

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

**Approved February 2, 2010**

**Hyatt Regency Hotel  
Newport, Rhode Island  
November 2, 2009**

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8. **Motion to adopt Addendum XX as amended and that the addendum becomes effective at the end of today's meeting** (Page 8). Motion by Bill Adler; second by Pat Augustine. Motion carried (Page 8).
9. **Motion that the plan review team be comprised of the full technical membership plus U.S. Fish and Wildlife Service representative** (Page 12). Motion by Dave Simpson; second by Pat Augustine. Motion carried (Page 12).
10. **Motion that for Winter I there be a 30,000 pound per 14-day landing period with states being required to prohibit landings of scup in other states within the 14-day period** (Page 13). Motion by David Pierce; second by Pat Augustine. Motion failed (Page 15).
11. **Motion to ask the Mid-Atlantic Council to put on their agenda for the December meeting to have a discussion and to ask the Monitoring Committee and the SSC to have a conference call to look at the black sea bass quota for 2010** (Page 17). Motion by Tom Fote; second by Bill Adler. Motion failed (Page 18).
12. **Motion to adjourn by consent** (Page 18).

## ATTENDANCE

### Board Members

David Pierce, MA, proxy for P. Diodati (AA)	Tom O'Connell, MD (AA)
William Adler, MA (GA)	Bill Goldsborough, MD (GA)
Ben Martens, MA, proxy for Rep. Peake (LA)	Bill Windley, MD, Governor's appointee proxy
Mark Gibson, RI (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
David Simpson, CT (AA)	Jack Travelstead, VA, administrative proxy
James Gilmore, NY (AA)	Steve Bowman, VA (AA)
Pat Augustine, NY (GA)	Catherine Davenport, VA (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
Tom McCloy, NJ, proxy for D. Chanda (AC)	Louis Daniel, NC (AA)
Thomas Fote, NJ (GA)	Red Munden, NC, proxy for B. Cole (GA)
Gil Ewing, NJ, proxy for Asm. Albano (LA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Craig Shirey, DE, proxy for P. Emory (AA)	Harry Mears, NMFS
Roy Miller, DE (GA)	Wilson Laney, USFWS
Bernie Pankowski, DE, proxy for Sen. Venables (LA)	A.C. Carpenter, PRFC

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

### Ex-Officio Members

#### Staff

Robert Beal	Toni Kerns
Vince O'Shea	Nichola Meserve

#### Guests

Greg DiDomenico, GSSA	Ken Court, Pt. Judith, RI
Joel Hovanesian, Wakefield, RI	Patricia Kurkul, NOAA
Dan McKiernan, MA DMF	Christopher Brown, Pt. Judith, RI
Jerry Carvalho, RIFA	Gary Shepherd, NMFS
Najih Lazar, RI DFW	

Peter Burns, NMFS

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Maine Fisheries Commission convened in Brenton Hall of the Hyatt Regency Newport Hotel, Newport, Rhode Island, November 2, 2009, and was called to order at 10:45 o'clock a.m. by Chairman A.C. Carpenter.

### **CALL TO ORDER**

CHAIRMAN A.C. CARPENTER: Good morning, ladies and gentlemen. I'm A.C. Carpenter and this is the Summer Flounder, Scup and Black Sea Bass Management Board. There is a roster being passed around or a sign-in sheet being passed around. Please sign in and it does look like we have quorum so there is no need to take a roll call.

### **APPROVAL OF AGENDA**

CHAIRMAN A.C. CARPENTER: The first order of business is the approval of the agenda. I have one item that has been added under other business. It's a discussion of a letter from Dr. Lubchenco. Are there any other items to be brought before the board or any other changes to the agenda? Tom.

MR. THOMAS FOTE: Under that item, once we get the clarification on the letter – that's why I didn't ask for another one – is I'd like to basically at least have a discussion on the black sea bass quota for 2010.

CHAIRMAN CARPENTER: That has been added. Seeing no other changes, the agenda is accepted.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN CARPENTER: We have the approval of the Proceedings from the August 18<sup>th</sup> meeting. Are there any additions, deletions, corrections? Seeing none, we will consider them approved by consensus.

### **PUBLIC COMMENT**

CHAIRMAN CARPENTER: The next item is the public comment period. This is the opportunity for the public to address the board on issues that are not on the agenda. Is there anybody from the public that would like to address the board? I see one hand.

MR. ADAM NOWALSKY: Thank you, Mr. Chairman, good morning. My name is Adam Nowalsky, recreational fisherman from New Jersey. I had public comment I wanted to offer this morning with regards to the letter that was referenced by Mr. Fote as well as the issues with the 2010 quote. If

you'd like, I'll hold that comment until that discussion.

CHAIRMAN CARPENTER: I think that would be more appropriate.

MR. NOWALSKY: Okay, and then also I had a comment with regards to the overages being reported by the MRFSS System for 2009. Seeing that it wasn't an action item on the agenda; again I didn't know if you want to take comment on that issue now or wait until that discussion was had.

CHAIRMAN CARPENTER: Although it is not action item, I'd wait until we had the discussion and after the presentation and the information.

MR. NOWALSKY: Okay, thank you, I'll look forward to offering comment then.

CHAIRMAN CARPENTER: Seeing no other public comment, we'll move on. Item Number 4 is Draft Addendum XX, and Toni Kerns is going to give us a presentation on that.

### **DRAFT ADDENDUM XX OVERVIEW**

MS. TONI KERNS: Staff just passed out a version of the documents for Draft Addendum XX that would be easiest for you all to use that version of the document to follow along today to make sure that we're all using the same page and using the same option numbers. The content is the same, but there is a different reordering of a couple of options.

I'm going to go through the options for this addendum document since this document is a little bit confusing. Some people had questions after the last board meeting. Then once I'm done going through the document, I will give a brief summary of the public comment, and then we can move forward from there.

Today we will be looking at the public comment and then considering options to move forward for final action on this document. This document is for black sea bass and scup commercial management and transferring of the state-by-state portions of the quota. Black sea bass has state-by-state quotas that the commission recognizes, but those state-by-state quotas are not recognized by the National Marine Fisheries Service.

For the scup summer period the commission also puts together state-by-state quotas which are not recognized by the National Marine Fisheries Service.

Because the FMP only has direction for quota transfers when both ASMFC and the National Marine Fisheries Service recognizes those state quotas, this document is considering language to set policies for quota transfers when ASMFC is the only one that recognizes those state quotas.

Our portion of the FMP lacks guidance on these quota transfers. If you go ahead and move to Page 5 of the document, I'll go through the options that are being considered. Section 4.1, this section, if action moves forward in the document, will stay in place unless the board makes changes to it for further notice.

For Section 4.2 and 4.3, these are interim measures. Because the Policy Board is currently having discussions about quota ownership, the disposition of unharvested quota by states and quota transfers, Section 4.2 and 4.3, if options are adopted, would expire at the end of the 2011 fishing year, so that we would not be setting any precedence for that Policy Board discussion.

For Section 4.1, this looks at setting policies and giving guidance for quota transfers. Option 1 is status quo. That would leave with little guidance and policies for quota transfers when ASMFC only recognizes state shares. Option 2 would be to establish policies. A quota transfer could occur up to 45 days after the last day of the fishing season. There is no limit on the amount of transfer that could occur. There would need to be agreement between both states involved in a transfer. Letters would need to be sent to ASMFC for those transfers, including the amount that was being given and accepted.

Section 4.2 looks at automatic reconciliation of quota transfer. Currently, Option 1, the ASMFC plan does not have any language describing automatic reconciliation and would continue to remain silent on this issue. Option 2 would forgive all state-specific overages when the coast-wide quota was not exceeded. This just means that in any given year that we have a coast-wide quota, some states may go under and some states may go over their individual state quotas, but the entire coast-wide quota wasn't exceeded. This would just automatically forgive those states that had overages in that case.

Next is looking at Section 4.3, which is the multi-state reconciliation process. Under this process, this is when the coast-wide quota is exceeded, and there may be some states with underages and other states with overages. Currently Option 1 would be status quo; no guidance or policy set in the FMP for this.

