

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

**Crown Plaza Old Town
Alexandria, Virginia
August 18, 2009**

Approved November 2, 2009

TABLE OF CONTENTS

Call to Order 1

Approval of Agenda..... 1

Approval of Proceedings 1

Public Comment..... 1

Review of Draft Addendum XX for Public Comment..... 1

Board Discussion of Draft Addendum XX for Public Comment 3

Discussion of Scup and Black Sea Bass Recreational Harvest 5

Update of the Mid-Atlantic Council’s Progress on ACLs and AMs 11

Discussion of Future Role of the Monitoring Committee..... 14

Plan Review Team Membership..... 18

Other Business..... 19

Adjournment 21

INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1)
2. **Approval of proceedings of May 5, 2009 by consent** (Page 1).
3. **Move to approve Draft Addendum XX for public comment** (Page 5). Motion by David Pierce; second by David Simpson. Motion carried (Page 5).
4. **Motion to adjourn by consent.** (Page 21).

ATTENDANCE

Board Members

David Pierce, MA, proxy for P. Diodati (AA)	Gina Hunt, MD, proxy for T. O'Connell (AA)
William Adler, MA (GA)	Bill Goldsborough, MD (GA)
Mark Gibson, RI (AA)	Bill Windley, MD, Governor's Appointee proxy (GA)
Joel Hovanesian, RI, proxy for Sen. Sosnowski (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
David Simpson, CT (AA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
James Gilmore, NY (AA)	Catherine Davenport, VA (GA)
Pat Augustine, NY (GA)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Louis Daniel, NC (AA)
Tom McCloy, NJ, proxy for D. Chanda (AC)	Bill Cole, NC (GA)
Thomas Fote, NJ (GA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Gene Kray, PA, Legislative Proxy	Harry Mears, NMFS
Craig Shirey, DE, proxy for P. Emory (AA)	Jaime Geiger, USFWS
Roy Miller, DE (GA)	A.C. Carpenter, PRFC
Bernie Pankowski, DE, proxy for Sen. Venables (LA)	

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

Ex-Officio Members

Staff

Robert Beal	Toni Kerns
Vince O'Shea	Kate Taylor

Guests

Greg DiDomenico, GSSA	Michelle Duval, NC DMF
Jerry Carvalho, RIFA	Patricia Kurkul, NOAA
Dave Smith, MSSA	Jeff Deem, MAFMC
Ben Martens, CCCHFA	Brian Hooker, NMFS
Ray Kane, MA Fish Adv. Comm.	Wilson Laney, USFWS
Carrie Kennedy, MD DNR	Frank Kearney, CCA-VA
Loren Lustig, PA	Michael Luisi, MD DNR
Sean McKeon, NCFA	Arnold Leo, E. Hampton, NY
Jessica Coakley, MAFMC	

The Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 18, 2009, and was called to order at 11:32 o'clock a.m. by Chairman A.C. Carpenter.

CALL TO ORDER

CHAIRMAN A.C. CARPENTER: I'd like to call the Summer Flounder, Scup and Black Sea Bass Management Board to order. There appears to be a quorum so there is no need to take a roll call on that. The first item of business is to welcome everybody.

APPROVAL OF AGENDA

CHAIRMAN A.C. CARPENTER: The first item is the agenda. There are two items that would have come up under other business that we need to deal with. One deals with the scup and black sea bass recreational Wave 3 data. It is in and I think that is going to require some action or at least a discussion. I am going to insert that item between Numbers 4 and 5.

Then under other business there will be a very brief discussion of the 2010 Winter Scup Trip Limits. This came out of the Mid-Atlantic Council Meeting that we had two weeks ago. We've got some ideas that we want to discuss with that. Are there any other changes to the agenda? Any objections to those being added? The agenda is approved by consensus.

APPROVAL OF PROCEEDINGS

We have the proceedings from the May 5th meeting of this board that were included on the CD. Are there any additions, deletions, or corrections to the minutes? Seeing none, we will consider them approved by consensus.

PUBLIC COMMENT

Public comment; it is the practice of the boards to allow public comment on issues that are not on the agenda. There was a sign-up sheet provided in the back. I understand there was no one signed up, but does anyone want to address the board at this point in time? Seeing no interest in that, we will move along to the next item.

REVIEW OF DRAFT ADDENDUM XX FOR PUBLIC COMMENT

Item Number 4 is discussion of quota transfer regulatory language within the FMP, and I'm going to ask Toni to give us a presentation on that.

MS. TONI KERNS: At the last board meeting we began discussions about quota transfer regulations for the scup summer period only and the black sea bass commercial fishery. Through those discussions, the board asked staff to prepare a document to give us a better indication of what the problem is and then background information to see if this information should be included into a draft addendum.

