

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

Radisson Hotel  
Alexandria, Virginia  
August 16, 2005

Approved November 2, 2005

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ATLANTIC STATES MARINE  
FISHERIES COMMISSION

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

RADISSON HOTEL OLD TOWN  
ALEXANDRIA, VIRGINIA

AUGUST 16, 2005

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**Call to Order**

The Summer Flounder, Black Sea Bass and Scup Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Radisson Hotel Old Town, Alexandria, Virginia, August 16, 2005, and was called to order at 4:15 o'clock p.m. by Chairman Mark Gibson.

**CHAIRMAN MARK GIGSON:** I'm going to call to order the meeting of the Summer Flounder, Scup and Black Sea Bass Management Board. Welcome to the August meeting of the Summer Flounder, Scup and Black Sea Bass Management Board.

The first item on the agenda is the agenda itself. I'm aware of the need for several items to be added under Other Business. The first is the interpretation of Addendum XV relative to the 2006 quota level.

The addendum specified a reallocation of that incremental quota. In view of the actions taken last week and the likelihood that there will not be a quota increase in 2006 needs to have a board discussion on how to handle that.

The other item that I've been made aware of is that there was a scup white paper put together by Gordon Colvin on behalf of the

states of New York through Massachusetts. That does not appear on the agenda or in your briefing packet, and I believe Gordon would like to speak to that.

Those are the two items we need to add under Other Business, again, the Addendum XV 2006 quota level relative to the transfer issue; and the scup white paper. Are there any other adjustments? David Pierce.

**DR. DAVID PIERCE:** Black sea bass tail tendrils. I would like to ask a question and raise an issue, which shouldn't take very long. It's a follow up to the last board meeting that we had last week.

**CHAIRMAN GIBSON:** Black sea bass item. Anything else? Okay, with consensus from the board, we'll proceed with the agenda.

The next item would be proceedings from February 2005. Pat Augustine.

**MR. PATRICK AUGUSTINE:** Thank you, Mr. Chairman. Move to accept, if there are no additions or corrections.

**CHAIRMAN GIBSON:** Seconded by Bill Adler. Any board discussion or objection to approving the proceedings as submitted? Seeing none, they stand approved.

The next item is an opportunity for public comment. There will be other opportunities for the public to comment as the board is taking action items in the agenda, but is there anyone from the public who wishes to come forward and speak now to the board on matters before the board today? Yes.

**Public Comment**

**MR. HERB MOORE:** Good afternoon, Mr. Chairman and members of the board. My name is Herb Moore. I am counsel for the Recreational Fishing Alliance. While I had

the opportunity, I just wanted to address some of the items in Addendum XVII.

As detailed in our written comments on Addendum XVII, the Recreational Fishing Alliance is opposed to regional management of the summer flounder fishery. On the first issue in Addendum XVII, regional management, the RFA supports Option 1, status quo and strongly opposes Options 2, 3 and 4 based on the following:

First, it's been well documented that the single biggest problem in the management system for the recreational summer flounder fishery is recreational data collection, particularly MRFSS. In our opinion, coming up with a regional management program at this point, before making any significant improvements to the biggest problem in this fishery, is putting the cart before the horse.

We can't support a drastic change such as regional management at this point, considering there haven't been any significant changes to the recreational data collection program.

The second objection we have to regional management at this point is that in this fishery there are a number of regional nuances. Regional management would further restrict the Atlantic States ability to address those regional nuances.

There's no question that the fishery on the east end of Long Island is significantly different from the fishery in Raritan Bay. Likewise, the fishery in Delaware Bay is significantly different from that in the Chesapeake.

The best way to address those regional nuances to provide the most opportunities for the recreational fishing public, to provide the most opportunities for the recreational

fishing industry is through conservation equivalency.

It's extremely important that states maintain their ability to try and address those regional nuances. Therefore, we fully support conservation equivalency and can't support regional management.

A final item of contention that we have with regional management as it's outlined in Addendum XVII is that, frankly, we find this document to be deficient. Summer flounder is one of, if not, the most important near-shore species on the Atlantic coast.

You're talking about more 3 million participants in the recreational summer flounder fishery, generating over a billion dollars in economic output, tens of millions of dollars in tax revenue. Regional management would be a significant change in how this fishery is managed; yet, less than five pages in Addendum XVII outline this proposal to the public.

This document contains tables showing how different regions may be able to liberalize or different regions may have to constrain their catch; however, completely lacks any tables reflecting exactly what types of measures anglers would dealing with should their state be lumped into a region.

I understand there are a myriad of possibilities as far as season, size limits and bag limits, but without presenting that information to the public, it just strengthens our objection to regional management.

As far as averaging multiple years of landings and multiple years of data, we fully support it. It looks like that's the best way to eliminate or at least ease the impact of statistical anomalies.

However, we've got some real concerns with the technical committee's footnote.

Frankly, we feel like it's an ambiguous footnote, and we reject it. So, therefore, we are opposed to regional management at this point, and thank you for the opportunity to comment.

CHAIRMAN GIBSON: Thank you. Are there other members of the public wishing to comment at this time?

MR. PHIL CURSIO: Thank you, Mr. Chairman. My name is Phil Cursio. I represent the United Boatmen of New York, which represents the party and charter boat business on Long Island and in the Greater New York area.

Once again, I have to state for United Boatmen that we strongly opposed to any sort of regionalization plan at this time. It should be clear at this point to all the commissioners that the overwhelming majority of their constituents have expressed their of support for this option.

The public has spoken, and I would ask that doesn't this fact embody the reasons for public notice and comment. The only option that United Boatmen can and will support at this time is the multi-year averaging of data and landings.

This approach actually accomplishes the only benefit that we see in regionalization, which is a larger dataset without placing a hamstring on individual states' abilities to manage their own fisheries, preserve state sovereignty and mitigates the harsh results of single-year data points.

It also meets the requirement to use the best scientific information available, which is National Standard 2 under the Magnuson Act. We believe that science includes not only the collection of data and the nature of the data, but also encompasses the treatment, analysis and application of any scientific data.

Multi-year averaging comports with accepted norms of statistical analysis where data are inexplicably erratic. This means that multi-year averaging of landings falls within the definition of BSA, and thus should be adopted both by this commission and by the council.

Now, I'm also aware of the consensus among the commissioners here that this board is not amenable to the legal standards expressed in the Magnuson Act. However, we would encourage the commission to voluntarily adopt and embrace this standard as it can only result in better fisheries management. Thank you very much for this opportunity.

### **Addendum XVII**

CHAIRMAN GIBSON: Thank you for those comments. We still have time relative to our agenda. Is there any other public comment at this time?

Seeing none, we'll go to the next agenda item, which is Toni's review of public comment on Addendum XVII.

### **Review of Addendum XVII Public Comment**

MS. TONI KERNS: Thank you, Mr. Chairman. We conducted public hearings along the Atlantic coast in each state that is on the management board for summer flounder. There was a total of 90 attendees at the public hearings, and this graph gives you a brief idea of the opinions of those that were in attendance at the public hearings.

In Narragansett there were six attendees. The majority of those were in support of status quo, and for the regional management they not want to see any changes. There was one person that was interested in Option 2, but he would like to see the states to be able to pick their seasons.

In terms of the multiple-year application of data, two people were in favor of not allowing this, and four people were in favor of allowing the multiple application of data. Issue 3, the multi-year application of landings, everyone at the meeting thought that we should not do this.

In New Jersey there were 24 attendees. Out of the attendees that spoke up at the hearing, 13 were in favor of just remaining status quo, and 10 were in favor of the voluntary options. Those that were in favor of the voluntary options were in favor of that with also status quo being an option, so being able to put forward both those options.

The majority of the people that spoke up at the hearing, 13 people were in favor of allowing multiple-year application of data, and 13 were in favor of allowing multiple application of landings as well.

We had a hearing in Plymouth, Massachusetts, but no one attended for the summer flounder hearing.

In Ocean City, Maryland, we had 18 attendees. Of those that spoke up, four were in favor of status quo. The majority in the room there, even though everyone didn't speak up, we could tell that everyone was pretty much in favor of the status quo and not to make any change, to allow anything but state-by-state management. Also, two of them were in favor as allowing the multiple-year application of data, as well as landings.

In Old Lyme, Connecticut, there 23 attendees. Of those that spoke up, two were in favor of allowing for four regions. They felt that it was favorable for the local fishermen, and it was also favorable to have common regulations by area. There was also one person that spoke up in favor of the voluntary option.

One person spoke up in favor of allowing the multiple-year application of data, while one person spoke up of not allowing the multiple-year application of landings.

In New York we had 11 attendees at the hearing. Of those that spoke up, I believe that the majority in the room was in favor of remaining status quo and not to allow regionalization. There was one person who was in favor of the option of two regions, and another person that was in favor of the option of having three regions.

There was one person that thought we should not allow for the multiple-year application of data, and two people that verbally spoke up of allowing the multiple-year application of data. One person was not in favor of averaging landings while two people were in favor of averaging landings.

Those people that were in favor of averaging landings thought that we should not be able to go back and forth from year to year averaging one year and not averaging the next, averaging one year, and not averaging the next. They thought that once you started averaging, you should continually have to average for an extended period of time.

In Newport News, Virginia, we had two attendees. Both attendees were in favor of status quo, to not allow for regionalization of management. One of the members spoke to not allow for the averaging of data, as well as not averaging the landings.

In Dover, Delaware, there were five attendees. Those five attendees were in favor of Option 3, to have three regions. They felt that it would be good to have Delaware in sync with New Jersey regulations, and this option would put them with that. Four of those people spoke up in favor of allowing to multi-year average the data, as well as the landings.

There was one attendee in Beaufort, North Carolina. He was a member of the press, so he didn't have any specifics to favor one option or another.

In general, though, at all the public hearings, for those people that did speak in favor of status quo, the main reasoning behind it that I heard was that states have enough difficulty in determining their regulations within their states themselves, and they felt it would be too difficult to come together with another group of states to determine regulations, and they would not be able to meet the needs of that state's specific fishery management plans with regulations if having to go into cahoots with other states.

We received several written comments. There were a total of 42 comments. Five of those comments were from industry organizations; United Boatmen of New York, the Coastal Conservation Association of New York, the Coastal Conservation Association, the Recreational Fishing Alliance, the Tri-State Fishing Area Club, and the Village Harbor Fishing Club, which included 41 signatures within their written comment.

For regional management, there were 21 comments in favor of status quo. Again, the major reason behind that was they have enough trouble deciding without our state what regulations to put in place, we don't want to have to go in cahoots with other states as well.

There was one person that was in favor of having two regions. They felt that this was the only option that fixed the problems with the MRFSS without giving advantage to any other particular state.

Option 3, having three regions, was in favor from six written comments. Most of these comments were from people from the state

of Delaware; and, again, they wanted to see their state paired with New Jersey.

There were nine people in favor of Option 5, the voluntary approach. All of the people that were in favor of Option 5 were in favor of this option along with usually status quo or another management option.

With the summary of the written comment on the multi-year averaging of data, six were in favor of remaining status quo, to not allow averaging of data. They felt that averaging of data would not be good for the fishery.

There were eight in favor of allowing the averaging of data. They thought it would be useful in determining the impact of the recreational fishing regulations.