Option 2 would be to have a multi-state reconciliation process. This process would occur prior to March 1<sup>st</sup>. Staff would inform any state with overages and underages, what those amounts are to confirm that they are correct. Then under this if we move forward with the multi-state reconciliation process, the board would need to decide whether or not they would want to automatically pool together those states that had underages to be distributed to states with overages or would those states with underages give permission to the states with overages to use that quota.

So it is either that you're automatically giving away your quota when you have some left over to those states with overages or are you saying, yes, I will give you my quota from Virginia, say; or, no, we wanted to use our quota for conservation so we're not going to give away our quota. Then the second portion of the multi-state reconciliation process is how to distribute that quota that has been pooled together and donate by the states with underages.

Option 1 is a negotiation process where those states that have the overages would work together to decide how to distribute the quota amongst themselves. They would have one week to reach an agreement after they had their initial conference call to decide how to distribute the pooled underages.

If no agreement could be made, then the distribution would default to one of the three options; equal shares, existing allocation shares or equalizing the state percent overage. I'll go through what each of those means now. Option 2, instead of negotiating with each other, you would automatically distribute and pooled underage based on an equal share, so every state would get one pound until either their overage had been met and taken away or until the pooled fish ran out.

Option 3 is an underage redistribution based on your existing state allocation of the quota. If a state had an overage, had 15 percent of the coast-wide quota, then they would get 15 percent of that pooled underage quota that is available to those states with the overages. In all of these options, states can never receive more donated fish than their actual overage.

Then Option 4 is actually a different concept. You're actually redistributing the overages based on equalizing the state's percent overage. For those states that have an overage, you would redistribute that actual overage to try to get everyone's overage to be a similar percent. You would never have to take

on an overage more than what your state actually had.

This is one is sort of the one that everyone has the most problem with, so it might be easier to look at the table that follows, which begins on Page 10. If you had three states with overages, as an example, Massachusetts, Connecticut and New York all with varying percent overages, we would – I’m sorry, it starts on Page 11. If you have three states with overages, Massachusetts, Connecticut and New York, all varying percentages, we would look at the net overage. We would all those states’ overages together and then give a percent share of the net overage.

Then if you move over to Step 2, which is on Page 12, you see that in the end both Massachusetts and Connecticut end up with 5.1 percent of the overage and New York’s overage has completely been taken care of, and so it equalizes Massachusetts and Connecticut and then removes the overage completely from New York. If this document moves forward, then it would become effective immediately today approval of the final document.

## **DRAFT ADDENDUM XX PUBLIC COMMENT**

We had seven public hearings for this document with various attendance. Most of these hearings were multispecies hearings, so for some individuals they weren’t necessarily here for summer flounder, scup and black sea bass. It seemed as though most people just stuck around to see what was going on in the summer flounder, scup and black sea bass fishery. We received no written comments for this document.

For the comments that we did get at the public hearings, we had two people that were in favor of status quo regulations, so not having guidance for setting transfer policies; and one individual that was in favor of setting policies and guidance for transfers. For Section 4.2, which is the automatic reconciliation when the coast-wide is not exceeded, six people were in favor of status quo, so not to automatically reconcile. Two people were in favor of Option 2, to automatically reconcile those states with overages when the coast-wide quota was not exceeded.

Then for Section 4.3, three people were in favor of status quo, to not give guidance on any multi-state reconciliation process. Two people were in favor of any underages from a state would be automatically transferred to a common pool to be redistributed to states with overages. There were no comments on

the distribution process itself and how that should work.

There was one individual that stated that it would better to not give the whole amount of underage that a state had to states with overages; that they should only give 50 percent of their underage to those states with overages. That’s all of the public comment I had on this document. Are there questions on either the public comment or the options themselves?

MR. JAMES GILMORE: Toni, 4.3.1, when you went over the options, there was something different. Your Option 1 I have as Option 2, so did one of them get missed?

MS. KERNS: I said at the beginning of the meeting you should follow along with the document that was passed out because it’s slightly different than what was there. The options were reordered.

MR. THOMAS McCLOY: It’s not really a material comment, but in the information that was provided on the CD listing the public hearings and the comments that were received from the public, you had New Jersey listing the hearing at Tom’s River and it was in Port Republic. They said the comments were accurate but the location was different.

## **DRAFT ADDENDUM XX FINAL APPROVAL**

CHAIRMAN CARPENTER: Thank you. Anything else? I think this brings the issue before the board for final consideration of this particular addendum. Dan McKiernan.

MR. DAN McKIERNAN: If you’d like, I’ll make a series of motions and we’ll take this one at a time and not bundle them; would that be acceptable.

CHAIRMAN CARPENTER: We’ll certainly try. If you have a motion, we’ll take them in order.

MR. McKIERNAN: Sure. **My first motion is under 4.1, state-to-state transfers, to adopt Option 2, to establish policies to govern transfers.**

CHAIRMAN CARPENTER: Is there a second to the motion? Second to the motion from New York, Pat Augustine. The motion is now before the board; is there any discussion on the motion? Any public comment on it? With that, ready we ready to caucus? We’ll have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, we're calling the question on the motion. All in favor raise your right hand; all opposed; any abstentions; any null votes. **The motion carries, nine in favor, no opposition and two abstentions.** You did so well with that one, Dan, do you want to try another one?

MR. McKIERNAN: Sure, **I have another motion; under 4.2, automatic reconciliation, to adopt Option 2, to forgive all states' overages in years when the coast-wide quota was not exceeded.**

CHAIRMAN CARPENTER: Is there a second to the motion? Dave Simpson seconds the motion. Any discussion of the motion? Seeing none, we'll have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Is everybody ready for the vote? All in favor please raise your hand; all opposed; any abstentions; any null votes. **The motion carries seven to two to two.**

MR. McKIERNAN: **I would like to make another motion regarding 4.3, multi-state reconciliation process, to adopt Option 2 and Sub-Option 3A, to allow post-season transfers of quotas to reconcile overages and underages among states.**

CHAIRMAN CARPENTER: Is there a second to the motion? Seconded from New York, Jim Gilmore. Any discussion of the motion? For the record, let me have Toni explain what this motion would do.

MS. KERNS: First the commission would notify whether or not there was an underage or overage – I'm sorry, Sub-Option A, a state notify ASMFC whether or not the underage from their state may be transferred to the common pool and then be redistributed to those states with overages. It would be up to the state whether or not they're going put their underage into the pool. Then, second, that would adopt allowing the multi-state reconciliation process to occur and it would have to take place prior to March 1<sup>st</sup> on each year.

CHAIRMAN CARPENTER: Is there any discussion of the motion? Seeing none we'll have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Are we ready for the vote? All in favor raise your hand; all opposed, same sign; any abstentions; any null votes. **The motion**

**carries nine in favor, no opposition and one abstention.** I think we may have another motion from Dan.

MR. McKIERNAN: Two more. **Under 4.3.1, distribution process, adopt Option 1 and Sub-Option 4B, to give participating states one week after notification from ASMFC to reach agreement to redistribute underages. If unanimous agreement cannot be reached, then redistribution of underages will be done based on existing allocation proportions.** I will comment on that once I get a second.

CHAIRMAN CARPENTER: Do we have a second? Second from Pat Augustine. Any discussion on the motion? Dan.

MR. McKIERNAN: Yes, I just want to point out to the board that this is probably the one issue that generated the most debate within our committee and probably people will always agree to disagree regardless of the outcome. As a state that's in the middle of the totem pole in terms of the relative amounts of allocation that Massachusetts gets, I can tell you from our perspective any outcome would be fine, but we just thought it would be most relevant to maintain the existing allocation shares because for whatever reason they were adopted it is codified, it is part of the permanent record, and it would make the most sense to give back the fish to those states in that same kind of ratio.

If, for instance, the state of Rhode Island has a fishery that's twice as big as ours and we have the same overages, then they would get twice as much of whatever underages would be redistributed should Rhode Island and Massachusetts be the only two states that were going to receive these underages.

I understand Option 4C, the equalizing states' percent overages, is favored by some states, but I find it to be not only confusing but actually difficult to describe according to its title because even in the allocation scheme or the scenarios that we put into the addendum, the fact was one state did have all of its overage forgiven, so it really just becomes a case where two states work to that common percent overage. I just think for administrative reasons it's too complicated to move forward as a final rule. I'll stop there.

