A.C. and then Tom.

MR. CARPENTER: I'll pass for now.

CHAIRMAN FREEMAN: Tom.

MR. FOTE: Let me make sure I'm clear in my mind. When we go out to decide recreational measures on summer flounder for the following year, we will now have three options on the table. One will be regional; one will be state-by-state conservation equivalency; and one will be coastwide. That will be the three options we go.

Then we've got to decide -- first we've got to decide whether we go coastwide, regional, or state-by-state. And then once we've made those decisions, then we can go into the process. Okay, as long as all three are still considered options.

But the only problem then, Pete, when you look at it, is you're going to obviously vote whichever is to your advantage and we're going to wind up in this whole thing and one state or another looking for the advantage in the tables.

CHAIRMAN FREEMAN: Gil.

MR. POPE: Thank you, Mr. Chairman. The other thing that we have to keep in consideration here is I'm not sure if -- there was a court case, I guess it was the year 2000 or so, that compelled us to, in conjunction with the commercial and recreational, there had to be a 50/50 chance that we met a particular F target.

And my question may be to Harry or somebody is that still in effect? And do these measures that we adopt or that we are going to do, do they have to meet some type of standard with the courts still? And that

has to be taken into consideration I think when we do any of this. Thank you.

CHAIRMAN FREEMAN: All right, Jack Travelstead.

MR. TRAVELSTEAD: Just following up with what Pete Jensen and Tom Fote were talking about, would a reasonable option be one that would allow a group of states that did agree on a set of measures, the same set of measures to then be treated as a region, but if there was no agreement, allow those states to continue under conservation equivalency as an individual state?

For instance, if Rhode Island, Connecticut and New York could all agree on a set of measures, then consider those three states as a region, but allow Massachusetts or New Jersey to continue under conservation equivalency. I think the problem is presupposing what regions are going to be able to do this. I think there needs to be some flexibility there.

CHAIRMAN FREEMAN: I think it's an interesting concept, Jack. They looked at it just the opposite, where they're looking at trying to combine similar data in order to get the effectiveness of a larger area and less variation.

But, it seems to me your idea may have considerable merit. Again, it seems like regardless of what we come up with statistically, it's really the agreement of the states whether they want to do it or not.

In your instance, states get together and determine let's do something the same; and we go back, technically can we determine what the allocation can be, and then it's up to you.

If you want to move forward with it, you could, or go back, fall back to state by state

if you want. It seems to me it has considerable appeal and it would overcome some of the concerns people have expressed here. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was going to suggest similar to what Jack did, but in the case where we want to get even more finite, to ask whether it would be possible to eventually look at a state like New York being in two separate regions; and following Jack's thought on it, was in the case where we agreed with our northern neighbors, Connecticut, Rhode Island, Massachusetts, north, and then that could be one group, one region; and then south.

I'm not sure the information is available yet. I've talked about this a couple of years ago and people said it wasn't possible, but to take the south shore, part of the south shore -- we thought Shinacot would be the place -- and then include that if New Jersey and Delaware and maybe Virginia agreed to a second region, whether or not that would be doable.

And so within the context of Option 1, status quo, seeing that we have the two options now, coastwide or state by state, there would be two other options which would even be more convoluted, which would be the regional ones, as we have listed under Option 2, 3, 4, 5 and 6, and then this other sub-option.

So I guess the real question at the end of the day is when all of the dust settles, how much can the technical committee and staff do relative to what Mark Gibson had suggested would have to be identified and fleshed out as information before we could really move forward beyond just the concept and an idea.

Are we talking six months? Are we talking

a year? Is there anything that we could do between here and the beginning of next year or in January? A lot of questions, but maybe you can address a couple of them, Toni. Thank you.

MS. KERNS: Pat, I might have missed some of your questions because Bruce was talking to me. I think the last question was is there anything that you can do to be able to implement these measures for 2005.

To be able to implement these measures for 2005, we would have to make a decision today on whether or not you wanted to move forward with the addendum so it could be brought out for public comment and then final decisions could be made at the next meeting.

Whether or not it would pass muster with the federal government is another story because the Mid-Atlantic Council does not have the ability to use regional measures under Framework 2, so we would be sending this to National Marine Fisheries Service on our own, not with the Mid-Atlantic Council.

It would be their decision on whether or not this was, I guess conservation equivalent would be the word for it. And if not, then I believe then we would default to the default measure, which is one fish at 18 -- or last year it was, and we'll decide on that at the joint meeting with the Mid-Atlantic Council in December.