Lastly, is the averaging of landings. There were seven written comments in favor of remaining status quo, to not allow averaging of landings. If averaging does not improve the estimate, then it should not be done. It is difficult to average different regulations. It can lead to abuse of the system if you average one year and not average the next and could be detrimental to the summer flounder stock.

There were seven people in favor of allowing the averaging of data. They thought that if averaging was used, it would help to smooth out the good and bad years and have a more reliable trend. That is the summary of the public comments. If anyone has any questions, I'll be happy to answer them.

CHAIRMAN GIBSON: Any questions for Toni from the board? Okay, it looks like you don't have any questions.

## Addendum XVII Discussion

MS. KERNS: At the Mid-Atlantic Council meeting last week, the council deferred any action on Framework 6. Framework 6 is the sister document to our Addendum XVII. They will be making a decision on this document at their October meeting in South Hampton.

So, I just want to remind the board that Framework 6 has to go into place for our addendum to have any teeth to it. If they don't adopt one of the measures that we adopt, then due to the process that we have to go through with the Service, we won't be able to enact an option that we say we wanted to put in place.

So, any option that you guys adopt today will be pending whether or not the council would adopt that same option in Framework 6. Is that clear?

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Toni, I want to go through that little scenario that I went through with Pat Kurkul in the meeting with the council. Rick Cole was chairman and did a great job in running us through what we were trying to accomplish with the council package, Framework 6.

What I suggested was, because there was concern by the council of some of the members who did not like the breakout in the options that we had, that the council statement actually be less restrictive than our addendum.

Within the first paragraph, in the context of what we have said in our document, it encompasses the point I was trying to make with the council in that it states that this activity would be creating another tool in the box, meaning multi-year averaging, without

any specific region spelled out, like we have in Option — I think it's 1A, 1B, 1C, 1D, 1E and so on.

And, by doing that, the question then comes up could the council be less restrictive in its language, meaning that we, the board, if we adopt all of the items within this package, we would have more flexibility not only at this time but at a later date.

So, if we accepted our language right now that delineates all of the specific regions, including Option 5, which seemed to be the most acceptable by a lot of the folks, and the council's language is not identical but less restrictive, would that not be doable, would that not be acceptable?

CHAIRMAN GIBSON: Bob Beal.

MR. ROBERT E. BEAL: Pat, I think part of the answer is we have to keep in mind how conservation equivalency works on the recreational fishery in the federal plan. The states have taken on the initiative of developing state-specific measures to achieve recreational harvest limits.

If the states were to implement a regional approach and the federal government hasn't recognized the regional approach, it may be difficult to convince the regional office that the measures through the regional approach do in fact have a high enough likelihood of achieving the recreational harvest limit.

So, I'm not sure if we can generalize and say that if we're — you know, you're using the words "more restrictive," but I'm not sure necessarily approach, broken down in different scenarios, is more restrictive.

You know, we're putting more details on the management program than the Mid-Atlantic Council under your scenario, but I think it would almost have to be on a case-by-case basis, depending on how the averaging occurred, and it's up to the regional office to

determine if they want to implement conservation equivalency in federal waters.

So, we potentially could end up in a situation where state waters have a regional approach; however, federal waters have the precautionary default, and all federal permit holders are obligated to fish under the precautionary default for the entire year. So, I don't know if we can really make a blanket statement that it will or will not work.

MR. AUGUSTINE: A follow-up, Mr. Chairman. But the default measures that the federal government has are going to be consistent with whatever their plan is, anyway. If we are not in agreement, similar to what we were with one of our recent plans in recent years, through the regional office, they just said, well, when you reach this quota or 80 percent of it, it's shut down in federal waters.

And, federally permitted folks were not able to harvest any more fish. So, I guess I'm just wondering if we are not consistent with them, is there any way that Amendment 14 and Framework 6 can ever go through.

That's really my concern. It's a rhetorical question. I did talk with Ms. Kurkul after the meeting and during the meeting, and she did agree that by not breaking out in Framework 6 the specifics, then that's something for the council to deal with.

They would be less restrictive but could accommodate what we have in this addendum. So, I'd just like to hear anyone else's opinion around the table. I know Rick Cole has had some comments about it, and anyone who could shed some light on this, I would appreciate it. Thank you.

CHAIRMAN GIBSON: Pat, just so I understand it, instead of -- maybe it's less restrictive; do you mean less specific. Is that a better way to talk about --

MR. AUGUSTINE: Well, that's it exactly.

CHAIRMAN GIBSON: Less restrictive I think is causing some problems.

MR. AUGUSTINE: We're calling out specific regions of two states or three states or four states, as the case may be, but the opening statement that we have as to why we're creating it, we're creating regional management as another way in addition to our coastal and in addition to our conservation equivalency.

When you blow away all the fluff and take all the frosting off and you're down to the basic ingredients, two things are happening here. The council is creating Framework 6 to accommodate ASMFC's regional approach management that they want to try to put in place.

So, I'm not suggesting that we water down or take out what we've got right now. I'm just saying that I think somehow, as a result of when we're through with this meeting, that the council gets the message that maybe their language does not have to be identical, but that it is less restrictive and will accommodate.

In the long run, it would seem to me that assuming we come up with some other combination of regions that might be more appropriate or more acceptable, it would be within our purview to do that without having to go through the complete framework process of the council again. Those are my thoughts on that. Thank you.

CHAIRMAN GIBSON: I think I understand. It would be asking the council to produce a more generic Framework 6 that could encompass any of the specifics we might contemplate.

MR. AUGUSTINE: Exactly.

CHAIRMAN GIBSON: Okay. Rick, did you want to comment? He asked for comments from council.

MR. RICK COLE: The only thing I could add, Mr. Chairman, would be that as it stands right now, Framework 6 encompasses all the different options, and I don't think that's going to change. And, again, like Pat indicated, I think it's imperative that the Service backstop whatever we may do here in regards to this addendum.

We have been through this before, and we know the importance of having the federal regulations in place that will cover the federally permitted vessels that are fishing in federal waters and also any vessels fishing in federal waters. They have got to mesh.

The regulations and our management strategy through the particular states or regions have to mesh and coincide. It's a difficult issue here. Bob mentioned the federal default and everybody can recall that last year's default measures were 18-inch minimum size and one-fish bag limit.

So, that's what we're looking at as far as restrictive measures in that regard. Now it's not clear to me how we can proceed at this point in time and trying to keep this whole process together, given what happened at the council meeting.

CHAIRMAN GIBSON: Toni, did you want to speak further on the timeliness issue?

MS. KERNS: The last thing that we discussed at the council meeting and due to the push-back of Framework 6 with the council, the Service has indicated that they will not be able to get the entire framework finished and complete for regulatory use before the end of the year.

So that would mean we would not be able use any action that you potentially would

approve at this meeting until 2007, because we would not have any similar documentation from the Service until after the fishing year in 2006.

CHAIRMAN GIBSON: Gordon.

MR. GORDON C. COLVIN: I want to explore that just one step further. It seems to me that potentially the applicability of the regional options and the applicability of the multi-year averaging might be a little different. Let me put it this way.

Is it even necessary for the federal framework to be adopted and the rule to implement it to be adopted to apply multi-year averaging to the ASMFC process under the existing two framework options, which are coastwide and state by state?

I ask that question because the fact is that I think that the federal regulations are silent on that issue, and that the commission has essentially developed its own guidelines for the manner in which state-specific conservation equivalency proposals have been developed.

CHAIRMAN GIBSON: Bob, do you want to respond?

MR. BEAL: I'll give it a shot. Gordon, when you refer to the averaging of the data, are you referring to the averaging of data to determine what, for example, New York's size limit and bag limit and would be to achieve a goal that's established based on a single year's data; or, are you commenting on averaging landings data to determine the goal that New York is trying to achieve would be?

MR. COLVIN: Both.

MR. BEAL: Both?

MR. COLVIN: Or each separately, if there's a different answer.

MR. BEAL: I think the easy one is that averaging of annual data to evaluate the impacts of different seasons, size limits and bag limits, that's been done by states, and I think that could easily be implemented under just conservation equivalency through the commission without the approval of Addendum XVII.

As everyone is aware, we kind of modify the ground rules for conservation equivalency almost on an annual basis, depending on different years' data availability and years for the viable curve and all sorts of things. So, I think that's under the scope of that process.

The more difficult answer is what to do about averaging multi-year data to determine what the state reductions or liberalizations can be. The question there, I think, goes back to whether the federal government would accept those regulations developed under conservation equivalency as to having a reasonable chance of achieving the recreational harvest limit.

I think if this board could develop the justification for that, they may be able to convince National Marine Fisheries Service that there is a reasonable chance of achieving the harvest limit, but without that, I'm not sure -- obviously, I can't presuppose how the regional office would handle those proposals and plans from the states.

CHAIRMAN GIBSON: Does that help?

MR. COLVIN: Well, just to follow up, I come back to the question I raised, and that is whether the current framework, the framework that's in place now that lays out the option of a coast-wide or the state-by-state conservation equivalency addresses that issue; or, is the framework in the federal

regulations, as I suspect, silent on the issue, in which case, it's theoretically in play anyhow?

MR. BEAL: As far as I know, Gordon, the framework is silent on the averaging issue.

CHAIRMAN GIBSON: Okay, where are we relative to moving this addendum forward for action? Bruce Freeman.

**MR. BRUCE FREEMAN: In order to get the discussion started, I'll make a motion. I move, for the purposes of Addendum XVII, that for regional management, the commission remain status quo for application in development of recreational regulations; that the commission allow multi-year application of data; and allow averaging of recreational landings data when comparing to harvest limits.**

CHAIRMAN GIBSON: Pat.

MR. AUGUSTINE: I'll second that motion, Mr. Chairman. For discussion purposes, I'd like to see the full content up on the board. Mr. Chairman, could we have Mr. Freeman give his rationale for the motion?

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: Well, essentially, as certainly demonstrated by the public comment and the position that the state of New Jersey supports, we believe that the existing system, state-by-state allocation, is one that has been discussed at length several times in the past.

We believe the conclusion that we came to, dating back to the eighties, is a valid conclusion where each state needs to make a determination, once it's given its estimated landing limits, how best to deal with that.

When you start regionalizing, it becomes much more complicated and much more contentious. We believe that's not the way to proceed. We also believe that the averaging of the data, the multi-year application of the data is something that will level out some of these ups and downs we see in the fishery, as would the allowing of the averaging of the landings.

Now, there has been discussion as to how the averaging should be used. I think that this needs to be vetted through the technical committee, so, certainly, states don't take advantage of moving in a liberalizing fashion, but that it be looked at very conservatively. Our position is that we need to level out these swings in the harvest, as has been demonstrated in the last several years.

CHAIRMAN GIBSON: Okay, we have a motion up on the board, and it has been seconded. Board discussion on the motion? Jack Travelstead.

MR. JACK TRAVELSTEAD: I like most of the motion. I have some concerns, though, about allowing the averaging of landings. I recall the advice of the technical committee that it probably was not a good idea.

It certainly doesn't make the point estimates any more accurate by averaging them. I think we're kidding ourselves if we think that's really going to work. I think we're setting ourselves up in allowing a state to average its landings over a period of three years where they will continue to exceed their harvest limits.

I mean, they're only going to average if it's beneficial to them and lessens the impact on their anglers. Nobody is going to average so that their landings are higher than the harvest limit. You're only going to average

if it helps you get out of trouble. It might help you get out of trouble for a few months or for that year, but it's not going to slow up the harvest any, is it?