MR. DAVID SIMPSON: I'm opposed to the motion because I'm concerned that the sub-allocation option where states with overages – states that have large quota shares have an incentive under this option to go



over quota because they know – Rhode Island, for example, would know that any net underage from the other states, that they would be guaranteed 51 percent of that quota or more – well it would have to be more than 51 percent of the quota, and so there would be an incentive for any state with fairly large shares to in fact go over, where a state with a small allocation would dare not go over because the risk would be too high.

I mean 30,000 pounds of fish is nothing if you have a 300,000 pound quota. It's a lot if you have a 60,000 pound quota. I'm concerned about that a great deal. You have to remember that what we're talking about is overages that occur unintentionally, and so what you're looking to do – this is despite the best efforts of each state to prevent an overage and it occurs anyway.

It's not entirely logical to go back to the original allocation and give all these states relief based on how big they were to begin with. The Sub-Option 4C, based on equalizing state percent overages, I acknowledge that the math is a little more complicated, but that's not for the public to be concerned about. It's not even for the board to be concerned about.

It really is very simple. I think the thing to focus on is the net result, and that is that these inadvertent overages, that every state who had an inadvertent overage ends up with the same amount of overage on a percentage basis. It's analogous to what states are going through with their own budgets these days. A lot of states have furlough days.

What that does is it equalizes on a percentage basis the amount of pain that the highest paid person in the states gets and the lowest paid person in the state gets because it's a percentage of their income. That is a much fairer way to deal with an unintentional overage. It takes away any incentive for a large state to go over.

When you can sit there and know that you have 35 percent, 50 percent of the quota, anyway, there is very little incentive to act in a timely fashion to prevent an overage. There is a little bit of a discrepancy on the last page, on Page 12. The top table, Step 2, shows the actual outcome that would result under the proposed scenario.

Massachusetts that had originally a 21.6 percent overage would end up with a 5.1 percent overage. Connecticut, which initially had a 30 percent overage, would end up with a 5.1 percent overage.

Now, Connecticut's initial allocation was 55,000 pounds; Massachusetts was 377,000 pounds. New York had a 1.9 percent overage and under the proposal would still have 1.9 percent overage.

The bottom-line table for Option 4 deviates a little bit in that this is what we actually did through a negotiated process this past year. We essentially looked at New York's very small overage and said let's just forgive that. Everyone will get something out of this, and Massachusetts and Connecticut will end up with 5.1 percent – it's actually 5.4 percent giving New York no overage.

That was a little variation and in fact might be something that you could do in the major option that Dan suggested, which was the negotiated process. You could look at it and say a state is over 2,000 pounds; give them the 2,000 pounds just as we did last year. So, again, I think this is an issue of fairness. The heart of the whole issue is was the overage unintentional.

I have a motion following this to make sure that states demonstrate that they took decisive quick action to prevent overages before they're eligible to receive the benefit of transfers from states that went under. I'll just point out that last year, yes, Connecticut went over by 30 percent. We went from catching 2-1/2 percent of our quota a week to 25 percent a week with no warning and no reason to think would it happen, and that's why we had this large overage on a percentage basis; you know, 20,000 pounds. When you're managing a very, very small quota, you're in a precarious situation, as many states know. So, that's my reason for opposing it and favoring instead Option C.

MR. MARK GIBSON: I support Dan's motion. I think it's the simplest way to proceed. I hear what Dave Simpson is saying but for the record we're not going to try to game the system based on the knowledge of the outcome of this motion. We have overages and they're clearly a function of mistakes, this year's being included.

We don't have time to think through how to game the system. Frankly, we're having enough trouble just administering the quotas in a timely fashion as it is. I'm not as concerned about that as David is, but I do hear his point. Thank you.

MR. McKIERNAN: I just want to comment on the question of whether there is motive to deliberately fish over your quota. From my perspective and my office, I absolutely don't see it and that's because sea

bass and scup are both fisheries that take place for us in our summer months.

For us to deliberately take more quota than we have, we have no confidence in what the other states' numbers look like, and so we would have egg on our face big time if we ever thought that another state was not to take its quota and then because of some SAFIS glitch all those fish show up at the last minute, we'd have no fishery the following year. I don't see a situation where any state would do that.

I think as a package this is a great package that actually brings a lot more transparency and integrity to the system. In years past we've called the states of New Hampshire and Maine and said, hey, you know, you're probably not going to need that quota because you don't see bass up your way, but under this package, if it's approved, then that underage from those states would get kicked back and all the states would have access to that.

My last point is that if you'll notice we're supporting a distribution process that is negotiated at first. I favor that because I can envision some reasons why we don't want to go to the formula to redistribute the underages. That could be, for instance, a law enforcement case. You know, if Dave called me and said, "Hey, you know, I just got word that we've got a big overage but it's because there was illegal fishing going on that our enforcement branch caught."

That happened to us in Massachusetts. We had a case where we caught one dealer running large amounts of fluke out of state. We fortunately caught it in season and we closed our fishery before anybody ever dreamed of and sooner than anybody could anticipate because if they were monitoring our quota on the website they didn't know what we knew, and we knew there was some illegal activity going on.

If we had a situation where that happened post season; in other words, we didn't find out until after all the numbers were in that we had this terrible illegal overage, then we would have been in a much different situation. I can imagine a state coming forward and saying, "Hey, because of this enforcement case, we have an overage, but it wasn't a quota-monitoring glitch. It was illegal fishing." That gives this negotiated distribution process a chance to work, and so if somebody had that kind of an extraordinary situation it would be resolved by the sister states.

CHAIRMAN CARPENTER: Thank you, Dan. Any other comments? Are we ready for the vote? We will have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, you have the motion before you and I'll call for the vote. All in favor raise your hand; all opposed, same sign; any null votes; any abstentions. **The motion carries with six in favor, three opposed and two abstentions.** Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, one of the issues that did not come up, but now that you've set a timeline of notification, it would be my understanding that you would document this. The way we've done this in the past is with a written notification to the states, a fax to the states. Unless you have some other guidance on that, I would assume that you would want to operate that way to deal with the seven-day time period.

CHAIRMAN CARPENTER: The notification period is in the document, and we assume that you would follow the procedures that you have been using before in trying to carry that out and documenting it.

EXECUTIVE DIRECTOR O'SHEA: Right, I know the seven days is in there, but when does the clock start and how do we notify you; that's all I'm saying.

CHAIRMAN CARPENTER: I think we can leave that to the discretion of the staff. As soon as the data is available, then when the letters go out the states will have seven days to reply to that. Bill Adler.

MR. WILLIAM A. ADLER: I would like to make a motion to accept the addendum as set up there, as amended.

CHAIRMAN CARPENTER: Hold off on that motion just one second; Dave Simpson wanted to add a motion here.

MR. SIMPSON: **I would move that transfer options adopted under Addendum XX apply only when state quota overages are unintentional to receive quota transfer under automatic reconciliation or in a multi-state transfer receiving states must demonstrate to the satisfaction of donor states that a good-faith effort was made to prevent an overage from occurring.**

CHAIRMAN CARPENTER: Do I have a second? Second from Tom McCloy. Any discussion on the motion? Pat Augustine.

MR. PATRICK AUGUSTINE: This is a very difficult motion to deal with. I know the point you're trying to make, David. Who in their right mind would admit that they actually ran over their quota intentionally, and how do you go about proving that in view of the fact that we have all these other stop-gap measures to protect states from being put in a position where they have to make a decision that is arbitrary and capricious by saying okay, you're not over; we'll transfer, and so on. I don't know how you can, in good faith as a state, go out there and tell your people to overfish. This is almost – I would hate to use the expression "overkill", but that is what it comes across to as. I may have difficulty understanding this. If someone could clarify it more, David, I'd appreciate it very much.

CHAIRMAN CARPENTER: Dave, would you like to address that question?