MR. AUGUSTINE: A follow up with that, Mr. Chairman. Let's see, can we ask Harry to respond, to the best of his ability without boxing him in, as to whether any of these approaches might be doable and are we talking about a framework adjustment to the mid -- or what would you think the steps would have to be in order for us to move forward to progress in this area?

CHAIRMAN FREEMAN: Let me just say, without prolonging this because we're running out of time, is that Harry raised the issue of whether it's legal or not. They haven't done that analysis, so in my opinion before we go any further with this, I mean, it's an interesting discussion, but that aspect has to be taken care of.

If it's not, if there is a problem legally, whether we think it's great or not, unless there is a change in the plan, that's not going to happen. So regardless of what we think we'd like to do, that legal issue needs to be determined by the service and then referred back to us for any action.

Let me just take a few more comments and then I want to just -- again, it appears to me we're going nowhere until this legal issue is determined. I see Dan was in the back jumping up and down.

MR. FURLONG: Often, when we talk about tools in the toolbox, we don't have a tool in the toolbox to do this. Framework 2, as Harry indicated earlier, we did contemplate this as an option, and that was not what the council and that was not what the commission went along with.

Framework 2 came out with the idea that, hey, it's either coast-wide or it's state by state. Now, whether or not you can gather up states into a grouping and say, hey, well, we agree amongst ourselves that we'll adopt this, then it gets to the Harry Mears point about whether or not the agency will look at it and say, yes, we'll look at the sub-region and go forward with it.

But as a council, we don't have that option. When we have our meeting in December, you're going to have a choice. You're going to have a choice to go state by state or you

can take a coast-wide quota, either/or. It's a binary world.

That's where we are with the toolbox Framework 2 provided us. I don't think we could do any kind of change in our plan to accommodate the 2005 fishing season. So, certainly, conceptually this is a great idea, and I think certainly it will be explored in Amendment 14, but in terms of realistically having it implemented through our process, no.

CHAIRMAN FREEMAN: All right, you heard the comments. Let me just take a few more. The hands are up. Lance, you had your hand up and Everett you had yours up.

DR. LANCE STEWART: Not to complicate it further, but if we were looking at regional separation, I see one option that would make biological sense and be much more attuned to sub-population management based on the fluke offshore migration patterns into state waters, and that would be to include Massachusetts, Rhode Island, Connecticut, New York as the northern sector; and then include New Jersey, Maryland, Delaware in the Chesapeake Region as the third sector; and then Virginia and North Carolina, just as units of stock migration or concept of justification of giving regional groupings more credibility.

Do you understand what I'm saying? It's more of a geological and more of a species migrational pattern and grouping and recruitment dependence for this, so that's just an added suggestion. Thanks.

CHAIRMAN FREEMAN: Thank you. I had Everett. And, Gordon, you want to speak.

MR. PETRONIO: Thank you, Mr. Chairman, I'll be very brief. At the time I

raised my hand, I had a very serious concern that now several others have raised that I question whether or not this could possibly be done for the 2005 year. That was where I was going. I don't want to repeat what people have already said. Thank you.

CHAIRMAN FREEMAN: Thank you. Gordon.

MR. COLVIN: I'd like to hold out the notion that it could be done for 2005, notwithstanding what I heard Dan Furlong say, notwithstanding what I've heard Harry say, for this reason.

It seems to me that if the board adopted one of these options and put it into play, under the terms of the framework it amounts to nothing different than selection of the state-by-state option and applying the option of choice among the individual states within each region.

They are not incompatible; and if we want to make it work, I'm quite convinced we can make it work. I don't think that's a reason to not proceed, not at all. There may be reasons not to proceed, but I don't think that's it.

I also wanted to say that I would completely support including the option that Jack Travelstead suggested as an additional option in the proposal. The last thing I'd like to address is the issue of timing.

I think Toni indicated that if we didn't take some action today to proceed to adopt something to go forward, we couldn't do it. I don't agree with that either. I wouldn't ask people to vote on this until there are tables in it that illustrate, based on 2004 landings, what the different options would look like for 2005.

That would be a waste of everybody's time.

I think those tables can be constructed once we get the Wave 5 landings, and we may even be able to look at something at our next meeting, although I understand how tight that will be.

But the fact is that these fisheries don't really start next year until the spring, and they never have, and we can look at this again in January if we need to.

What I'd like to suggest is that perhaps we try to put a discussion draft of this addendum together for the next board meeting with tables that show how the regional -- not necessarily management measures but ups and downs, you know, additions and subtractions would look after we have Wave 5 in them and then people will have a better sense of what they're really talking about. Right now it's kind of interesting to speculate on what they might look like, but we don't know.