You're going to be shooting for an easier target to hit because you've averaged. I just see it getting us into very real problems.

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: I see this averaging, as Jack indicated, something that wouldn't be taken advantage of; and if a state desired to use it, it would be required to continue using it. So, in periods when the quota was under caught, that would be used as well, so there would be no advantage.

My desire is to even out a situation where a state one year will have a very low catch and the next year a very high catch. We have seen these swings in the MRFSS data. Every time it happens to a state, the state indicates it certainly doesn't understand how this can occur.

The intention is to alleviate these wide swings. But, again, I would have to leave this to the technical committee, so states don't take advantage, but once they get into this system, they would have to remain in it. You couldn't pick and choose those years where you'd be at an advantage and then choose not to opt into the system when those years work to your disadvantage.

CHAIRMAN GIBSON: Gordon Colvin and then Rick Cole.

MR. COLVIN: Thank you, Mr. Chairman. I will not be able to support the motion, and I want to just discuss a little about the reason why and the issue that troubles me the most, although there's more than one.

That relates to the multi-year averaging issue. We've taken this out for public

hearing; we heard a great deal of public input, and carefully attended to and appreciate the comments that we've gotten.

Let me just take a minute to articulate what I think one of the concerns that I've heard is, and I think it's been strongly expressed. It's a hypothetical situation, maybe.

The hypothetical situation is suppose, hypothetically, a state within a region had a large quota and substantially under-harvested it in a given year, the other states in that region over-harvested their quotas, but were able, in our annual get-together in December, to outvote that one state, because they were many and the state was one, in support of a regional option for the following year that would essentially result in that one state's surplus being transferred among the states that over-harvested?

That's the major concern I've heard. I haven't always heard it explained exactly that way, but a lot of it boils down to that. I understand that; that's a concern. One could look at a hypothetical situation like that and easily say that wouldn't be fair.

But, one of our options here was for a voluntary situation where two or more states could agree to come together. Later in this meeting you're going to hear briefly about a memo that I sent to all of you on behalf of four of us about a voluntary approach to managing scup, which we think, based on our first year's experience, may well prove to be a workable approach and one that we'd like to continue.

I've been around with this process long enough and I've seen enough different things come and go and happen to the states and to their fisheries to suspect that there may well come a time when some of us might want to pursue that approach with fluke.

If that option is not part of this motion -- and it's not -- then it's not available to us, and we still have only the same two options we have now. Either we have one set of regulations that applies to the whole coast or each state is on its own.

There's no option for two or three or more of us to get together, sum our catches and our projections of catch and come up with common regs. I think that's a mistake. I think that's an option and a tool that we ought to have, particularly if we choose voluntarily to have it. I can't support the motion without that option in it. Thank you.

CHAIRMAN GIBSON: Rick Cole next.

MR. COLE: Thank you, Mr. Chairman. Jack and Gordon both covered some of my concerns. I thought initially I might offer a motion to split the motion, but that's not going to resolve this issue. I'm going to have to vote against the motion.

The averaging bothers me the most. Again, the technical committee has made it clear that the point estimate that we're using now is the proper way to do it. We asked the technical committee to review this issue. They did it. They provided us with a concise statement that was the consensus of the technical committee.

The staff has put it in the addendum document, and it can't get any clearer. The council staff has talked with the MRFSS people. The MRFSS people are the people that work with these data everyday. They know more about the different anomalies that do occur with this data and the different technical issues.

The MRFSS people say the way we do it now with the point estimates that's generated on an annual basis is the correct way to do it. Chris Moore, at the last council meeting, told the group that when

you look at averaging, you're comparing apples with oranges. It's not the way to do it.

Lastly, on this particular point, now that we've hit a glitch in our summer flounder management program, where the stock is not as big as we thought it was and we're removing more fish from the stock than we thought we were, this is not the time, in my opinion, to come up with an approach that could weaken our efforts to try to restrain the recreational harvest, and that's what we would be doing, in my opinion.

It's not fair to our management effort and it's not fair to the commercial fishermen who have to work on a hard quota. This process is not the way to proceed. Therefore, as the motion currently exists, I won't be able to support it.

CHAIRMAN GIBSON: Jack Travelstead and Eric after that.

MR. TRAVELSTEAD: I appreciate Bruce's explanation on the averaging of landings. There were two or three points you made, Bruce, that made sense to me, but I don't see them in the addendum.

Number one, it sounded like you said this would be an individual state decision if they average landings, so it would not apply to all states. You could have one state averaging and no one else.

You said that once a state starts to average its landings, every year thereafter they will have to continue to average landings, and I don't see that in here. Thirdly, that somehow, whatever the state does in averaging would have to meet the approval of the technical committee to make sure that the state isn't somehow upsetting the apple cart.

I think if we go with averaging of landings, you've got to have those things in here to make that clear. It seems to me if you really mean that if a state is going to continue to have to average its landings, once it starts, that's pretty important.

They should at least have to continue to average landings up to the point where there's no significant difference between whether they average or whether they don't, and then at that point they can choose to go back to the single year's worth of data. It seems to me if this passes, that should be in here to make that clear.

CHAIRMAN GIBSON: Eric.

MR. ERIC SMITH: A question here; there's an idea or a question in my mind that Gordon raised without dealing with the subject. I just skimmed through the addendum document and didn't get a clear answer.

This is for Dave Simpson, technical committee chair. Am I right in the fact that now the technical committee does average some datasets? I mean, just in their normal course of how they do things; is that done, depending on the technical committee's view that the data supports doing that or is it just never done?

MR. DAVID SIMPSON: No, it is done in some cases, particularly for developing management options, but not to determine what the landings were --

MR. SMITH: No, separate from the landings; I'm talking about survey indices we average; catch per unit effort, and so forth, we might average, things like that?

MR. SIMPSON: Yes.

MR. SMITH: Yes, I thought that. I didn't want to set you up for it, but I wanted to be

sure I was right. On the data application part of this three-part motion, we're actually doing Option 2 now. We can do it, I should say.

So, we really, unfortunately, characterized it a little differently because it sounded like we would have to decisively vote for Option 2 in order to do what in retrospect we actually have the ability to do now.

So I would say the data application one is kind of off the table. We don't need to vote on it because we can do it now. That's landings aside.

So far I've heard, I guess in my view, more compelling arguments that the averaging of landings is probably not such a hot idea to pursue relative to the arguments in favor of it. And, again, opinions will vary, but that's how I see it now. So, if I were to vote right now on this, I wouldn't want to vote for a motion that included the averaging of landings. I would have to be persuaded further.

And on the first point, which was the regionalization, the public comment is very clear it's all over the board. Depending on what state you're in, you like different types of regions. Sometimes in the same state, different groups of people like different regions.

The only one that made any kind of sense was the one Gordon suggested, which was just allow the voluntary formation of groups, and Connecticut happens to be in one of those now for scup.

That one even, the way it's characterized, makes me a little bit apprehensive because you can envision a situation where half the states that stand to gain by forming a group do so at the expense of the other half of the states that are going to lose, but by virtue of formation of this sector, the losers lose

bigger than if they just took their lumps on a state-by-state basis.

So even that one, I think I could vote for the voluntary regionalization with the understanding that we would try not to do unto others as we would not have done to us, if you want to be biblical for a moment.

So, having said all of that, I am not sure -- I guess I could easily vote against the motion and wonder why we need to do the addendum. If we can't find a way to adopt what Gordon talked about as the voluntary regions, and we can already do the data application, averaging the data application, and most people don't like the idea of averaging landings, maybe we need to move on.

And if we can't just come to that conclusion, then I would suggest Rick Cole was right with his first inclination, we should divide the question because you've got a three-part harmony going on, and lots of people have different views on lots of parts, and I don't think we'll ever sort them out unless we deal with them one issue at a time.

**CHAIRMAN GIBSON:** Other board comments on the motion? Seeing none, I guess we need to dispense with this unless there's motions to amend or put the question or anything like that. Okay, time to caucus on the motion.

(Whereupon, a caucus was held.)

**CHAIRMAN GIBSON:** Okay, are we ready for the question? All those in favor of the motion, please raise your hand; all opposed; abstentions; null votes. The motion fails. Pat Augustine.

**MR. AUGUSTINE:** Thank you, Mr. Chairman. I would like to move to allow

**for voluntary participation in the formation of regions, Option 5.**

MR. COLE: Second.

CHAIRMAN GIBSON: No other issues included in that, just the single issue?

MR. AUGUSTINE: No, Mr. Chairman, I'd like to do them one at a time.

CHAIRMAN GIBSON: Very good. Was there a second to that?

MR. COLE: Yes, second.

CHAIRMAN GIBSON: Okay, seconded by Rick Cole. The motion is made, seconded and written up on the board. Board discussion on this motion? I have Gil Pope first, Dave Pierce, Bruce Freeman.

MR. POPE: Thank you, Mr. Chairman. I have to vote against this for the same reasoning that Gordon said earlier in his scenario that could possibly happen; that a few states get together and vote for something or against something, so I have to vote against this one. Thank you.

CHAIRMAN GIBSON: Okay, Dave, you're up next.

DR. PIERCE: Gordon made a point earlier on about the states of New York, Connecticut, Rhode Island and Massachusetts getting together on scup and voluntarily agreeing on an approach for this past year.

He's right, it was done, and it seems to be working. However, in the case of scup, most of the scup that's landed recreationally is in those states, so it was easy for us, relatively easy for us to get together and decide what we should do because the other

states, New Jersey south, were not in the mix.

We didn't have to be concerned about our actions on them. Were Option 5 applied to fluke, it's still unclear to me as to what the consequences might be to other states that might not be part of some voluntary region, some voluntary grouping of states. I seek some clarification regarding that.

Even at this late date, I still don't understand how this would actually work in practice relative to some states perhaps unexpectedly being disadvantaged and others perhaps being advantaged. So, I would look for some clarification there, if staff could perhaps provide that.

CHAIRMAN GIBSON: I don't know that I can answer that. I can't predict what the implications might be for one group of states organizing voluntarily and what the implications might be to those states that didn't organize. Gordon, do you want to try to address that?

MR. COLVIN: Well, I expressed support for this approach earlier, so I'll take a whack at it based on the understandings that foster my support.

I think that this option would ordinarily be associated with a decision on the part of the board and the council to proceed in a given year using the state-by-state conservation equivalency approach. I think it's kind of moot if they chose -- and I'm beginning to despair that they'll ever choose again to go with a single set of coast-wide measures.

It doesn't sound like that's in the cards. So, having made the decision to go to state-by-state conservation equivalency, I think we all know how that process has worked. Each state is given a target; and based on its share of the quota and its projected harvest for the following year, and it's either a plus

or a minus, they're allowed to adjust their regulations up or down accordingly.

As I see this approach, it was offer, under that scenario — let me use an example because we had a lot of comments in the public record from folks in Delaware who wanted to try to get on the same page as New Jersey — that in a given year should New Jersey and Delaware choose to do so, but only if they chose to do so, they could essentially combine their states' quotas, combine their states' projected catch, pretend that they were one state, if you will, for the purpose of implementing a conservation equivalent approach and a single set of regulations applicable to both states, but only if they chose it.

CHAIRMAN GIBSON: Harry Mears.