MR. SIMPSON: Sure. The whole point of this addendum is to deal with unintentional, inadvertent, whichever word you want to use, overages. To remove any incentive whatsoever to go over by a little bit – 5 percent of a large quota is more than we get as an annual quota, it's trivial whether it gets compensated or not to a large state – simply what you would do is draft a quick a letter to explain that you had trip limits in place, that you can demonstrate that you were engaged in active quota monitoring, adjusting trip limits when you could see you were reaching target, the things that you would normally expect folks to do, that you closed when it was apparent that the quota was going to be reached, that a normal projection would say it looks like at this rate of landings we'll hit our quota in two weeks, and that they in fact closed in two weeks.

It's very simple and it's not, you know, beyond a shadow of a doubt. It's to the satisfaction of the states that are being asked to give up their unused quota to this common pool. If it can pass the straight-face test, that's all I'm asking for. Otherwise, if I were a large quota state, I would just say that there is a least – there is no danger under the alternative we selected of going over by a little bit.

MR. McKIERNAN: I would like to point out that in one of the options we approved, which is Sub-Option 3A of 4.3, states can already withhold their fish from this common pool, so that discretion is already there. Furthermore, I know David talked about donor states

and recipient states. In my view the donor states give their fish to the commission and then the commission then reconciles the overages accordingly.

I don't foresee any letters coming from, say, my state to Mark's state if I was to have an underage and Mark would have an overage. I envision the letter being written to staff of the commission that Massachusetts has detected that it has X number of pounds as an underage for the common pool and then that common pool is then calculated out to the states with overages and there is no state-to-state correspondence.

In this motion I see the receiving states needing to put on a dog-and-pony show and the donor states I guess caucusing to decide whether they agree with it, but if you go back to the motion that we've already made and approved, if a state is unhappy about the performance of the states with overages, they can feel free to keep their fish out.

MR. SIMPSON: And this motion is just to say that the state that is asking for fish should put that information out so that those donor states can reach the conclusion that, yes, the state asking for fish did everything they reasonably could.

MR. McCLOY: First of all, I don't think any of us sitting around the table here today are inclined to let our quotas run over because of all the ramifications that are associated with that. As Mr. Augustine pointed out, proving intent of a state along these lines is difficult at best. However, the whole premise for this addendum is to deal with those unintentional overages. As Mr. Simpson has said, and I don't see that it hurts, regardless of how difficult it is to prove or not prove intent, to have a reiteration in the addendum really stating what the overall objective is.

CHAIRMAN CARPENTER: I'm going to ask would any additional debate change anybody's opinion of how they may vote on this particular issue? Seeing none, I'm going to call the question. We'll have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, let's call the question. All in favor of the motion please raise your right hand; all opposed, same sign; any null votes; any abstentions. **It is a tie vote; therefore, the motion fails.** I'll now call on Bill Adler for your motion.

MR. ADLER: **Mr. Chairman, I would like to make a motion that we adopt Addendum XX as amended.**

CHAIRMAN CARPENTER: And the addendum will become effective at the end of today's meeting.

MR. ADLER: Correct.

CHAIRMAN CARPENTER: All right, is there a second to that motion? Pat Augustine seconds. Is there any discussion on the motion? Is there any need to caucus? All in favor please raise your right hand; all opposed, same sign; any abstentions; any null votes. **The motion carries ten in favor with one abstention.**

Thank you very much and I appreciate your having your motions ready ahead of time. That does help get through a process, particularly one as complicated as Addendum XX. The next item on the agenda is a review of the preliminary Wave 4 recreational harvest estimates. Toni Kerns has some information for us.

#### **PRELIMINARY WAVE 4 RECREATIONAL HARVEST ESTIMATES**

MS. KERNS: The board has requested in the past that as wave data becomes available, to present that to the board. Wave 4 data became available about three or four weeks ago, so this is date through August. For the Black Sea Bass Fishery, which is a coast-wide quota, we are 806,286 pounds over the coast-wide quota. We have landed 1.944286 million pounds of fish so far, and the quota was 1.138 million pounds.

For summer flounder, through Wave 4, most states are under their 2009 quotas as you can see up here, except for three states. The states of New Jersey, Delaware and Maryland have all exceeded their quota. New Jersey is 191,000 fish over their quota. This is in numbers of fish and not in pounds. New Jersey did close their fishery – well, their season closed on September 4<sup>th</sup>, so they were only open four additional days after the Wave 4 data.

For Delaware, they are 11,536 fish over their quota. Their fishery is open all year long, though, so they will probably catch some additional fish and will be over their quota more than what is listed here. For Maryland, they are 26,024 fish over their quota. Maryland closed their fishery on September 13<sup>th</sup>, so they were only open 13 more days after the Wave 4 data was through.

Then for the Scup Fishery, through Wave 4 the Northern Region has landed a total 2.763 million pounds of fish, and that makes the Northern Region 254,822 pounds over their quota. The southern states, New Jersey, Delaware, Virginia and North Carolina, have all landed about 65,000 pounds of fish, so they have not exceeded their 3 percent share of the recreational quota. If you looked at this on a coast-wide basis, we would be 242,873 pounds over the 2009 recreational TAC for scup.

The Northern Region states are still open and the bonus season is going on right now for the states New York, Connecticut and Rhode Island for the party and charterboat fishery. The southern states are open year-round, so their fisheries are still continuing, but as you can see the southern states typically land less than the northern states. Are there any questions on these estimates?

CHAIRMAN CARPENTER: We had earlier someone that wanted to make comments on Wave 4 data. Please take the mike again.

MR. NOWALSKY: Mr. Chairman, again, my name is Adam Nowalsky. I'm not going to sit here and make a rehashing of discussions that have been had many times before regarding the validity of MRFSS data and its usage. What I did want to make a comment on is with regard to how it's going to be applied and used for recreational measure-setting here moving forward, specifically with regard to the black sea bass, which is a fishery that has the largest overage according to the MRFSS data at this time.

The fishery management plan does not have anything in it with regards to paybacks in the fishery. Understanding that in previous years there has been the direct comparison from Year A to Year B in determining what percentage of a cut needs to be taken. When you look at the reduction harvest tables that are in the process of being developed by the Mid-Atlantic Council Staff for discussion in December, but there is anything in the fishery management plan that says specifically that whatever an overage of the following year's quota is, that's the percentage reduction that you're looking at.

It goes ahead and states that you need to compare and look at the years and understand how it applies to the fishery as a whole. I understand that historically as a result of the fishery management plan, which has included specific reduction mortality tables for reducing mortality on a fixed schedule, now that the sea bass fishery has been declared fully rebuilt and

not overfished, no overfishing is occurring, I would suggest that as we move forward at this point here, that there is a consideration not just on a year-to-year basis.

You go back and look at 2008 MRFSS landings where for the region, from Cape Hatteras northwards, where you have landings of about 1.2 million pounds was the number you had in 2008. When you look at the comparison, you know, there is a reason why we're all here talking about scup, summer flounder and black sea bass altogether – the fisheries are interrelated.

That way similar areas that they're fished in, you know, to look at it and say, okay, the black sea bass almost doubled while these other fisheries didn't have that impact, there are some issues to look at. I think it's very important that some additional – you know, a hard look is taken at what the process can be here for recreational measures for 2010 as opposed to just simply looking at how the overage of this year compares to next year's quota. Thank you.

CHAIRMAN CARPENTER: Thank you for your comments. We appreciate you bringing that before the board. Are there any board members that wish to discuss the preliminary landings?

MR. RED MUNDEN: Toni, would you go back to the slide for the black sea bass landings. I believe the total landings for North Carolina of 113,000 pounds reflects landings both for north and south of Cape Hatteras.

MS. KERNS: I believe you are correct. It should be noted on your sheet that was available to the board prior to the meeting, but that portion got cut off from my slide. So, yes, that is not proportioned out and that will be proportioned out once we have the final numbers for black sea bass at the December meeting.

When Jessica presents the Monitoring Committee Document and then the recommendations from the Monitoring Committee, it will have proportioned out North Carolina's landings for north of Hatteras in her projections. I believe she uses those proportion numbers from the previous year as well.

CHAIRMAN CARPENTER: Does that answer your question? Dave Pierce.