I had the plan development team help me work through these issues and put them into a format of a draft addendum if the board so chooses to move forward with that. That is the document that was just passed out to the board. The board would consider the document for approval for public comment at this meeting. Public comment would be from September through parts of October. The board would review that comment in November, and then final action will be taken at the annual meeting in November.

Currently the FMP for Black Sea Bass and Scup does allow for quota transfers, but that language within the FMP is for just coast-wide transfers. It is not specifically for ASMFC state allocation of quota management, so the documents lack guidance regarding the timing procedure and policies.

Specifically, Amendments 5, 8 and 9 detail the transfer language for scup, black sea bass and summer flounder. There is no language that has been when ASMFC has opted for state-by-state management. Recently the National Marine Fisheries Service adopted a rule that allow for transfers to extend into the end of the year. Prior to this rule transfers could only occur up until December 15th.

These are only for late-in-the-season circumstances that could relate to weather or some sort of dangerous situation where a boat would need to come into dock at another state's area. These requests for the late season circumstances could come in the following fishing year. Overages can occur in the fishery. The overages can occur for many reasons.

Some of those reasons could be delays in reporting. It could be due to data collection and process inconsistencies, unanticipated changes in catch rates or implementation delays of trip limits and such. The current FMP requires that a state pay back an overage

even when the coast-wide quota has not been reached.

The measures contained in the draft document would propose to streamline the transfer of quota for black sea bass and for the scup summer period only. It would establish clear policies for those transfers and potentially allow for transfers to occur after the year's end. The management-proposed items in Sections 4.2 and 4.3 of this document would be considered interim measures.

The Policy Board will be having discussions about quota ownership, disposition of the unharvested quota and quota transfers later in the week. It was the intention to not have this document be precedent-setting for any decisions that the Policy Board may or may not take later on; therefore, the provisions in Sections 4.2 and 4.3 would expire at the end of the 2011 fishing year unless the board takes action to modify or extend the provisions of this addendum.

But, again, this addendum is not intended to be precedent-setting for any of the measures that the Policy Board may be taking. So, onward to the proposed management options; the first decision that needs to be made would be looking at state-by-state transfers. Currently under the addendum for status quo there is very little guidance and policies when the ASMFC has adopted state-by-state transfers.

Our current practice has been to have the state that is requesting fish send us a letter of how much fish that they're requesting, as well as send that letter to the state that they are requesting fish from; and the state that is donating fish, to send the ASMFC a letter telling us how much they are willing to donate and to which state it is coming from. Those transfer requests have to occur within the fishing year.

Option 2 would be to set an established policy for transfers. The transfer between two states may occur upon agreement of those two states at any time up until 45 days after the last day of the fishing season. This is to accommodate any delays in accounting for landings so that a state is sure of what its end-of-the-year landings have been.

There would be no limit on the amount a state could transfer, and there would need to be a signed agreement between those states involved in donating and accepting the quota transferred. Those would be turned into the commission.

The second decision that is in the addendum is looking at automatic reconciliation of a state's quota.

Currently this commission does not have any set language or policies about automatic reconciliation of quota, and it remains silent on this issue. Option 2 would be that when the coast-wide quota has not been exceeded but some states have exceeded their state's quota, those states will be forgiven their overages because the coast-wide quota was not exceeded. That would happen automatically; you would not need to request transfer from those states that have underages. It would just occur.

Next is looking at transfers that would occur between multiple states. I called it the multi-state reconciliation process. Currently the addendum has no guidance or set policies on a multi-state reconciliation. Status quo is to remain silent on this issue. Option 2 would be to look at developing a multi-state reconciliation process.

The process would take place prior to March 1st of each year, and it would cover the previous year's fishing season. Staff would work with states to determine the annual landings to let states with overages know that they have overages; and states with an underage, to let them know how much fish they have available, and states confirm those amounts with staff.

Within this option, if Option 2 were adopted, then the board would need to consider how to give out those underages to the states with overages. Option A is that states would notify the commission whether or not the underages from their state could be transferred to a common pool to redistribute to those states with overages; or, Option B, the underages from states would automatically be transferred to the common pool for distribution to those states with overages without getting permission from those states.

Next is looking at the distribution process to give to the states with overages. Multiple options could be adopted for this section of the addendum. The first option is looking at the underage redistribution based on equal shares. What would happen is we would look at much is available in the common pool underage and we would apportion it to each of the states with an overage equally. A state would not be able to receive more than its total overage.

I'm going to give an example for you to follow along. If you look on Page 9 of the document, this is where the tables come from specifically since it was hard to get the tables to transfer well onto the screen. This comes from the 2008 Scup Summer Fishery. There are three states with overages, and they varied in amount from a large to smaller amount of overage.