MR. HARRY MEARS: Thank you, Mr. Chairman. If this comes to a vote, I will abstain because I look at it as an allocation issue, but I feel obliged, in the absence of general counsel being here, what it means from a council perspective.

As I remember the discussion on this approach or this potential approach, when it did arise, when the original state-by-state conservation equivalency allowances were approved under the current joint plan, it is specifically predicated on a state-by-state basis.

I'm assuming here, if this passes, that it would be incongruent with the joint plan. I think it would force Framework 6 to go ahead and address regional quotas. Dan Furlong is in the audience. He can disagree or agree with my spin on it.

But, when this went out to public hearing under the summer flounder plan, regionalization was one of the options, and it was expressly not approved or it was expressly not desired at the time of the

public comment and decision-making process.

So, my point here is that for the conservation equivalency provisions to work under the joint plan, it, in all likelihood, will require follow-up action by the council so that it can be adequately incorporated under the federal plan administered by the Mid-Atlantic Council.

CHAIRMAN GIBSON: Gil Pope.

MR. POPE: Thank you very much. And at the same time I remember reading a letter from Pat Kurkul about how the MRFSS is being used in the single-year conservation equivalency, and that she felt, if I got the gist of the letter right -- I'm not sure, and Harry might want to correct me -- she said that it really wasn't designed to do that.

I think we all agree to that at this point, and we're trying to do something else, but it just seems like there's nothing in between. It seems like we can't seem to come up with between the regional approach and the single year, because each of us has a program that we either think is working or not working.

The other point that I want to make to this, is that it seems like I don't remember -- and Everett doesn't seem to remember -- ever volunteering for the voluntary group. So, in this particular case, we seem to have been volunteered.

I don't remember that we voluntarily wanted to give away anything, so I'm not sure if that was the way to go, and that's why I'm opposing this. Thank you.

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

MR. PRESTON PATE, JR.: Thank you, Mark. A question to help clarify where my

position might be relative to this motion is. Does Option 5 allow for the pooling of data in the process of developing the regional plans?

In other words, if New York and New Jersey wanted to get together and develop a regional size and bag limit, would they be allowed under Option 5 to combine their recreational landings data to reach that goal?

CHAIRMAN GIBSON: I don't see how else they could -- I don't see how you could come up with a consistent plan amongst the region if you weren't combining your information sources.

MR. PATE: Well, there are two ways to do it. One is that would be one, and the other would be to reach an agreement that they would try and achieve, based on their own state's analysis, the same size and bag limit.

If the conservation equivalency process allows that results in them having the same size and bag, then they've reached the regional approach through voluntary agreement on what the size and bag should be, but not through the process of pooling their data. I guess I was just curious to know from New York's standpoint, the maker of the motion, the intent was in their motion.

CHAIRMAN GIBSON: I was going to have Toni first address it, and then have Pat, the maker of the motion, address it.

MS. KERNS: I think the first issue of the pooling of the data is what Harry was speaking to in that then we would need a sister document with the Framework 6 for the Service to be able to accept those proposals. If we went with the second option that Pres brought forward, then we would not need any of this. This is something that we could do currently because you are not pooling your data.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Specifically to your point, Pres, the way Toni had written this option up -- and I was confused when I read it the first time and went back and said, no, it makes sense. It says, "Region-specific tables developed by the technical committee would be used to determine which possession limits, size limits and closed seasons that would constrain recreational landings to the coast-wide recreational harvest limit for that entire grouping or region.

"Tables would be adjusted for each region to account for past effectiveness of the regulations of states within the region, which shows the regional size limit, possession limit and closed season that would constrain landings to the appropriate level.

"If this were chosen, regions would not be allowed to implement measures by mode or area unless the PFC of mode or area for that region is less than 15 percent. The management measures within the region would be the same for each state in that region and conservation equivalency would not be permitted.

"There would have to be consistency but the tables would have to be developed by the technical committee." I think the only thing states could do would be to participate in the final decision to either accept it or not accept it, similar to what we have now for conservation equivalency. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. Other board discussion or comments? I realized that before the last motion, I neglected to ask for audience comments, so I'll do that now pending board action on this motion. Is there public comment at this time? Seeing

none, it's time for the board to caucus on this motion.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: Yes, Bruce.

MR. FREEMAN: I have a question just for clarification on this motion. Under Page 7, under this option, Option 5, it has adjacent states. Now, for example, let's take New Jersey. If in fact we wanted to combine with New York, certainly, New York is adjacent to us, and that's obvious; or, we wanted to combine with Delaware, that's adjacent to us.

But, would it include, let's say if New York, Connecticut and New Jersey, since they're adjacent, or is it just a single state adjacent to one? I'm confused as to exactly what is meant by "adjacent".

CHAIRMAN GIBSON: I understand it to mean a contiguous block of states. You can't be adjacent to Connecticut, obviously, but you can be adjacent to the nearest neighbor and so on. That's my understanding of it. I mean, that's what we attempted through the scup program.

MR. FREEMAN: Okay, fine, thank you.

CHAIRMAN GIBSON: Are we ready to call the question? Okay, on the motion to adopt Option 5; all those in favor, please raise your hand; all opposed; abstentions; null votes. The motion carries.

Okay, any additional motions? I think we may have a motion coming and it's not quite ready yet. Gordon Colvin.

**MR. COLVIN: There being silence, I'll make a motion to get us moving. Mr. Chairman, with respect to the data application in the development of recreational regulations, I move the**

**addendum include Option 2. I don't mean include Option 2; I mean the addendum will adopt Option 2.**

MR. TRAVELSTEAD: Second the motion.

CHAIRMAN GIBSON: Who seconded that?

MR. TRAVELSTEAD: Travelstead.

CHAIRMAN GIBSON: Okay, thank you. Motion by Gordon; seconded by Jack Travelstead to adopt Option 2 of data application. Okay, board discussion on this motion? Harry Mears.

MR. MEARS: Just for the record, Mr. Chairman, could Option 2 be read?

MS. KERNS: Option 2 states, "The multi-year application of data is allowed. Under this alternative, the averaging or combination of multiple years of data; i.e., landings per angler, length frequency distributions, would be allowed in the analyses to determine the impacts of proposed recreational management programs. These programs may include minimum fish sizes, possession limits and fishing seasons."

CHAIRMAN GIBSON: Okay, is everyone clear what this option does? Is there board comment or discussion on this motion? Gil Pope.

MR. POPE: I'm just curious; is that similar to the one that we voted down, the motion before this? How similar is it to the one that we voted down, I guess, two before this?

CHAIRMAN GIBSON: Well, that was a combined motion. It had a number of elements in it. This is a single-issue motion for the use of multiple years of data. Harry Mears and then A.C.

MR. MEARS: Mr. Chairman, could I ask the chair of the technical committee to give their report on the technical committee's perspective on this option?

CHAIRMAN GIBSON: Yes, please, Dave Simpson.

MR. SIMPSON: Well, there's reference to it in the document, but the technical committee supported the concept of doing this multi-year averaging and so forth, using data to explore management options.

CHAIRMAN GIBSON: A.C.

MR. A.C. CARPENTER: That answers my question as well.

CHAIRMAN GIBSON: Other board comments on this motion? Preston.

MR. PATE: A question more than a comment. Getting back to the point that I think Jack Travelstead made when he was speaking to the earlier motion, would this allow states to be selective in their use of multi-year averaging, and I would assume to their advantage when it turned out to be so.

I would like clarification from the technical committee. Is your support based on this being a requirement each and every year or can the states be selective in the application of this option?

MR. SIMPSON: The way we have approached it in the past and the way I would envision it to occur in the future is that a state would present its strategy for developing options and provide some rationale for why they would use multi-year averaging.

Historically, it's been in the case of a state having an underage and looking to expand or liberalize their fishery, which presents

greater technical challenges than restricting the fishery.

That's the argument that's been used before and the case that it's been used in before, and that's what I would expect in the future. So, I would envision it being on a case-by-case basis, and the argument would have to be there for using multi-years or a single year.

CHAIRMAN GIBSON: Toni.

MS. KERNS: And just as a reminder, each of these proposals would still have to go through the scrutiny of the technical committee. The technical committee still has the ability to either pass or fail a proposal.

But, this specific option, Option 2 for data application, is for data only to help put together management programs. This is not for averaging of landings to determine a TAL or your harvest limit.

CHAIRMAN GIBSON: Pres, does that help? It would still be the technical committee's review of the suite of years offered for averaging.

MR. PATE: Yes.

CHAIRMAN GIBSON: Any further board comment on this motion? Is there any public comment to this motion at this time? Yes.

MR. MOORE: Herb Moore from the Recreational Fishing Alliance. I'm a little confused follow Mr. Smith's comments earlier. It was my impression, following his comments, that this is already allowed. The commission can essentially already apply multiple years of data. I guess my question is if it's already allowed or is it already allowed, and is this motion necessary?

MS. KERNS: In the guidelines for the conservation equivalency document, this issue is ambiguous so this will clarify what the TC is allowed or is not allowed to do.

CHAIRMAN GIBSON: Thank you for that clarification. With that, we should call the question. We are running a little behind schedule. All those in favor, please signify by raising your hand; all opposed; abstentions; null votes. The motion carries. Bruce.

**MR. FREEMAN: I move to allow the averaging of landings data (Option 2 under averaging of recreational landings) by individual states with the restrictions of the following: 1. If a state chooses to use averaging, it would be compelled to continue using this system -- Jack, I'm looking for the terminology you used.**

MR. TRAVELSTEAD: What I thought was that you would have to continue to use it until such time in a particular year the averaging you would have required to use produced the same results as not averaging, or there was no significant difference between the two.

MR. FREEMAN: If I may, Mr. Chairman, can you put that into fewer words? I understand the concept, but I'm trying to reduce it.

MR. TRAVELSTEAD: Yes, that sounded good.

MR. AUGUSTINE: It would be the results of averaging would not be less restrictive than if you used year by year.

CHAIRMAN GIBSON: How many restrictions do you have, Bruce?

MR. FREEMAN: What I have is if a state chooses to use averaging, it would be compelled to continue using this system until the results of averaging would be neutral.

Number 2 would be "would have to meet the approval of the technical committee". Now I put that caveat in because there may be other considerations that Jack or I or others haven't thought of, but would be necessary in order for a state not to take advantage of this.

My desire is not to advantage a state; it's simply to even out these radical changes that may occur from one year to the next.

CHAIRMAN GIBSON: With regard to Restriction 1, I kind of like that would not be less restrictive in the results of the year-by-year application. I think that makes more sense than the neutrality.

MR. FREEMAN: All right, I'm certainly agreeable to wording changes to make this clear.

CHAIRMAN GIBSON: Under 1, it would be saying if a state chooses to use averaging, it would be compelled to use averaging until the results of averaging were not less restrictive than a year-by-year application? Pat Augustine, help me here.

MR. AUGUSTINE: Thank you. Did you want to put a caveat in there such as a minimum number of years, like three years or a number? Five years sounds like too much; three years sounds like it might be a better number.

MR. FREEMAN: In the original it was up to three years. That's certainly agreeable.

MR. AUGUSTINE: That was why I suggested possibly three years.

MR. FREEMAN: I didn't include that because I thought that was reasonable in the original, but if you want to include that, perhaps it would be good to include that as another caveat.