DR. DAVID PIERCE: Toni, I've asked this question before but because we have this update, I have to ask it again just to make sure that indeed we are of the same mind on this. Can we be assured that no

research set-aside catches of black sea bass or scup have in any way impacted or influenced the estimates of recreational harvest that we have right now?

MS. KERNS: I can answer that question for you, Dave. I just was at the Wave Review Meeting last week and was speaking with MRFSS staff. For the party and charterboats that have purchased research set-aside quota, if they do go out and an interviewer intercepts individuals from that boat or their mates, then those individuals are directed to say at the beginning of that trip if someone comes to you, tell them you are on an RSA trip and then they do not record that information.

For the for-hire survey, staff is going back to cross-check to make sure that none of the records that they have are from RSA trips, but that also then does require that those vessels are saying this is a research set-aside trip and telling those individuals that they are doing so. If the partyboats aren't doing that and telling their participants to say that, then we have no guarantee, so part of the work is by the public as well.

#### **DISCUSSION ON THE ROLE OF THE FUTURE OF THE MONITORING COMMITTEE AND THE SSC**

CHAIRMAN CARPENTER: Seeing no other discussion, we'll move on to Item Number 6. This is a discussion on the role of the future of the Monitoring Committee and the SSC from the council. We had a meeting with the Mid-Atlantic Council last month where Dave and I and the Executive Director and a number of the other commissioners, who also serve on the Mid-Atlantic, were at the table to discuss this. I'm going to ask Toni if she would give us a summary of the plan that was discussed at that meeting and how it might work.

MS. KERNS: Staff passed out at the beginning of the meeting a flow chart that is titled "Science and Statistical Committee and Monitoring Committee Interaction for Specification Setting". I'm going to just quickly go through that flow chart. What the two groups committed to was after the benchmark assessment report, peer review report and stock assessment update has been completed, depending on what year it is for the assessment, one to two weeks later the Mid-Atlantic Council Staff will prepare the Monitoring Committee Memo which will include the staff recommendation.

That memo will be distributed. That staff person will consult with the National Marine Fisheries Service

lead assessment scientist for the species, as well as the ASMFC TC Chair just to review some of the information or if she has questions. She does not need concurrence with those individuals for the memo. That memo is from staff and not from those other two individuals.

Staff will then give that memo to the SSC and the Monitoring Committee, and they will have a week to review that memo. The SSC and Monitoring Committee will have a briefing meeting or a conference call together to go over the memo for questions to be asked answered between the two groups. There will be two weeks in between that meeting and the SSC's meeting to make recommendations the ABC as well as scientific uncertainty.

Within that same week the Monitoring Committee would meet and give their recommendation. The role of the Monitoring Committee would be to implement fishery management recommendations and any management uncertainty that they would want to recommend that the board account for.

The fishery management recommendations would include changes to the specifications like trip limits or gear modifications, those types of information, not recommendations on the quota. That would strictly fall under the ABC for the SSC. The quota recommendation that they could make is to account for management uncertainty.

Also within that same week, there is a placeholder for an advisory panel meeting. This would only be if the Monitoring Committee were to make recommendations to change the fishery regulations. Then the Monitoring Committee would be consulted on those recommendations and give advice to board and the council.

Within two to two and a half weeks of those three meetings, the board and council would take action and make recommendations for the specifications for summer flounder, scup and black sea bass. The Mid-Atlantic Council staff committed to putting together a letter for a memorandum of understanding that would account for this information, and that letter is still being worked on, but then would be shared with the board once it has been completed. A.C., do you have anything else to add?

CHAIRMAN CARPENTER: Nothing in particular except that the council and the commission's representation there recognizes that this is a very ambitious schedule, and there is an awful lot of work

to occur in a relatively short period of time between the start and the end of this process and that it is going to be a work in progress for a few years, as I see it, because it is a change in the way we've done business before, and it is reacting to the changes in the federal law. Comments from board members; I have Pat Augustine.

MR. AUGUSTINE: Toni, I guess the inferences in Block 3 where we will consult with NMFS lead assessment scientist, the ASMFC Technical Committee Chair; is the assumption in the next block that the SSC and Monitoring Committee will have a briefing meeting or conference call, that we will participate as a part of that? Is there an inference in there or they just going to take the recommendation that we gave in the block above? I think that you're assuming here that we will participate in that Block 3.

MS. KERNS: When you say "we", do you mean how did the states participate?

MR. AUGUSTINE: No, you or the technical committee staff. There is an inference that you will carry – or whoever our nominee is to do that will carry forward our position to interact in that conference call; that if there are any issues that come up that are not being addressed to our satisfaction, that we would have an opportunity to discuss it at that level before we go on to the next block where it is then turned over strictly to the SSC meeting and recommendations. I think you're inferring that but you're not saying it.

MS. KERNS: Yes, I would be participating or would be on that conference call or at that meeting as the coordinator for summer flounder, scup and black sea bass. We are going to discuss in our next agenda item the plan review team membership, because the plan review team is the ASMFC's membership for the Monitoring Committee, so there would also be state representation as part of the Monitoring Committee at that meeting or on that conference call as well.

MR. AUGUSTINE: One more follow-on, Mr. Chairman; are we assuming at the AP meeting, the second block from the top, if it were necessary that would be a joint advisory panel meeting between ASMFC boards that are affected and the subcommittees, the Demersal Committee on the council. It doesn't say that but I think that's the process, so I don't know if you'd clarify that or not.

MS. KERNS: When we have AP meetings, they typically are joint meetings, yes.

MR. AUGUSTINE: I would just noting that for clarification purposes and whether you included it or not.

MR. FOTE: Mr. Chairman, can I ask Toni a question? I'm looking at this procedure and the way it's mapped out here, and I'm trying to understand if the Monitoring Committee no longer gets to comment on what they think that the quota should be. From what I'm getting from this document, it's strictly left in the modeler's hands and not how the fisheries' biologists' feel. That's what I'm trying to figure out here.

I mean, I see a conference call, but I don't see where the Monitoring Committee historically has met – well, not historically; one year it did and one year it didn't, but the basically the Monitoring Committee should be meeting before to give their recommendations on what the quota is. I see this as left out and it is changed, and so that's what I'm trying to figure out right now.

CHAIRMAN CARPENTER: Tom, that conference call will be – and we will get to the Monitoring Committee's makeup here in just a minute – but that will be the opportunity for the fisheries biologists to express their opinion and their view on what should come out at the end of this process. It won't be in a form of a formal document that they submit, but it will be an opportunity for them to discuss with the SSC members what they feel is appropriate for a given range of options for the following year.

MR. FOTE: Followup on that; my concern here has been all along and going back to when they suggested this in the Magnuson Act, that you basically set up no, first of all, criteria of who sits on the SSC; basically no disclosure. I mean, I as a commissioner here, when I go through my state legislature, I get voted on by the Senate Judiciary Committee.

First, I start with the governor; I have to submit 22 pages of forms and documents and 15 pages of ethical forms. Then it goes on and they do a legal review of my past record. They've got all that information out. Then I go to the Senate Judiciary Committee and it gets voted on and then go for the full senate to get voted on.

There is a process you go through. Every grant, every piece of property I own is up on some webpage someplace. I haven't found it yet but I know it's out there. When I look at the membership of the SSC,

there is not this transparency about how they get appointed. I know how it does but it's not this open process that we through. I'm not disparaging everybody, but it's not the same kind of process that we go through.

If they are going to have more power than we do, because that's what it looks like when it comes to setting quotas because we have no choice but to accept their recommendations, we need a fuller disclosure pattern on how they are basically selected and what the input is on those selections. Right now, you know, they're nice people, the executive committee of the Mid-Atlantic Council but it's in their ballgame of who they choose and then it gets voted on by the council members.

We're not in this process at all. This is a joint management plan. I have great difficulty with that. I also have difficulty in leaving modelers with the final decision. There is a lot of difference between a lot – my degree is not in fisheries' biology. Mine is an MBA, and we basically use modelers a lot when we basically make projections in advertising and everything else, but they are not the final word because we have to go to the salesmen or the other people in business on what is going out there because models can say whatever information you put in there.