CHAIRMAN FREEMAN: I have a few more speakers, then we have to cut this off. We have a time limitation. I have A.C., and then I want to go to the public. Then we need to determine how we want to deal with this.

MR. CARPENTER: Mr. Chairman, I wanted to speak to the timing issue as well. A few moments ago we heard from Bob Beal that if we were making our decision earlier in the year, maybe Addendum -- what is it -- XVI, some of the problems there would have been taken care of.

If we're going to put together tables that evaluate all of these options, I really think that we could spend a moment to eliminate a couple of the options because I really don't think they're the best.

What I'd like to see is I'd like to see an

evaluation of those tables on a July 1 to June 30 year versus a January 1 to December 31 year. And my rationale for that is that if we were to move the calendar six months, rotate it, we could have essentially the same information six months earlier in order to make a decision so that we could plan for the 2005 and '06 and '07 years in a more timely fashion.

And, Gordon, I agree with you that the fishery doesn't start until the spring. The regulatory process that we have to go through to get there starts six months earlier than that. We are constantly put in a position of having a meeting in December, trying to figure out what you're going to do for a season that's going to start just a few months from then, and a regulatory process that takes you that long to get there.

I'm willing to bet, without looking at the tables, that if you take the fishing year and you switch it by just rotating it six months, that the ultimate outcome of those tables aren't going to change, but your timing ability to act on them will. So, that's a plea in my little gray, dim world that I operate in down here. Thank you.

CHAIRMAN FREEMAN: Okay, a couple comments from the audience.

MR. KERSIO: Thank you, Mr. Chairman. First I'd like to thank the commission for moving so quickly on this. Phil Kersio, United Boatmen, New York/New Jersey. I know that this discussion came up rather quickly in the past several months, and I just want to thank you for working so hard on getting some initial proposals together. We support this wholeheartedly. We think that this addresses the major problem with MRFSS, which is the data resolution. It certainly is more appropriate for a regional approach than it is state by state.

I would like to just reiterate a couple of things that I have heard go around already, but just for the sake of driving the points home, certainly, we would need some flexibility with regard to seasons, even within a region.

Even across two or three states, you're going to see differences in when fish show up in certain areas, and we don't want to leave anybody out. Another possibility, we'd like to see flexibility perhaps in size limits as well. I think something like that could be addressed.

Mr. Augustine had suggested bisecting Long Island. We see that as very positive because we see basically two different fisheries being prosecuted on Long Island for the fluke. The North Shore/Long Island Sound Fishery is a completely different fishery than the South Shore.

I think the reason for that is that the habitat is so much different. You have rocky habitat on the North Shore, and you have sandy beaches that then continue down into New Jersey and southerly.

I think that perhaps the habitat issue should be considered when thinking about breaking this fishery up into regional sectors. I would also suggest -- and I also heard this go around -- is that this should also be applied to the scup fishery for similar reasons.

Given the situation in New York this past year, I would urge the commission to move forward on this as quickly as possible, even as early as today. Thank you very much for the opportunity.

CHAIRMAN FREEMAN: Dick, did you have your hand up? Dick Brame.

MR. DICK BRAME: Thank you, Bruce. I'm Dick Brame with the Coastal Conservation Association. I think harkening back to what Mark Gibson said and some of what Mr. Colvin said, it wasn't too long ago we did a coast-wide management measure.

That's really what MRFSS is designed to do is a coast-wide management of the recreational fishery. It seems to me we've kind of gone at it backwards. We're trying to parse out an every smaller piece of the pie in state-by-state management, but still using a broad axe to do it, which is the present MRFSS system.

It may be instructive to this board to go back to your technical committee and ask what level of sampling would be appropriate for state-by-state management or even regional management to get the variability down to where it makes sense.

One of the things I was struck with at the workshop NMFS had on the West Coast in San Diego is there is actually a state that has in-season quota monitoring of a fishery and can close it, I believe within a week using MRFSS.

It's the halibut fishery, but they sample 30 percent of the trips. And for those of you that are not conversant with it, on the East Coast we sample way less than 1 percent of the trips, so it's a matter of how many intercepts we want to have.

I think your technical committee could actually help you with a lot of these questions because they could tell you. I bet they would tell you right now that state-by-state monitoring is probably inappropriate. Thank you.

CHAIRMAN FREEMAN: Okay, back to the board. We're running out of time here.

What is the pleasure of the board on this issue? All right, let me just try to see if I understand the comments.

One is before we move forward with this, there definitely has to be some analysis from the agency's standpoint of the legal issues that are implied, as Harry indicated.