MR. AUGUSTINE: Yes, and then I would second that, Mr. Chairman, for follow-on discussion purposes.

CHAIRMAN GIBSON: Thank you, Pat. We'll get the wording worked out and then we'll go from there. Okay, what's the third restriction?

MR. FREEMAN: That it be a three-year average, a running three-year average. Yes, that's good. I would put running three -- if a state chose to get into this, it would have to be a running.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: That would be for a running period of not less than three years. There's an inference there that you'll average for three years, but not less than three years, but once you submit or commit to averaging, that you have to do it for a minimum of three years. In other words, you can't do it for one year and opt out the next year. I think that --

MR. FREEMAN: Well, I think, Pat, under Number 1, if you want to opt out, you have to get back to a neutral position. You can't use it one year to advantage yourself because your catch goes way down and then the next year opt out.

Well, Condition Number 1 would prevent you from just jumping in and out. Under 2, there would be -- sorry, under 3, there would be a running three-year average, which would moderate this even more, in my opinion.

MR. AUGUSTINE: Mr. Chairman, it just seems that when we put that at the end and we say a running three-year average, when I go back to make my decisions that we want to use averaging, when do I start it?

Do I start it back in 2003 or 2003-4-5; then average for 2006? In other words, how far back do -- that's the hole that I see here, so if you had a start date -- for instance, if you decided to average in 2006, you would have to run 2006, 2007 and 2008.

I think it would be clear to the public to know that they have committed to the blocks of time. Somebody else may be able to help on that.

MR. FREEMAN: Well, if I may, Mr. Chairman, my concept here is that if you wanted to use it for 2007, you would have to go 2006-5-4. Then if you want to use it in 2008, it would be 4-5-6. It would just continue moving in a three-year block.

CHAIRMAN GIBSON: The way it's written right now, I don't think it's clear what's intended. It just says a running three-year average. It doesn't say anything about dates of timing initiation or completion.

MR. AUGUSTINE: That was the point I was making, Mr. Chairman. Maybe Toni has an idea of how to go with it.

CHAIRMAN GIBSON: We need a break to polish up this motion. Gil Pope.

MR. POPE: I think the intention of this is if you use it, say, in 2006, that it's used in 6-7-8, and then at that time, you have to decide and say, look, I'm going to use it for the next two years.

If you decide to use in 2007, then you have to go to 2009. You have to continue on, and that you have to go with at least three years

in the future and not in the past. But, the first year, if you want to use the last three, that's fine, but you're committing to three years.

And if you use that same data and you use it in 2008, then you have to use it in 8-9-10. You can't just use -- you have to declare that you're going to use just for those three years, good or bad. I think that's what he was trying to get across.

CHAIRMAN GIBSON: Pat.

MR. AUGUSTINE: I think she's trying to type something in there. Toni had a very good idea. It sounded like it clarified exactly what Bruce was trying to describe.

CHAIRMAN GIBSON: It's a running three-year average of the current year and the two previous years.

MR. AUGUSTINE: That's what you were saying, wasn't it, Bruce?

MR. FREEMAN: Well, again, that meets my concerns. I think, Pat, the issue you spoke about, once the state opts in, you're compelled to continue with it -- it may be more than three years -- until you reach a point where you're neutral and that you're not behind, and then you could opt out.

So, it may be much more than three years. I have no problem with that. Again, I don't want people to use this for taking advantage of one poor year, but it's meant to simply do away with these very dramatic rises and changes from year to year.

MR. AUGUSTINE: Thank you, Mr. Chairman. That was my thought exactly, and I think Bruce captured it in his comments. The idea was once you're there, you're there until such time that you clearly have come up with that average, but it will take the bumps out.

CHAIRMAN GIBSON: I have Eric Smith and then Gordon.

MR. SMITH: I'm not sure at this late point in the day, this is a good idea to try and do this, but I do understand Point 2. Even I can understand that. Number 3, I understand now, but I would point out that's not what Gil said, so we have to understand this is something different.

Number 1 mystifies me. If a state chooses to use averaging, it would be compelled to use averaging until the results of averaging would not result in regulations that are less restrictive than the use of annual data.

Do you mean not less restrictive -- would not result in regulations that are less restrictive than the regulations that would result from the use of annual data; or, are you comparing the regulations from averaging versus what the regulations would be based on one year of data? That Number 1 is, to me, very confusing.

CHAIRMAN GIBSON: That's what I understood the intent to be; that you'd be comparing regulations derived from the averaging process against those that would go into effect based on one year of data.

MR. AUGUSTINE: That's it exactly.

MR. SMITH: I would suggest, then, the words should be, right from the cursor, "regulations that are less restrictive than the regulations that would result from the use" -- is that what you mean?

CHAIRMAN GIBSON: This is a tortured motion, but I think we're stuck with it at this point. Who is going to claim authorship of this? Does the seconder still endorse this? Does the maker of the motion still endorse this?

MR. FREEMAN: Yes, I think it's okay.

MR. AUGUSTINE: We have to have a consensus or we have to have a caucus here, but, yes.

CHAIRMAN GIBSON: I Gordon Colvin on the list. Gordon, do you have a comment on this?

MR. COLVIN: I have a couple of things, Mr. Chairman, I want to try to get clarified in my mind. First point, why do we do this? It seems to me -- and I'm going to ask the staff to tell me if I'm wrong here -- that the application of this approach would be when we take action every year to project what a state's landing will be in the following year as compared to what their quota is going to be in the following year.

This is what I was talking about earlier. Right now, for the most part, we project that a state's landings in the following year will be the same as their landings in the current year, and then we make certain adjustments based on what their quota will be and that tells them whether they have to get more restrictive or less restrictive.

So, what we're saying is, I think, that instead of projecting landings in the following year as the same as the current year, we would project them to be the same as the average of the current year and the two preceding years landings. Am I right? I need to understand that.

MR. AUGUSTINE: Yes.

CHAIRMAN GIBSON: Yes, that's what I think they're saying here.

MR. COLVIN: Because if that's what we're saying, it makes me just a teeny bit more comfortable with that application of averaging than I would have been based on the advice from the technical committee. I understand the technical committee's advice

in terms of what it has to say about the best estimate of a current year's landings.

I don't dispute that for a second, but I think we actually apply that a step beyond because we're making this projection. That's Point 1.

Point 2. On the other hand, I've got a question for the maker of the motion. With respect to Item Number 2 up there, the approval of the technical committee, the concern I have is that the technical committee, here in black and white, seems to be saying they ain't going to approve this.

Is it the viewpoint of the maker of the motion that the technical committee's advice is something other than that, because here's the problem I have. The technical committee has already told us -- and we even went so far as to include their advice in the public comment draft of the addendum -- they don't approve of this approach.

Then, by including that provision in the motion, it seems to me we're deflecting public hopes and desires to implement this option to the technical committee, who has already said, no, why should we do that?

If that's the case, I am not sure that's right. We should either take their advice or not take their advice, it seems to me. So, I just wonder if we can get some discussion on that point.

CHAIRMAN GIBSON: Bruce.

MR. FREEMAN: My take on this, Gordon, is, from the technical committee, that there could be pulses of recruitment that are difficult to determine ahead of time, and that it could influence the fishery, and I understand that.

But, what I'm trying to do is to avoid a problem that the state of New York got into

a year or so ago where your catches were dramatically reduced, and you were forced into an impossible situation, and no one can explain it other than that's what the data indicates.

It seems to me that none of us would like to be in that position, and I'm trying to find a way where we would not be put in that position because of some artifact in the data, which drives us way down beyond anyone's expectations.

I don't want to take advantage of the system by using such information to increase the state's estimated harvest level. It is difficult to —

MR. COLVIN: Can I respond, Mr. Chairman? I'm not sure that response addresses my issue. My concern is not with -- because I know what happened in New York better than anybody, but the fact is that the technical committee, if I read their advice -- and if we back the clock up and put this into effect, the technical committee's advice to the board would have been we reject New York's reasoning in their three-year averaging.

And if that's what they're telling us, then I think we need to act on that advice now and not put it in the motion because I don't think it's fair to the technical committee. They've already told us what they think.

To make matters worse, what it's going to do is it's going to create expectations among our constituents that maybe the technical committee might approve something, and the focus of their interest and ultimately criticism is going to be on the technical committee, and I think it ought to be on the board. Again, that's another reason I think it's not fair to the technical committee.

CHAIRMAN GIBSON: Dave Simpson.

MR. SIMPSON: Just to thank Gordon for making that point, because what you're going to do is make the technical committee a political body, as the management board should be, and not a technical body.

We're going to start to get lobbied by interest groups, and we're going to have more people at our meetings trying to influence technical advice, and that's the wrong way to go. I think what we said before was from a technical perspective, as Rick Cole pointed out, the best estimate of landings in a given year in a given state is what MRFSS provides now.

If the problem is it's too painful to make the adjustment in one year, that's a decision the board can decide to make, and they could work out a schedule for getting back on track that extends beyond a year, but please don't put the technical committee in the position of having to become a political body.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: I guess one of the issues is the technical committee is saying that, indeed, every estimate that we get for each year, for every harvest in each individual state is a good estimate. It's the best estimate -- well, yes, it's best because it's all they can provide.

But it may not necessarily be an estimate that an individual state feels comfortable with. It may not sound logical, and we may have our own specific reasons why we feel it is inappropriate.

So, with that said, let me give an example as to how I would interpret this motion, which, admittedly, is kind of complicated to understand, but this is how I would interpret it as a way to get around -- not to get around it, but to deal with the wild swings that we have witnessed with recreational landings

from one year to the next, inexplicable wild swings, let's say.

I would interpret this motion, if it was to pass, as meaning that, for example, if in Massachusetts we had a relatively low landing of fluke, recreational, in 2003, and a relatively low in 2004, but then we get to the end of this year and we find out that it's spiked way up, it's spiked way up, now, do we want to use that high-spike value as a way to determine what we likely will have as landings next year, and then we have to develop regulations to cut landings dramatically because of that high spike in 2005?

I would say probably not. Therefore, if this motion was to pass and we were to follow its logic, we might want to average 2003, 2004 and 2005 to give us a lower value that would then not make us -- not oblige us to have to implement some rather dramatic measures to get that unexpectedly high 2005 value down to some lower number that we might think would be more consistent with the lower numbers in 2003 and 2004.

So, that's what I think this motion, if passed, would enable us to do; and if that's the case, then it does provide an attractive way for us to go. But, indeed, it does put us at odds, I suppose, with the technical committee's conclusion that these are the numbers.

If in 2005 Massachusetts landings spike way up, according to MRFSS, the technical committee, I guess, is saying it's spiked way up, those were your landings, so live with them. That's, I think, what the technical committee was essentially saying to us, and to all of us.

So, if what I've said is true, then I'll likely vote in favor of this motion.

CHAIRMAN GIBSON: David, do you need to comment again? I've still got a list of people that are next.

MR. SIMPSON: Just to get back to a comment that Gordon made, where he thought that what the technical committee was doing was using last year's landings to estimate what this year's would be; in other words, this year we would be using 2004 landings to estimate what 2005 would be.

That's not done. We meet in November in order to get information to the board in a timely fashion, and we look at Wave 1 through 4 of the current year, and there's an estimation done there, you know, a projection of what's going to happen in Wave 5 and 6, that's usually based on proportions of landing and so forth.