I have real concerns in the way we're going with this system. I voiced that concern years ago, but it seems to be getting locked in here. I need to feel more comfortable on how the SSC is being appointed and we don't see that right now. It should be same type of process that we go through as council members or go through as commissioners here.

Since they are going to have more power, we need to see that process mapped out, and I haven't seen that yet in my hands. Is there a document that basically and specifically goes with the disclosures they have to make, whether they have federal grants or not, because I have to make those disclosures, so I'm looking into that process.

DR. PIERCE: This is certainly an improvement over the process that we just experienced for black sea bass and scup where the chair of the Monitoring Committee relative to those three species provided her recommendations specifically to the SSC; that is, the numbers, the quotas. Then afterwards the Monitoring Committee got to see what the numbers were and they had no say and they had no influence and no input.

That was problematic so this is an improvement; however, it still is not my preference. My preference is for the chair of the Monitoring Committee to develop some recommendations for quotas; that in the case scup, sea bass and fluke she would make those recommendations to the Monitoring Committee and then the expertise and talents of the Monitoring Committee would then help her, collectively as a Monitoring Committee, make a specific recommendation to the SSC, for that to consider, reject, change whatever.

As it stand now with this improved process, the chair of the Monitoring Committee is divorced from the Monitoring Committee relative to the numbers. The Chair is on his or her own coming up with a suggested number or quota that goes to the SSC. Then the Monitoring Committee and the SSC look at that document for about a week of review, and it almost pits the Monitoring Committee against the SSC, and that's not the way it should be.

It is not my preference; it's an improvement, but I still see too much power and influence being given to the chair of a Monitoring Committee and it divorces the Monitoring Committee from those all-important discussions about what the quota should be; considerations that should be looked at; everything else the Monitoring Committee does relative to providing state insights and federal insights, for that matter, to the manner of the fisheries and how the quota should be set. Obviously, the council is going forward with this strategy and I don't support it.

CHAIRMAN CARPENTER: Thank you, Dave, and as I said earlier this is somewhat still a work in progress. We don't want to repeat last year and this is an improvement over last year. We are running a little bit behind on our agenda. Unless there is some burning issue that somebody wants to speak to on this one, we will move on to Item Number 7, which consideration of Plan Review Team membership, and I'm going to ask Toni to present some information on this one.

#### **CONSIDERATION OF PLAN REVIEW TEAM MEMBERSHIP**

MS. KERNS: At the last board meeting we discussed that Addendum IV stipulates that the Plan Review Team is the makeup of the ASMFC's membership on the Monitoring Committee. We don't actually practice that currently. Currently all of the members of the TC end up going to the Monitoring Committee meeting.

The board had stated that if we move forward with changing the role of the Monitoring Committee, that they would like to consider taking the actual practice of having the TC as the membership of the PRT so that could continue to participate in the Monitoring Committee discussions and meetings.

Currently the Summer Flounder Plan Review Team membership is myself as Chair, John Maiolo, Mark Terceiro, Najih Lazar, Paul Caruso and Wilson Laney. For black sea bass it's myself as Chair, Beth Burns and Mike Armstrong as well as Wilson Laney. For scup it's myself as Chair, Paul Caruso and Greg Wojcik from Connecticut and Wilson Laney.

Traditionally on plan review teams, the commission's plan coordinator is the chair for plan review teams. This issue is brought back to the board because you said that you would want to change this makeup if the role of the Monitoring Committee was altered; and since it was altered, I want to see if it's still the intention of the board to change the makeup of these plan review teams.

CHAIRMAN CARPENTER: Dave.

MR. SIMPSON: **No, I think it would be good if we could continue the practice that we've had of more complete involvement, and to that end I would move that the plan review team be comprised of the full technical membership plus U.S. Fish and Wildlife Service representative.**

CHAIRMAN CARPENTER: Is there a second to that motion? Pat Augustine seconds. I think this is going to be a much larger team than what we are accustomed to in terms of the plan review team and its function, but I think this does get part of the way to solving Dave's concerns that these technical committee members now will officially have a seat at the table or on the phone conference. Is there any discussion on the motion? Any opposition to the motion? **Without opposition, the motion carries.** We can move on to the next item, which is the 2010 Scup Winter I Trip Limits. Toni has some information on this one as well.

#### **2010 SCUP WINTER I TRIP LIMITS**

MS. KERNS: At the last board meeting the board tasked the states of Massachusetts through New York to discuss the Scup Winter I Trip Limits. To refresh your memories, the Winter I Trip Limit in the past has been a 30,000 pound trip limit with a two-week landing limit. It was brought to the attention of the board that there is a loophole in that in effect that it's



possible in some states for a vessel to land in one state and then in that same two-week period then land in another state, enabling that vessel to land 60,000 pounds in that two-week period.

Some of those states had discussed that it was difficult to enforce a two-week landing limit because it's difficult to get real-time landing information and so states have to go back through and look at the VTRs to determine if a vessel has been out of compliance for this. The four states got together on a conference call and decided to recommend a 30,000 pound trip limit and not have any week landing limit associated with that trip limit.

This 30,000 pound trip limit would then mirror the National Marine Fisheries Service trip limit, which is 30,000 pounds per trip per day. This would increase the amount of fish available significantly to individuals during the Winter I Period.

CHAIRMAN CARPENTER: Thank you. Do we have a motion ready on this? All right, would a state like to make a motion? All right, we'll take questions first.

MR. McCLOY: The four states that were recommending that; did they have any discussion about what that might do to the market price of scup?

MR. GIBSON: Certainly not an extensive one. I'm trying to remember the substance of the call, but that's not why I actually put my hand up. Rhode Island's perspective at that time was this is an administrative burden that we didn't need to deal with. I have since had some time to discuss this with some of the commercial fishermen involved, and that's the exact point that they raised; that allowing multiple landings not restricted in the two-week landings' window is going to do just that; it's going to flood the market and potentially overrun the quota and depress prices.

I didn't have that information available to me at the time of the call. Again, my position at this time was purely that it relieved an administration burden on us and makes enforcement easier. I will tell you that fishermen have come to me and expressed just that concern that was just raised. Some of them are here today if you would like to hear from them.

CHAIRMAN CARPENTER: All right, if we can get a motion on the floor, I'll entertain public comment at that time. Dave.

**DR. PIERCE: I would move that for Winter I there be a 30,000 pound per 14-day landing period with states being required to prohibit landings of scup in other states within the 14-day period.**

CHAIRMAN CARPENTER: All right, give us just a second to get that on the board. Can you repeat that?

DR. PIERCE: 30,000 pound per 14-day landing period with states being required to prohibit landings of scup in other states within the 14-day period.

CHAIRMAN CARPENTER: I'm going to ask a question, Dave, on that. How do you envision this as being enforceable?

DR. PIERCE: Well, it will require some additional administration in order for it to work effectively, drawing in the enforcement resources to make them aware of the fact that indeed this is the requirement. Certainly, in Massachusetts we can administer this. This can be enforced. I would ask the other states to chime in to see if indeed they can do it.

It's far better than going with 30,000 pounds per day, which indeed would flood the market, depress prices. It's not a good option at all. From what I understand, the 30,000 pound per 14 days does work very well for the fishermen. We just have to deal with this double-dipping of going to other states. This is the only alternative I could come up with to maintain the strategy of 30,000 14-day. Massachusetts can deal with it, but I again would ask other states to –

CHAIRMAN CARPENTER: Thank you, Dave. Let me see if we can get a second on this motion. I have a second from Pat Augustine. Now is there any additional discussion from the board? Pat Augustine.

MR. AUGUSTINE: I guess the clarification is that the only thing we're changing would be the bottom part about that, the notification or being able to – compared to where we are today. Today we have 30,000 pounds for two weeks. The question is can we close that net in such a way that we can have more assurance that states and fishermen will adhere to that. I think I know what the answer is – information to our fishermen that, no, you're not supposed to do it, but from an enforcement point of view can enforcement make a comment on this to improve their checking.

CHAIRMAN CARPENTER: I would have to ask enforcement from the various states; but while you're thinking about that, I had Jim Gilmore and then Tom Fote.