What I would ask, Harry, is that the agency look into this issue relative to several of the proposals that were made in this draft document with a concept as to what is or is not doable. That certainly has to occur parallel with that and report back at the next board meeting.

MR. MEARS: When is our next meeting, Mr. Chairman?

MS. KERNS: December 6th. I'm not sure exactly which day we're meeting with the Mid-Atlantic Council.

CHAIRMAN FREEMAN: Early December.

MS. KERNS: It's December 8th. Thank you, Dan.

CHAIRMAN FREEMAN: At the same time, I would ask that as requested, staff work with the technical committee to see if they could do some analysis as to what several of these -- and I would say let's pick two or three.

I don't want to give the staff a tremendous burden and then just walk away from it, but pick two or three of these and see if they can do an analysis as to what these numbers would look like, keeping in mind a suggestion that Jack had that this would have to be voluntary, the states would have to get together to do this.

It wouldn't be that essentially someone would determine what these regions are and you'd be in it or out. There needs to be cooperation amongst the states whether they wanted to work in conjunction with each other or not.

But at least staff would pick three alternatives and just run the analysis to see what those numbers would look like, give the board a better understanding of how these would work. And then at the December meeting, we could make a determination of how we want to proceed or not. Are there any other comments? Does that seem reasonable? Pete, you had a comment.

MR. JENSEN: Yes, can we add one thing to that? It occurs to me that if states do voluntarily agree on a region and pool the data, then there also may be a reason to believe that prior year data would be just as instructive as current year data.

I don't know that staff can -- how they would do that analysis, but it seems to me that would be worth looking at in the context of what we're talking about.

CHAIRMAN FREEMAN: Good suggestion, Pete. All right, Eric.

MR. SMITH: Did you want to try and pare these down, because I would suggest that we drop two of them and replace them with one and that would get rid of one.

CHAIRMAN FREEMAN: Yes, I would. I think it's unreasonable, Eric, to ask the staff to go through six of these when two or three we definitely think we'll never use.

MR. SMITH: Well, what I would suggest is drop Options 3, 4, and 5 and replace them with the range of states that Dr. Stewart

mentioned, and those were three regions as follows: Massachusetts, Connecticut, Rhode Island, would be one; New York, New Jersey, Delaware and Maryland would be the second; and Virginia and North Carolina would be the third.

CHAIRMAN FREEMAN: All right, any objection to that? All right, we'll do that. Pres.

MR. PATE: We're going to have to stand alone, Bruce. I can't support any other option except to have North Carolina as a separate unit just because of the nature of our fishery.

CHAIRMAN FREEMAN: Okay, but at least one of those other ones, Pres, would include that. There's two other ones that had North Carolina standing alone.

MR. PATE: I thought the one that he described was the only one.

CHAIRMAN FREEMAN: No, I think Eric's suggestion was combine 3, 4, and 5 into one.

MR. PATE: That's fine.

CHAIRMAN FREEMAN: I think 6 has North Carolina by itself and 2, so there were these two other options -- just to get a feel for what could happen or what may happen. All right, Harry.

MR. MEARS: Mr. Chairman, if staff could communicate back to me specifically the three options that are going to be evaluated, that way I can curtail the workload on our end.

And just another clarification, and I'm not sure where we left this discussion-wise. What I heard is that the options as presented

in the draft addendum will stay as they are; whereas, you do not have conservation equivalency among states within any region, that all states have identical measures. Is that correct, because that's very important in the evaluation.

MS. KERNS: That is correct as what reads in the addendum, yes.

CHAIRMAN FREEMAN: Okay, A.C., you had a comment.

MR. CARPENTER: Yes, I just wanted to ask Eric, since he selected to separate Maryland and Virginia, if I can fit between Connecticut and Rhode Island. (Laughter)

Other Business

CHAIRMAN FREEMAN: All right, we'll take that under advisement. Okay, no further discussion, we'll move on. We have a couple other items, one, the scup trip limits. Eric, you brought that issue up. We need to know when we start this and what's the two-week period. Do you want to pick that up?

Scup Trip Limits

MR. SMITH: Yes, thank you, but that's exactly the issue. I couldn't say it any more briefly than that. It's just when do we start the clock. It's kind of like a three-legged race; everybody's got to start at the same time.

CHAIRMAN FREEMAN: January what?

MR. SMITH: Well, what day of the week is that? I mean, how --

MR. AUGUSTINE: Saturday.

CHAIRMAN FREEMAN: Don't we have in the plan the week starts Sunday and ends Saturday?