But, in the end, when all the data comes in, we make the final adjustments, and we have the MRFSS current year estimate, and that's what is used. So, there isn't any using old data to figure out the current year.

CHAIRMAN GIBSON: Ed.

MR. ED GOLDMAN: Thank you. I'd just like to add on this. You know, I can understand the technical committee not wanting to be political. But, reading on the last page of the document, in the middle of the paragraph, it says, "These factors tend to be year-specific, and therefore averaging across years does not improve the estimate of harvest for any one year."

I agree with that. What we're trying to do is, as we said, dampen the swing, so it probably would be good to take Number 2 out of there and not have the approval of the technical committee, because they're saying this is not going to change the data.

We understand that, but we just want to lessen that swing from year to year. We feel that the board might or might not feel that won't have too much a dramatic effect on the rebuilding plan. Thank you.

CHAIRMAN GIBSON: I have five people on the list -- we're at least a half hour behind -- Pat, Jack, Dan, Preston, Dave Perkins.

MR. AUGUSTINE: Thank you, Mr. Chairman. Very quickly, in view of the way the motion is read, Dave, would this give the technical committee more comfort than the way it was presented originally?

I'm not asking for a commitment, but it seems to be much more comprehensive and more clearly stated that the way we had approached it in the document. I mean, yes or not? I mean, I'm not trying to put you on the spot. I'm sure it's going to become political no matter which way you go.

MR. SIMPSON: The landings are the landings, and right now we do that through MRFSS estimates. What you're doing as a group is deciding --

MR. AUGUSTINF: It's okay, I've got what you're saying.

MR. SIMPSON: You know, we're anticipating not liking the answer, so we're trying to develop a mechanism for having alternatives to what the answer is -- I don't like our landings; I want a way to change them. That's obviously motivated in one direction.

MR. AUGUSTINE: Got you, and my second point is I would like to make a friendly amendment to the motion to take out Line 2, "It would have to meet approval of the technical committee." It's inferred that it has to, anyway.

CHAIRMAN GIBSON: Are you willing to accept the friendly amendment --

MR. FREEMAN: Yes.

CHAIRMAN GIBSON: -- to strike Restriction 2?

MR. FREEMAN: I would accept that.

CHAIRMAN GIBSON: I had Dan Furlong who wanted to comment.

MR. DAN FURLONG: Thank you for recognizing me, Mr. Chairman. I'm Dan Furlong with the Mid-Atlantic Council. The action you've taken so far with your first motion that you approved and the second motion that you approved, I see no problems in terms of the framework that we have and the options that we have, such that when we get to the October meeting, there would be a high degree of compatibility between the commission and the council.

However, this motion, because of these restrictions, we never contemplated this kind of detail in our framework. So, I think it would be difficult for us, in a procedural sense, to have our framework being in an approvable state. That's comment number one.

Comment number two is that I can't speak for the council, but I can speak for the staff, and would like to echo what Mr. Cole already said, is that our staff very much prefers to prefer the option that is in our framework, which is stick with the one-year data, consistent what Dave is saying that the technical committee has said.

And the last thing I would say is if you take a look at our framework -- and you haven't addressed this at all -- what our framework says, and I'll read it, with regards to this procedure or option is this procedure for determining reductions would be mandatory for all states.

In other words, we were contemplating the idea if you go to this up-to-three-year option for averaging purposes, then it would be selective amongst the states. Every state would have to do it. So, you know, that

conversation hasn't been on the table here this afternoon while I've been here.

I would just point out that is, in fact, what our framework addressed, was the idea that this is a toggle, one-year average for everybody or it's multi-year for everybody. Thank you.

CHAIRMAN GIBSON: Thank you, Dan. I have Pres Pate and Dave Perkins. Then we're going to move this item.

MR. PATE: Mine will be brief because I agree wholeheartedly with what Dan just said. MRFSS is what it is, and we either apply it on a year-to-year basis, or we do the averaging mandatory for everybody every year, because it can swing both ways. It can over-estimate; it can under-estimate, and we've set up here is an opportunity for an individual state to take advantage of an over-estimate and smooth that out. The technical committee doesn't agree with it, and I can't support it.

CHAIRMAN GIBSON: Thanks, Pres. Dave, you have the last word.

MR. DAVID PERKINS: Thank you. I was just asking if maybe the chair of the technical committee, did you folks talk about any risks associated to the stocks of taking this approach in terms of delayed response, if the stock decreases, anything along those lines?

MR. SIMPSON: Yes, we did, and the concern would be that this would greatly increase the likelihood of exceeding the TAL.

CHAIRMAN GIBSON: I'm going to take one comment from the audience, and then we've got to move this question.

MR. CURSIO: I'd just like to add a couple of points here. Philip Cursio, United

Boatmen, New York. First of all, I'd like to remind the board that multi-year averaging provides another benefit in that it provides a mechanism for earlier setting of specifications, because you no longer need to wait for Wave 5 data or late-year data to set the following year's specifications because you have three years of data behind you.

Second, just speaking to a three-year rolling average, you could look at a one-year spike as anomalous. Once you get two years or more of a spike, now you can look at that as a trend and your average will go up accordingly, so your TAL will be set in accordance with that two-year or three-year trend.

If it truly is a trend and not a statistical anomaly, then it will show up in the following year's data. Finally, I would like to remind the board that MRFSS was never intended to be used as a year-to-year quota-setting tool, but was intended for long-term trend evaluation. Thank you, once again, for the opportunity to make some comment on this.

CHAIRMAN GIBSON: Thank you. The board needs to caucus on this motion, and then we'll dispense with it.

(Whereupon, a caucus was held.)

**CHAIRMAN GIBSON: Okay, is the board ready to vote? The motion is move to allow averaging of landings data, Option 2, allow averaging landings by individual states with the following restrictions:**

**If the state chooses to use averaging, it would be compelled to use averaging until the results of averaging would not result**

**in regulations that are less restrictive than the regulations that would result from the use of annual data;**

**A running three-year average of the current year and two previous years and for a minimum of three years.**

**All those in favor, please raise your hand; all those opposed, same sign; abstentions; null votes. The motion fails. Mr. Colvin.**

**MR. COLVIN: Mr. Chairman, I move the board approval of Addendum XVII with the two measures adopted by prior motions.**

**CHAIRMAN GIBSON:** Seconded by A.C. Carpenter. Gil Pope.

**MR. POPE:** Very quickly, I think there is a better way of going about what Bruce was trying to do, when I talked to him about it, and I hope sometime in the future that we can do this, because I think there's a much better way of smoothing out the averaging. Thank you.

**CHAIRMAN GIBSON:** You're not going to try to work out a complex motion? Okay, thank you. Any other board discussion on the motion, which is to adopt the addendum with the two prior authorized elements? Is there a need to caucus on this?

All those in favor of the motion, please signify by raising your hand; opposed; abstentions; null votes. The motion passes.

Okay, thank you for your indulgence. The next item is FMP Reviews.

### **FMP Reviews**

**MS. JULIE NYGARD:** Thank you, Mr. Chairman. I'm going to briefly review black sea bass and scup compliance. Black sea

bass, no compliance issues. The recreational regulations for 2005, by state, are up here, and apparently the open season column is not showing up, but the open season is all year.

The only exception, all states have that open season except for New York, which is open January 1<sup>st</sup> through November 30<sup>th</sup>. The possession limit is 25 fish, and all states have that except for Massachusetts, which has a possession limit of 20. All states have the minimum size of 12 inches.

There are no compliance issues for scup. The 2005 regulations for scup are up on the screen now. The four states, Massachusetts through New York, all have a 10.5 inch minimum size. Massachusetts has an open season from May 1<sup>st</sup> to August 31<sup>st</sup> and 25-fish bag limit with the exceptions noted with 50 per private vessel that has two or more anglers; and 60 fish for party and charter boats from May 1<sup>st</sup> to June 30<sup>th</sup>.

The regulations for Rhode Island, Connecticut and New York are all the same with the open season of July 1<sup>st</sup> to October 31<sup>st</sup>, and a 25-fish bag limit, 60 fish for party and charter boats from September 1<sup>st</sup> to October 31<sup>st</sup>.

New Jersey has a nine-inch limit and 50-fish bag limit, open season January 1<sup>st</sup> to February 28<sup>th</sup> and July 1<sup>st</sup> to December 31<sup>st</sup>. Maryland, Virginia and North Carolina and Delaware all have eight-inch fish minimum fish size, 50 fish and open season all year.

### **Summer Flounder Compliance**

**MS. KERNS:** Summer flounder, we have two compliance issues with regard to Addendum XV. Addendum XV with regard Addendum 15. Addendum XV required the states of New Jersey, Virginia, Rhode Island and North Carolina to transfer fish to the

states of Maine, Massachusetts, Connecticut and New York.

The state of New Jersey has initiated all of their transfers except for 3,079 pounds to Delaware and 14,109 to Maryland. North Carolina has completed all of their transfers except for 5,053 pounds to Delaware. Those are two compliance issues for summer flounder. I will forego going over the fluke recreational regulations. They are the last table in the FMP Review that you can look at in the interest of time.

CHAIRMAN GIBSON: A.C.

MR. CARPENTER: On that summer flounder, Table 5, you have PRFC with a 5.5 inch mesh. It should be an NA. We don't allow trawling at all.

CHAIRMAN GIBSON: Thanks for that clarification. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, do you need a motion to approve these reviews?

CHAIRMAN GIBSON: Well, we need board discussion on these compliance issues or lack of compliance thereof. I believe Eric had a motion to offer on this.

MR. SMITH: Well, actually before a motion, I wanted to point out that I think we all understand this addendum was a pretty divisive one, but I think it was very useful in forming our ideas on how we deal with the future of all three, fluke, scup, black sea bass and any other species we ever get involved with state-share quotas again.

I think it's a shame, but it's inevitable with the quota decline that we heard about last week, Year 2 of this addendum will not happen. If you recall, the addendum said that any increase in quota above the level that was allocated in 2004, which is about 28 million pounds, would be distributed

according to the formula in the addendum from some states to other states to reduce discards and bycatch.

The quota will drop below that floor; therefore, the Year 2 of the addendum is moot, and I would suggest we don't need a motion even to deal with that. It's not as if we have to take an action by a super majority to change the thing, because that whole action for Year 2 is hard-wired into the approved document in the first place.

So, unless there's disagreement, that should be off the board. The other point I have on the addendum is the procedural issue, and I've had some discussions with certain states in the last couple of hours, so this won't come as a surprise to anyone, I don't think.

The process issue of ensuring that the commission -- when we approve an addendum, we need to stay the course. In fact, when we approve any management action, we need to stay the course, and all states have to meet their obligations, and the commission in total has to hold us to that, so Connecticut or any other state can't selectively implement measures without having some real debate by the commission to make sure we stay with our process.

Because, if we don't do that -- and in this case, with this addendum, some states who met the entire obligation frankly are going to be disadvantaged, and that will be perceived that way back home relative to states that, for whatever reason, even a good reason, couldn't or didn't meet the total obligation.

So, with some regret but to remain to this process, I'm going to offer two motions in a moment to find New Jersey and then North Carolina out of compliance, and I think that's the appropriate way to address the issue that all of the requirements of that addendum for this year were not met.