MR. GILMORE: Mr. Chairman, Pat made most of the comments I was going to make. Just to reiterate, we were concerned also about flooding the market with that 30,000 pound a day trip limit. The first part of this motion is fine. Again, we don't know how we're going to enforce this multi-state landing issue. In theory it makes sense but I don't know how we're going to do it.

CHAIRMAN CARPENTER: I have Dave Simpson and then I'm going to the public.

MR. SIMPSON: The clarification; I understand and agree with what we're trying to do. I'm not sure how this is different from what we currently have. Is it your intention that when a vessel comes in to a port, that that state would check the VTRs of that vessel and confirm that they had not landed in the previous 14 days or during that 14-day period they had not landed in excess of 30,000 pounds, so it would be at that point; is that how it would work?

DR. PIERCE: Well, certainly, we cannot be assured that there would be timely enforcement. However, through checking of the records, through the VTRs, through SAFIS, we would be able to track the landings of individual vessels and enforcement could certainly, after the fact, determine who was in violation and then a state could take action against that permit holder for violating that provision, meaning they've landed more than 30,000 in a week, they took advantage of another state.

It can be tracked, not in a timely way but certainly it can be done. It's the only option for 30,000 per trip or per day that is just – it will decimate the quota and create a lot of economic havoc for fishermen who are doing quite well, so I understand, with the 30,000 over two weeks.

CHAIRMAN CARPENTER: I think everybody understands the intent, and I'm not sure that the language there changes anything from what we have in the plan now. I'm not so sure that trying to prohibit somebody from landing in another state that has a federal permit, if that wouldn't be a commerce clause interference here. I'm not a lawyer enough to answer that. Let's take some comments from the public on this issue. I see several hands.

MR. JOEL HOVANESIAN: Thank you, Mr. Chairman. Joel Hovanessian, Fishing Vessel Excalibur in Point Judith. We are heavily involved in the winter scup fishery. I agree with the first part of Dr. Pierce's motion here with that 30,000 pound 14-

day trip limit for all the obvious reasons, with the flooding of the market, the potential for the quota to be harvested way too prematurely, what that would lead to as far as regulatory discard situations and such.

However, the provision of the 14-day period where it has to be landed in one particular state is somewhat troublesome because we do unload in multiple states. Personally I may find myself in New Jersey one week, New York, Connecticut, Rhode Island, Massachusetts. There has to be a little more flexibility in that provision of this motion.

Another recommendation that I would have would be if we move forward with this 30,000 pound per two-week period, to evaluate the landings, say, three-quarters of the way through the period possibly to see where we stand as far as the overall quota is concerned; and if it looks we may be coming up short, to possibly change the 30,000 pounds per 14-day period to a 30,000 pound per seven-day period just to make sure that we don't underharvest.

Lord knows we are underharvesting enough species it is. That being said, I think there are ways of – you know, with enforcement and federal dealer reporting and everything else; not to mention the fact that if you make the regulation and it gets sent out to the fishermen, the fishermen are going to abide by the law. They're not going to take a chance and break that law.

You leave a loophole in it and, you know, a loophole is a loophole and some people will take advantage of loopholes, but if you make it a regulation, then I really don't see where it's going to be that big of a problem. Thank you.

MR. CHRISTOPHER BROWN: Christopher Brown, President of the Rhode Island Commercial Fishermen's Association. We also support the first portion of the motion, the 30,000 pound per two-week trip limit. It keeps the market satisfied with fish and as a high a price as can possibly be achieved.

We are opposed to the second part that would prohibit multi-state landings. One solution to this might be that you entertain occupying a macro on the QualCom Systems that are currently utilized aboard the federally permitted vessels to make a scup hail-in prior to crossing the demarcation line or something to that effect. That would take the states out of it. We wouldn't be subject to state enforcement of the federal law during a federal period. It's just a thought, kick it around. We think it's problematic

that you cannot land in two states, and it may even be a safety consideration.

MR. ARNOLD LEO: My name is Arnold Leo. I'm consultant for commercial fisheries for the Town of East Hampton. The offshore fleet operating out of Montauk did call me this past week to say they were very concerned about this possibility of 30,000 pounds a day being allowed. Certainly, we would support the first part of this motion, the 30,000 pound 14-day landing period be kept.

What I don't understand is why the second part of this motion is necessary. As Dr. Pierce points out, you know, you cannot in a timely way enforce this provision. You would have to look at the vessel trip reports when they're available. When you look at the vessel trip reports, you're going to be able to see if the vessel landed more than once in the 14-day period, whether it's the same state or different states. I just don't see the need for that provision being in there, you know, landing more than once in the 14-day period; no matter what state you land in is going to be illegal. I would recommend just taking the second part of that motion out.

CHAIRMAN CARPENTER: Thank you. I'll remind the board that we have the current 30,000 pound trip limit within the 14-day period. By voting this motion down, you would allow the status quo to continue. If you vote in favor of this motion, it would impose the state landings' limitation, which a number of people have suggested is problematic. Is there any additional discussion on the motion before I call for the vote?

MR. GREG DiDOMENICO: Greg DiDomenico, Garden States Seafood Association. Before I make a comment on the motion, I just want to illustrate a quick point. Since the two-week landing – well, the 14-day period has been implemented, the average price of scup has gone from sixty-six cents to a dollar twelve, and that's from two sources. I just want to demonstrate that currently the fishery is working very well.

As a matter of fact, the Winter I Fishery will probably receive an additional 400,000 pounds for the 2010 season, and we certainly appreciate the fact that this fishery may last up until April or through April and give an opportunity for even some of the states south of New Jersey to participate, which we think will be great. We certainly would like to see a status quo situation, but if the language has to change to stop a vessel from not complying with the law, we would support that. Thank you.

CHAIRMAN CARPENTER: Thank you, and I'm not sure we've got specific language to accomplish the latter part of your comments. We'll have a 30-second caucus.

(Whereupon a caucus was held.)

CHAIRMAN CARPENTER: Okay, let's call the question. All in favor of this motion please raise your hand; all opposed to the motion, like sign; any abstentions; any null votes. **The motion fails.** Thank you for that.

### OTHER BUSINESS

CHAIRMAN CARPENTER: We'll move on to other business. Tom, you had brought an issue that you wanted to discuss under other business and copies of some letters have been passed around, so I'll give you the opportunity to present your questions.

MR. FOTE: I came prepared at this meeting to go forth with a letter from my Commissioner of DEP requesting that we basically as a board recommend that at this coming-up December meeting that we basically revisit a question that we couldn't get passed and never got a chance to vote on at the summer council meeting to basically ask the Monitoring Committee and the SSC to re-evaluate the 2010 black sea bass quota.

The reason I didn't do that letter is because I happened to receive this other letter that was sent out to me on Friday. It was interesting because I got it from a person who had been down at a meeting and they basically said to me – well, I didn't get the letter from him, but the question was asked does this mean that – one of the NMFS lawyers asked if this means that black sea bass – that the council does not have to basically follow the recommendation of the SSC since it's a recovered stock that is not being overfished and overfishing is not taking place – was told, yes, that's the right response.

In the meantime, later Friday, I got four or five other calls from people saying that is not what it means, so it is really confusing. If I'm going forward with a motion here, I need, first, clarification on what that letter does mean and what the paragraph is. I'd also like to have clarification of what emergency action under Magnuson because I don't think it could happen under black sea bass qualified as an emergency action under black sea bass.

Those are the two questions I have. Where is that letter; what does Paragraph 4 really mean in that letter and are we able here at the joint meeting coming up in December to make a motion without going back to the SSC to accept the Monitoring Committee's recommendation on black sea bass to go to the higher quota or do we have to go back to the SSC and the Monitoring Committee and ask them to revisit the quota? That's really what I'm trying to find out here.

CHAIRMAN CARPENTER: Pat, can we ask you to provide some guidance on this issue.

MS. PATRICIA KURKUL: Sure, thank you very much. To start with, the letter does acknowledge that the Magnuson Act doesn't require putting in place a mechanism for setting ACLs until 2011 for stocks where there is no overfishing, but then it goes on to say that however there were changes to the Magnuson Act through the reauthorization that became effective in January 2007 that did require an expanded role for the SSC, including providing to the council ongoing scientific advice as well as a recommendation on acceptable biological catch or allowable biological catch, the ABC.