MR. BEAL: I think the weekly quota reports, they begin on Sunday morning.

MR. SMITH: Sunday through Saturday, I believe.

MR. BEAL: Sunday at 12:01 a.m. and ends Saturday at midnight on Saturday, so I'm not sure.

CHAIRMAN FREEMAN: All right, what I'd do then is ask staff to pick the first week in January, the first Sunday and then send a letter to all states indicating this is when it starts.

MR. BEAL: We will do that.

CHAIRMAN FREEMAN: All right, any objection?

MR. SMITH: Pat Augustine, our resident calendar expert, says January 1st is a Saturday, so January 2nd would be the first Sunday.

Election of Chair

CHAIRMAN FREEMAN: January second. Well, again, what I'll ask Bob to do is send a letter so everybody has it saying this is when it's going to start so there won't be any confusion. If it's the second, it will be the second. Okay, we do need nominations for a chair? This is my last meeting. Gordon.

MR. COLVIN: Mr. Chairman, I nominate Mark Gibson as chairman of the board.

CHAIRMAN FREEMAN: All right, second.

MR. AUGUSTINE: Mr. Chairman, move to close nominations.

CHAIRMAN FREEMAN: Eric will second that. All right, any other nominations? Any other nominations for a chair from the floor?

Seeing none, I close the nominations and by acclamation indicate that Mark will take over as chair. (Applause) Now nominations for vice chair. Eric.

Election of Vice-Chair

MR. SMITH: Mr. Chairman, I would nominate Jack Travelstead.

CHAIRMAN FREEMAN: All right, second. Pat, you're okay now.

MR. AUGUSTINE: Thank you, Mr. Chairman. I second that and move to close nominations and cast one vote.

Advisory Panel Nominations

CHAIRMAN FREEMAN: All right, any other nominations for vice chair? Any other nominations for vice chair? All right, seeing none, we close the nominations and Jack is vice chair. (Applause) Okay, one last item, we have nominations for the advisory panel. I think it's from Massachusetts?

MS. KERNS: North Carolina.

CHAIRMAN FREEMAN: North Carolina, and everyone should have a copy of that. Pres, do you want to make any comments?

MR. PATE: Move for approval.

CHAIRMAN FREEMAN: Okay. All right, it has been moved and seconded by A.C. Any discussion?

MS. KERNS: The individual is a recreational fisherman from North Carolina, Frank Fole. He has been on the Red Drum Management Plan Committee, the Recreational Fishing License Committee, and a member of the North Carolina Northeast Advisory Committee.

CHAIRMAN FREEMAN: All right, without dissent, it's approved. Any other items? Gordon and then Tom.

MR. COLVIN: One item, Mr. Chairman, and this discussion on advisory panel prompts this. I think one of the things we need to think about hard with the Mid-Atlantic Council, as we get on with Amendment 14, is the composition of our advisory panel.

I think one of the very first things we need to turn our attention to is whether we need to expand, modify, adjust, the Fluke Advisory Panel. I know from New York's perspective that we absolutely should be doing that to get the right kind of input from the beginning and to make this a success.

MR. FOTE: It was interesting, we were sitting at the Habitat Committee this morning, and South Carolina was expressing their concern over an event they had on the beaches where basically it was because of an oxygen depletion, they had thousands of flounder being caught along the beaches.

So I asked them the question, "Were they summer flounder or southern flounder?" and they said, they were both, so I want to know how many thousands of summer flounder were landed in South Carolina. If that's an ongoing event, they should be included in the management regime.

CHAIRMAN FREEMAN: Okay, we'll work on that one. Pres.

MR. PATE: Thank you, Mr. Chairman. I just didn't want us to get away without thanking Toni for all the hard work she did between the last board meeting and this one. Holding all those hearings and putting together these documents was quite an effort and I appreciate it.

CHAIRMAN FREEMAN: Yes. (Applause) I'd like to indicate that the two years I've

been chair this has been a real hoot. But the work that staff does, I don't think we really appreciate until you recognize the amount they do. I certainly want to indicate I agree 100 percent with Pres.

They've done a great job. We asked them to do a lot in a very compressed amount of time. They put together quite a bit of information, more than perhaps we even asked for, and we do appreciate that. Other comments? Eric.

MR. SMITH: Very briefly, Mr. Chairman, I didn't want to let you get away without the board expressing its appreciation for your extreme ability to deal with stress under fire. I think we all appreciate it. (Applause)

CHAIRMAN FREEMAN: Well, thank you, and, Mark, you're up. All right, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 6:10 o'clock p.m., November 8, 2004.)