**So, my first motion is to find the state of New Jersey out of compliance with Addendum XV due to the fact that transfers required by the addendum to Delaware and Maryland were not requested through the National Marine Fisheries Service. Actions needed to be taken for New Jersey to return to a condition of being in compliance would be to make the required transfer requests to the Service.**

CHAIRMAN GIBSON: Is that the entire motion, Eric?

MR. SMITH: Yes, it is.

CHAIRMAN GIBSON: Is there a seconder to the motion? Seconded by Pat Augustine. Bob Beal.

MR. BEAL: Just two procedural things. What this actually is move to recommend to the ISFMP Policy Board to find New Jersey out of compliance. In a motion to recommend a state out of compliance, you also need to note the conservation implications of not implementing the compliance criteria within an addendum or amendment.

Three elements need to be in there, what they didn't do, what the conservation benefits are, and what they need to do to come back into compliance. All three of those elements need to be in a non-compliance motion.

CHAIRMAN GIBSON: So, it's currently missing the conservation consequences.

MR. SMITH: Well, thinking on the fly and based on what the addendum called for, I guess the argument would be by not doing the transfers, bycatch reduction in Delaware and Maryland advantages of the addendum were not forthcoming -- the bycatch

reductions anticipated in the addendum were not forthcoming.

CHAIRMAN GIBSON: Bob, does that work for you?

MR. SMTIH: I would, frankly, move the sentence that starts with "Actions needed to be taken" to a place after the sentence that starts "By not doing", just to have the logical order that Bob suggested.

CHAIRMAN GIBSON: Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, would it be appropriate to ask the state of New Jersey what their intentions are in order to address this issue and whether or not it would be important to put in a date certain for their response before this proceeding occurs?

CHAIRMAN GIBSON: Bruce, do you want indicate how you will respond to this motion?

MR. FREEMAN: Well, the action we took is the action we took, and we've had considerable discussion both with our commercial industry and our fishery council, state council. The whole intent of this addendum was to reduce bycatch, and we have reached out to various states to get clarification on actions they would take to reduce the bycatch.

In the two instances where we didn't make the transfer, we're very sympathetic to the problem Delaware is in because of the fact that the Service does not recognize conservation equivalency, and Delaware is running a negative total or a negative value so far as bycatch.

But, in this instance the transfer essentially doesn't help Delaware other than it will reduce its negative balance sheet. It's really a paper exercise.

In the instance of Maryland, essentially we would be transferring to a state that on a per-boat basis catches much more than we do, so we're transferring -- although the amount seems to be considerably different, the Maryland situation is they have a very, I would say, concise system where they have an IFQ to vessels that have a directed fishery.

Then they allocate to vessels in the ocean fishery, and the bay fishery is an allocation for bycatch. In our opinion, by taking the amount from New Jersey and transferring that, it essentially would not advantage Maryland fishermen other than the directed fishery, which is not the intent of this addendum.

So, our actions -- we have given considerable thought and consideration, but our actions were taken deliberately and written letters to all the states that we agreed to make the transfer, as well as those we didn't, indicating the reasons and concerns we had. So our intention, unfortunate as it may be, is to not take additional action.

CHAIRMAN GIBSON: Thank you for that, Bruce. Gordon Colvin.

MR. COLVIN: As I understand, the motion explicitly indicates the anticipated bycatch reduction benefits anticipated in the addendum will not occur. It is my understanding, from the response Mr. Freeman made, that New Jersey concluded that those bycatch reduction benefits would not occur if the transfers were in fact made. May I ask whether the representatives of either Maryland or Delaware dispute New Jersey's conclusion?

MR. COLE: Thank you, Mr. Chairman. I guess the board probably hasn't seen the letter that we sent to the staff regarding requests from the staff to evaluate whether

or not a bycatch reduction would be achieved by this transfer in Addendum XV.

In this letter I pointed out that under the de minimis concept that Delaware operates under, any summer flounder that are landed in the state as bycatch are covered under the de minimis quota. You may recall that states that are considered de minimis are allowed one-tenth of one percent of the commercial TAL.

In 2005, in round numbers, that was 18,000 pounds. Delaware's normal bycatch landings in non-directed fisheries is generally about 7,000 pounds on average each year. So, I pointed out that was the case, and about the only use that we could use this transfer for would be to correct the accounting differences that have arisen over time between the way the National Marine Fisheries Service tracks commercial quotas and the way the ASMFC de minimis program works.

So, again, it's not really a bycatch issue in Delaware. It's all laid out in the letter, and essentially what Bruce said is accurate.

CHAIRMAN GIBSON: Thank you. Howard, do you want to respond from Maryland's standpoint?

MR. HOWARD KING: Maryland would intend to go back to New Jersey and try to fine tune our proposal, still using the framework we submitted to ASMFC, but try to make the proposal more palatable to New Jersey.

CHAIRMAN GIBSON: Thank you. Pres Pate.

MR. PATE: Thank you, Mr. Chairman. I appreciate Rick Cole's explanation of the program that Delaware submitted to us for review in making the transfers. It was our interpretation of their plan that their use of

the quota would not be consistent with the premise on which the addendum was adopted, and, therefore, we chose not to make the transfer to that one state.

I make that statement now in anticipation of having to deal with the same issue here in just a few minutes and wanted it to apply to this motion as well, so there wouldn't be a precedent set.

CHAIRMAN GIBSON: Thanks. Other board comments? Gil Pope.

MR. POPE: Thank you. I can't support it because originally, in my mind, it started out as what I lovingly refer to as a voluntary compliance issue, which to me didn't make any sense. But, having said that, I can't support this. Thank you.

CHAIRMAN GIBSON: Anyone else from the board? Gordon.

MR. COLVIN: I move to table the motion.

CHAIRMAN GIBSON: A motion is made to table; seconded by Rick Cole. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, if the maker of the motion's intent is to postpone this until later in the meeting, then the motion would be to table. If the intent is to postpone it to a later date or postpone indefinitely -- I mean, the intent to delay outside this meeting would be a motion to postpone.

MR. COLVIN: Based on that advice, Mr. Chairman, I move to postpone indefinitely.

CHAIRMAN GIBSON: Who was the seconder?

MR. PATE: I'll second it, Mr. Chairman.

**CHAIRMAN GIBSON: Rick Cole seconded that originally. Do you concur with that adjustment? The motion to postpone indefinitely is seconded.**  
**Comments on that? Jack Travelstead.**

MR. TRAVELSTEAD: I'm sorry but I must have missed something. Gordon, could you just explain why you're moving to postpone indefinitely?

MR. COLVIN: So this is a debatable motion. I see no point in acting on the motion today. I don't believe that the information we have received with respect to the Delaware correspondence warrants action under the motion.

I think there is an unresolved issue with respect to the intent of Maryland to submit future correspondence to New Jersey. If and when that correspondence warrants action on this motion, I myself might make a motion to remove it from the table, as it were, and to reconsider it at that time. But, at this point, I am anticipating it may be out there without the need for further action by the board.

MR. TRAVELSTEAD: I think that would be our hope, but it seems to me we really are talking about postponing to the next meeting in the hopes that the groups of states will get together and the problem will go away. And if it hasn't gone away, then we need to revisit it.

CHAIRMAN GIBSON: Other board discussion? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. At that point in time, I guess we revisit it again, but from the comments that Mr. Freeman made and Mr. Cole made, it's obvious we're at a stalemate. It's not going anywhere, and yet we have Addendum XV that says you will.

Maybe the next action between now and the next meeting would be that one state writes a letter to the other state and say, "Hey, let's just make it go away," and bring that information to the board. Otherwise, I think we're going to be forced at our next meeting to take some action because that's what our responsibility is.

CHAIRMAN GIBSON: It seems the statement from New Jersey was pretty clear, so I don't sense that much is going to change between now and then, so I think we need to dispense with this motion. Is there a need to caucus on it?

Okay, all those in favor of the motion to postpone indefinitely, signify by raising your hand; all those opposed; abstentions; null votes. The motion passes. Eric Smith.

MR. SMITH: In the interest of time, Mr. Chairman, unless there is objection, perhaps we ought to have the record show the same proposed action and the same resolution, if that's an appropriate parliamentary procedure.

I think the nature of debate suggests I could offer a motion about North Carolina, and we would quickly table it. Again, it's the prerogative of the chair, if no one objects with that, perhaps this is the most expeditious way of dealing with it.

CHAIRMAN GIBSON: That's my sense of the way it would go. I can't speak to the parliamentary appropriateness of that. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, the question is why would we want to do it?

MR. COLVIN: I can only speak for myself, Mr. Chairman, but if the same motion were made with respect to North Carolina and that motion attended only the Delaware

issue, I would in fact vote no on that motion, because I don't believe, based on what I've heard today, that the terms of the motion are met.

MR. PATE: Mr. Chairman, I agree with Gordon's observation. I think we need to deal with this with a direct motion relative to North Carolina's compliance.

CHAIRMAN GIBSON: Okay, Eric Smith.

MR. SMITH: Okay, in light of that, Mr. Chairman, it would be, for the recordkeeping, the same motion as previously moved, but change New Jersey to North Carolina and take out Maryland as a reference to the states that are out of compliance. I will read it:

**Move to recommend to the ISFMP Policy Board to find the state of North Carolina out of compliance with Addendum XV due to the fact that transfers required by the addendum to Delaware were not sent to the National Marine Fisheries Service. By not doing the transfer, bycatch reduction benefits anticipated in the addendum were not forthcoming. In order to come back into compliance, the state of North Carolina must make the required transfer request.**

CHAIRMAN GIBSON: Thank you, Eric. Seconded by Pat Augustine. It's essentially an identical motion with the state of Maryland removed. Okay, Gordon Colvin.

MR. COLVIN: Briefly, for the record, Mr. Chairman, while I am in sympathy with the motion and I understand the motives of the maker of the motion, I will not support the motion because I am convinced and persuaded on this record that the correspondence from the state of Delaware indicates that the conservation benefits

associated and expected from the addendum would not have been met had the transfer occurred. Therefore, I do not believe that the requirements for non-compliance are met in this instance.

**CHAIRMAN GIBSON:** Other board comments on the motion before you?

**MR. PATE:** Well, obviously, North Carolina agrees with that, having stated that same position earlier, Mr. Chairman. Just for the record, it should reflect our position on this one as well.

**CHAIRMAN GIBSON:** Anybody else want to weigh in on this one? Is there a need to caucus. All those in favor, please raise your hand; all opposed; abstentions; null votes. The motion fails. Is there a motion on plan reviews?

**MR. AUGUSTINE:** Thank you, Mr. Chairman. I would move that the board approve the reviews as presented by staff for 2005 for black sea bass, summer flounder and scup with any changes that were added.

**CHAIRMAN GIBSON:** Thank you, Pat. Bill Adler seconds. Okay, discussion on the motion to approve FMP reviews? Seeing no board discussion, call the question. All in favor, signify by raising your hand; opposed; abstentions; null votes. The motion carried. Pat.

**MR. AUGUSTINE:** Staff did an outstanding job on these three presentations, and they're all to be commended. Thank you.

**CHAIRMAN GIBSON:** Okay, Item 6, Addendum XVI.

## Addendum XVI

**MS. KERNS:** Okay, this will be fairly quick. At the annual meeting, I guess it was, last year, 2004, we discussed Addendum XVI, which is the delayed implementation management measures addendum.