Then the letter says so given that the councils must receive these recommendations from the SSC, and the recommendations are specifically intended, in setting or recommending the ABC, to address the question of preventing overfishing, and also the recommendation from SSC is considered best available science, so the councils do need to follow the recommendations of their SSCs separate and apart from the provisions having to do with ACLs and AMs.

CHAIRMAN CARPENTER: Pat, if I can ask a question, if I understand between the letter and what you've said, that if the Mid-Atlantic Council had not established a procedure or a mechanism for the SSC, then they wouldn't be bound by one, obviously, but because they have established the mechanism and the process, they are now bound by the results of that SSC deliberation?

MS. KURKUL: No, actually I'm saying the opposite, that the establishment of the mechanism is entirely separate from the issue of the SSC requirement to provide scientific advice and a recommendation of allowable biological catch. The SSC is required currently to provide that advice and to provide that recommendation.

The recommendation needs to be consistent with preventing overfishing, which is National Standard 1, and then the recommendation, from our perspective, is best available science, which is National Standard 2. For the councils to be consistent with the national standards, they do need to follow the advice of the SSC.

CHAIRMAN CARPENTER: Thank you. Tom, to that point.

MR. FOTE: What I'm getting, in trying to understand this, is that to prevent overfishing. This stock is not overfished and overfishing is not taking place. What the SSC recommended was a more precautionary approach than the Monitoring Committee, which recommended a recommendation that would again prevent overfishing and overfished.

If that is the criteria from the Magnuson Act to act on, then I don't see why we cannot go higher than this because that was not put in place to overfishing. It was put in to be a precautionary approach and that was not the one required by the Monitoring Committee. If we're going to the overfishing and overfished definition, this stock is not being overfished and overfishing is not taking place.

We really do not have to go back to the SSC, the way I'm interpreting it; that we can basically make the recommendation here at the joint meeting coming up in December, that we can just vote whether we want to accept the Monitoring Committee's report that would not promote overfishing or overfished but would just basically set a little higher quota.

MR. KURKUL: To that point, that's not a correct interpretation. The Monitoring Committee recommendation was reviewed by the SSC, and the SSC made the decision based on the uncertainty – in this fishery based on the uncertainty of the assessment, the specific biological characteristics of the fishery, that to prevent overfishing that it was necessary to set a precautionary trip limit in the short term.

It is an issue of National Standard 2, and you can't reject the SSC's recommendation to accept the Monitoring Committee's because the SSC recommendation is consistent with best available science, which is National Standard 2. I think I just reversed the national standards, but it is a National Standard 1 and National Standard 2 issue.

CHAIRMAN CARPENTER: All right, Tom, one last comment.

MR. FOTE: You just said that the SSC took into consideration the Monitoring Committee's Report. The Monitoring Committee met after the SSC. That was part of the problem when we basically look at it. I just want to get that straight.

MS. KURKUL: Yes, that is correct; I meant the staff's recommendation.

MR. ADLER: Under the SSC puts in the best recommended science, but the councils always had the opportunity up until I guess the future here to look at the socio-economic factors as well as the best scientific knowledge, especially with the fishery not overfished. I am very much opposed to this SSC walking in and just taking over everything as far as the statistics go. I think with a non-overfishing I think they should be able to adjust the SSC – or take this thing into consideration and then perhaps give them a higher quota. Thank you. I'll just leave it at that.

CHAIRMAN CARPENTER: Let me recognize that we are running behind schedule here. Let me also note that we have a joint plan and the reauthorization of the Magnuson Act changed the role of the ASMFC along with that of the councils. We are still trying to work with the council in smoothing out some of these difficulties, but given the hour of the day we're not in a position to change what has already been mandated. Unless there is another item to come before the board today, I'm going to move that we adjourn. Tom, I will give you 30 seconds.

MR. FOTE: Mr. Chairman, I hate to disagree with you. This is an important issue for the fishermen of New Jersey and actually the fishermen from Massachusetts and North Carolina. This meeting is having a huge economic impact so we need a few more minutes to discuss this. I was trying to get a ruling on how we proceed from here.

Basically, I'm being told and I'm not sure because I've heard different approaches and different reasoning from lawyers at NMFS so hopefully they will get their acts straight and basically get into the real document. But in lieu of this conversation, then I am making a motion that we ask that the Atlantic States Marine Fisheries, because this is what my commissioner wanted me to do is to make a request at the next joint meeting that we ask the Monitoring Committee and the SSC to revisit the black sea bass quota for 2010.

I mean, we did not even get a chance as a commission to vote on this since we seemed to be locked in and they ruled us out of order and then they basically voted first. I would like another opportunity in light of the emergency action that was put in place that was not really, in my estimation and a lot of other people, not really an emergency action under the Magnuson Act. I don't know where you qualified it as an emergency action.

**With that, I will make a motion that we ask the Mid-Atlantic Council to put on their agenda for the December meeting to basically have a discussion, to basically ask the Monitoring Committee and the SSC to have a conference call to basically look at the black sea bass quota for 2010.** If I find a second, we can go forward; and if not, just drop it at that.

CHAIRMAN CARPENTER: Tom, would you look at the board and see if we've got the essence of your motion on the board?

MR. FOTE: That's the essence of it; thank you.

CHAIRMAN CARPENTER: Is there a second to the motion? Second from Bill Adler. Is there any board discussion on the motion? Would the public like to comment on the motion? I see one hand.

MR. NOWALSKY: Thank you again, Mr. Chairman. Again, I understand you're short on time here. Again, you know, this paragraph here that Tom is bringing to the table here is vague at best. It would seem that if the intention from the Secretary, Dr. Lubchenco, was simply to say that the recommendations of the SSC may not be exceeded by the council, be it the Mid-Atlantic, be it the New England Council, as this letter was addressed initially, would simply say that, that you may not exceed the recommendations of the SSC, but that's not what it says.

You go back and you look at the sections referenced herein in Magnuson, 302g1b, each Scientific and Statistical Committee shall provide ongoing advice – there is nothing anywhere in Magnuson that says the SSC is the best available. Yes, it's very good information and must be considered; yes, 302h6 states that with regards to – when you're talking about ACLs, that you must follow the recommendation may not exceed what the ACL has been set, but what we're talking about for black sea bass is a quota; not an annual catch limit, not an ACL.

There is nothing in Magnuson or anywhere else in any of fishery management plans. Yes, it says you must use the advice, but there is nothing that says that it must not be exceeded and that it is the overriding best available science. Thank you.

reconvene next year Dave Simpson will be the chairman. Thank you very much; we're adjourned.

(Whereupon, the meeting was adjourned at 12:45 o'clock p.m., November 2, 2009.)

MS. KURKUL: I guess I'm not seeing that same ambiguity in the letter. Certainly, we've been in touch with the attorneys within the agency and with the people that provided the information last week at the council training. We all are saying pretty much the same thing. We are saying the same thing and that is that the SSC advice is considered best scientific information and that the council is bound by the – or is required to use best available scientific information. I don't see the ambiguity here.

CHAIRMAN CARPENTER: Thank you; I'm going to call the question. There will be a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Let's call the question. All in favor of the motion please raise your hand; all opposed; any abstentions; any null votes. **The motion fails.** We have one last item. Toni, do you have information on when and where of the next joint meeting?

MS. KERNS: I just wanted to remind the board that the joint meeting to set the recreational specifications for 2010 will be the week of December 8-10. It is in Wilmington, Delaware. As soon as I have an agenda, I will share that information with you; so if you could please save those three days. It's Tuesday through Thursday.

In addition to the recreational specifications, the chairman had asked the Fishery Management Action Team that is developing the omnibus for the ACLs and AMs to have a report to the council during that time. Because these ACLs and AMs are very important for summer flounder, scup and black sea bass, the board may want to consider staying for that discussion at the council meeting as well. I will highlight when that is going to be occurring when I get the agenda from the Mid-Atlantic Council staff.

## ADJOURNMENT

CHAIRMAN CARPENTER: I wish to thank all of the members for their support and cooperation with putting up with me as chairman for the past two years. It is my understanding that when we