In October of that year, I believe, we took the addendum out for public comment, and then we discussed the addendum with the public comment, and we did not make any actions on it. The board recommended that we go back and take a deeper look at the addendum.

The board indicated that they would give suggestions to staff, and staff has not received those suggestions. So as a reminder of the delayed implementation and where the addendum came from, it was brought to the attention from the ISFMP Policy Board that they had expressed concerns over the timeliness of state implementation of required management measures.

There was a concern that the traditional non-compliance findings and sanctions under the Atlantic Coastal Fisheries Conservation and Management Act was not sufficient to address implementation delays that we see in the Summer Flounder, Scup and Black Sea Bass Board, as well as other boards under the commission's management.

So, the Summer Flounder Board was the board chosen to develop an addendum that we use then for other species to look at these delayed implementation management measures. What I would like to do today, to bring that addendum back to life, is to gather a subcommittee of some board members and potentially some technical committee members and to actually get some people to say they will help with this, and then we will get together in the next month or so to take a deeper look at this addendum.

CHAIRMAN GIBSON: I'm looking for volunteers now. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I appreciate the suggestion that we put together a committee, but before you do that, I think it's worth asking the question of why we expect a committee to do something that we haven't been able to do here in almost a year?

The Policy Board said we wanted to go in this direction; and as Toni pointed out, we have a number of other fishery management plans that are sort of waiting in the hopper to see what happens with this particular board and what we're going to do about delayed implementation.

So, rather than rush off and appoint a committee, I think what a committee needs is a sense of commitment from the board about whether or not we're going to be able to tackle this and there's a resolve to do it. Thank you.

CHAIRMAN GIBSON: What's the sense of the board on the need to revitalize this addendum? Eric Smith.

MR. SMITH: Well, Mr. Chairman, I'm wracking my brain trying to remember why we deferred action, but I seem to recall the nature of the comment we got at the public hearings was that at least it was compounded by the fact we had just gone through the pay-back addendum with the recreational fishery, which, frankly, there were a lot of good reasons why that was a bad idea.

This one kind of came along right along side it or very close, and I think it got tainted by it. I think the board discussion was this is a good idea, that we need to have a strategy to deal with this. And, quite frankly, I may

very well be in that position tomorrow, as soon as tomorrow.

I just don't know. But, the comment from the public comment on the addendum was there's a right idea there, but the method of making it happen needs to be fleshed out more, and I think we all got involved in other things, and we haven't fleshed those things out.

So, I guess if you're looking for direction from board members, I think it's a good idea to pursue this. The question is how do we pursue it? I wouldn't suggest that since we haven't had a lot of traction on it in the last year, that it's not a good idea to try and pursue it.

CHAIRMAN GIBSON: Vince, follow up.

EXECUTIVE DIRECTOR O'SHEA: Two thoughts. One was after the last meeting, I thought there was agreement around the board to give some thought to this and submit information to staff about what you wanted to do. That was a great big silence in response.

The other alternative, I suppose, is to go back to the Policy Board and say this board isn't prepared to do it and suggest they pass it off to another species and let them be the first ones to do it.

The politics of this particular species and the players and the tough issues here, as has been pointed out, may be getting in the way of doing this, but somebody has got to go first, and that's an additional burden that this board has. Thank you.

CHAIRMAN GIBSON: Toni has asked for board input. Gordon.

MR. COLVIN: I'll be on the committee, and I'll do the work, and I won't forget this time. And if somebody wants to come over

and whip me, do it. We have to get on with it.

CHAIRMAN GIBSON: Are there volunteers to assist? Eric Smith and Bruce Freeman. Is that enough people to call on?

MR. PATE: I don't know how many you need, but I'll be willing to help.

CHAIRMAN GIBSON: Thanks, Pres, that's four. Okay, what else do you need on Addendum XVI? You've got a subcommittee. That takes care of that. Okay, on to other business.

We had two items, and I'm hoping the Addendum XV 2006 quota issue is a simple matter is how Eric Smith laid it out. I just wanted to make sure that the board concurred with the way Eric had --

### **Update on Summer Flounder 2006 Specifications**

MS. KERNS: If you are not familiar, the Mid-Atlantic Fishery Management Council recommended a TAL of 26 million pounds, which is a drop from what we anticipated the TAL would be when we projected the TAL's out for three years.

Last year we thought that we would be at 33 million pounds, and the addendum specifically states that it's been developed to allow for a change in the allocation scheme for the additional commercial quota from 2004 to 2005; approximately 1.3 million pounds in 2005, as well as the additional quota from 2004 to 2006, which was approximately 1.6 million pounds. We will no longer see that additional 1.6 million pounds, so, therefore, the addendum then becomes moot.

CHAIRMAN GIBSON: Thank you, Toni. Does the board concur with that assessment? It seems everybody seems to be nodding

their head, and we don't need any further action. Bruce Freeman.

MR. FREEMAN: The question is do we need to have a specific motion to acknowledge this?

CHAIRMAN GIBSON: I think it's the sense of the board that the addendum is rendered moot by the actions last week the quotas we'll likely have to impose in 2006.

MR. FREEMAN: I have another issue that is kind of -- we were at the board meeting last week, the combined board and council meeting, and the commission did not take action. The council, as reported, took action.

My understanding is the action we took last year leaves us with a quota for 2007 at 33 million pounds. My question is if the council moves forward or the service moves forward on the recommendation of the council of 26 million, now we have a divergence between what the commission has and what the council has. We need to rectify that.

CHAIRMAN GIBSON: We're going to take care of that at the New Jersey meeting.

MS. KERNS: We're waiting until the annual meeting in New Jersey so that we can see what the proposed rule will state as the recommended TAL, because we would like to try to stay -- it was the indication that I got from the board that we would potentially like to stay in sync with what the service proposes as a TAL, and, therefore, we are waiting until then to make any sort of changes to the recommended TAL. We won't have that propose rule until --

MR. FREEMAN: If I may, Mr. Chairman, I think it's going to get complicated because the council made a request for 26 million. The service argued against that, which

would leave it at 23 million if in fact they follow through with what appears to be their thinking. I wonder if Harry has any additional thoughts on what is going on here.

CHAIRMAN GIBSON: Gordon.

MR. COLVIN: I made the motion to suspend the rules, so maybe if I can tell you how I thought this was disposed of last week. The board and the council did not pass the same motion with respect to the recommendation for quotas.

The council clearly wanted to make its recommendation to the service for the three-year constant harvest at 26 million. As a consequence, both bodies passed a motion to suspend the rules, the rules requiring one common motion by both bodies of the joint meeting.

Council then passed a motion to make its recommendation at 26 million constant harvest for three years. That then sets in motion a chain of events in which the council staff prepares a quota paper that includes a variety of alternatives, including its preferred and recommended alternative of three years at 26 million.

That gets submitted to the service by a date certain, which I believe is in September. The service then has to review that recommendation, deliberate and then publish a proposed rule, which we were told would occur, hopefully, by late October, in time for the board to be made aware of the proposed rule in time for its annual meeting the first week of November in New Jersey.

On that basis, the board decided to hold off until that time to review the contents of the proposed rule and the service's decision and action with respect to what alternative or alternatives it accepted and put forward in its evaluation of them.

That's where we are. I thought that was clear on the record, and that's what the process was going to be. Right now, as I understand it, the Mid-Atlantic Council staff is working on that quota paper. They've got to get it in, and there will be alternatives.

And based on what was said, I think most of us will be not surprised if the service rejects the recommendation from the Mid-Atlantic Council and instead puts out a proposed rule with one of those other options, probably 23.6 million. That's what we expect, but we don't know it until it happens.

CHAIRMAN GIBSON: That's my understanding of where we are, Bruce. The last business was the scup white paper. Gordon Colvin.

### **Scup Allocation Discussion**

MR. COLVIN: Thank you, Mr. Chairman. I'll try to be very brief with this item as it was not on the agenda, and the paper itself is not part of the briefing material.

I do believe that all the board members were sent a discussion paper on the Scup Recreational Fisheries that was prepared by and sent to you by myself, Chairman Gibson, Dr. Pierce and Mr. Smith that reported to you on the development of the four-state scup recreational option that was approved by the board and has been implemented by the states for this recreational fishing season.

We attempted in that paper to outline what we saw as the deliberations, the process, our thought process that we went through in developing it, and our essential, if you will, a priority evaluation of that process prior to the conduct of the fishing year our assessment of the degree to which we were able to satisfy the concerns and the needs of our recreational fisheries.

We also included some comments on the situation with respect to our in-shore commercial fisheries, which we were also thinking about at the same time, and offer an assessment of future needs we would like to see met and some recommendations for short-term and long-term actions that we hope will move us in that direction.

At the time of transmittal, we were also quite concerned about how the 2006 quota-setting process might affect our ability to move forward particularly on the short-term suggestions that we had made. I think, based on last week's actions, we can anticipate that there might in fact be some opportunity to address those.

Without getting into it, because nobody has it in front you, I'd like to ask, Mr. Chairman, if it's possible, if the board could ask the staff to examine those options and to identify for us, perhaps in a memorandum form for deliberation at our next meeting, the staff's assessment of what procedures might be available to the board with respect to acting on or implementing some of those recommendations.

**CHAIRMAN GIBSON:** Any objection from board members of requesting that of the staff, what Gordon has just laid out? Seeing none, we will proceed.

There was a black sea bass item that I think Massachusetts has brought up.

### **Black Sea Bass Measurement Discussion**

**DR. PIERCE:** Right. Mr. Chairman, I seek a clarification, and I may make a motion after I get that clarification. It's with regard to black sea bass and the issue that was raised by the monitoring committee last week at the joint meeting of the board and the Demersal Finfish Committee of Mid-Atlantic Council.

That's the tail filament or the tendril of the black sea bass and it's included and not included in the measurement of the minimum size. The monitoring committee, I understand, pointed out that some states actually measure with the tendril included and some do not.

That's inconsistent, and it can create a significant minimum size difference between states if one state includes the tendril and others do not. For example, Massachusetts does not, Virginia does not, New Jersey does not, some other states do.

So, my request for clarification is what exactly did the board do at the meeting last week? I had to leave a bit early, and I missed that discussion. Was there a reason why no specific action was taken by the board relative to this issue?

**CHAIRMAN GIBSON:** Julie is going to address that.

**MS. NYGARD:** Actually, they didn't end up discussing it. It wasn't brought forward to the table again, so they didn't get to it.

**DR. PIERCE:** Okay, if I may, then, Mr. Chairman, I would move that for all states the black sea bass minimum size not include the tail filament or tendril in the measurement.

**MR. FREEMAN:** Second.

**MR. COLVIN:** I just want to clarify that the intent of the motion is also to recommend that the federal regulations follow the same advice? Thank you.

**MR. POPE:** Thank you, and that the ASMFC makes it very clear that this is a change and make it very simple and plain to the public because they're going to probably go the other way.

CHAIRMAN GIBSON: Other comments on the motion? Julie has already indicated the federal regulations already speak to this. Discussion by the board on the motion? Is there any need to caucus on this? I'll call the question.

All in favor, please raise your hand; all opposed; any abstentions; any null votes. The motion passes.

Any other business to come before the Summer Flounder, Scup, Black Sea Bass Board. We're adjourned.

(Whereupon, the meeting was adjourned at 7:05 o'clock p.m., August 16, 2005.)

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