If you give out fish to each of the states, then each state would get 5,266 pounds. That would end up leaving New York with no overage and leaving Massachusetts and Connecticut with a portion of their overage. Then you move to the second step. Because New York had taken care of all of its overage, you take the remaining underage from the common pool and divide that between the two states that still had an overage left, and so then Massachusetts and Connecticut would get 11,520 pounds of fish.

That would result in a balance of zero overage for Connecticut and about 50,000 pounds still from Massachusetts. The last step would be to give Massachusetts the remaining underage of quota, since they're the only state left with an overage, and it leaves them with an overage of 7.3 percent. The other states have an overage of zero because their overages were taken care of.

The next option is to redistribute the underage from the common pool apportioned by the state's quota allocation percentage. Again, a state would not be able to receive more than its total overage. If you look on Page 10, that's where we start in the middle of the page with the second draft.

You take each of the state's share of the quota and reapportion them to their maximum percent share of the underage, so Massachusetts ends up with 53.2; Connecticut, 7.7; and New York with 39 percent. You would divide the available fish to transfer underage to each of those states by that percentage of their share. This would in turn leave Massachusetts with a 4.7 percent overage; it would leave Connecticut with a 17.6 percent overage; and all of New York's overage would be taken care of.

Next is a redistribution of the overage. Now this is a little bit of a different concept than the first two options where you're redistributing the underage from the common pool. In this case we are taking the total net overage, which means the coast-wide overage minus the combined state underage, to try to equalize each of the state's overage.

A state would not be able to exceed its current overage, so it wouldn't have a greater percent overage in any case. This table begins on Page 11. You can see you receive the same percent share of the overage as the previous option where Massachusetts has 53, Connecticut 7, and New York 39 percent. You take the total net overage and divide it out to each of the states by those percentages.

Because the New York percent of the net overage is higher than its actual overage, it doesn't take on all of that overage, and so there is 5,461 pounds of fish that needs to be redistributed back to Massachusetts and Connecticut to increase their overage amount. In the end New York's overage amount remains the same as it was in the beginning, and it is 1.9 percent. Then Massachusetts' and Connecticut's overages are equalized, and it is 5.1 percent each, so they end up with the same percent overage in the end.

The last option is just a negotiation redistribution. The states would develop some type of sharing agreement for the common pooled underage. Once commission staff has organized a call for them to negotiate the sharing process, they would have one week to make an agreement on how they're going to negotiate those fish or share those fish.

If the states cannot come to an agreement, then there would be an automatic default as to how the fish would be redistributed. Option A is equal shares, the same process as described under Option 1. Sub-option B would be equalizing the allocation shares as described previously under Option 2; or, Option 4C, which is equalizing the state's percent overage as previously described in Option 3.

Then lastly for this addendum any measures that would be adopted would become effective immediately upon approval of the addendum. I realize that this is not a simple piece of information to take on in one sitting; so if anyone has any questions I'd be happy to answer them.

BOARD DISCUSSION OF DRAFT ADDENDUM XX FOR PUBLIC COMMENT

CHAIRMAN CARPENTER: I saw Pat Augustine's hand up first.

MR. PATRICK AUGUSTINE: Very well done, Toni; complex but very well done. Relative to Page 8, the negotiated distribution process under Option 4, you had said that if unanimous agreement cannot be reached, then one of the following options would be default distribution. Who would end up making the selection on that? I know this is a draft, but will it be scribed as to who or what group will make that decision? I think you might have to add something, but I just need clarity.

MS. KERNS: Pat, I don't think the plan development team was clear; and if this government

goes forward, I can add additional language to make sure it is clear. But, the board, if they chose Option 4 as one of the options they wanted to move forward, then they need to make a secondary decision and choose either Sub-option 4A or Sub-option 4C so that something is already set up as the default. Only one of those methods would be set up as the default.

MR. AUGUSTINE: Mr. Chairman, please, a follow-on; could you add some language in here in the case a state – take New York, for instance, we continually go over. Will there be a description as to how that state would be treated? If the other states finally say, “Hey, enough is enough”, we’re allowing New York to take care of that overage using the underages of the other states – I don’t know; is there language in here that I missed? I went through it twice and I couldn’t pick up on that. Is my question clear?

CHAIRMAN CARPENTER: Yes, very clear, but I think you have to understand this is a two-year interim deal, and I think that is more a topic for the Policy Board to discuss in a broader issue of continual overages since this is only designed to work for two years, 2010 and 2011.

MR. AUGUSTINE: Well, Mr. Chairman, for clarity, I know it is only for two years, but I am wondering if there will be a paragraph or something that describes that. A case may exist at the first year and at the end of the first year again, if a state has continually in the past gone over this – so maybe there is enough information that I don’t need anymore.

CHAIRMAN CARPENTER: I’m thinking that it has gone on long enough and it is a larger issue than just one species or just two species. I think it needs to be dealt with at the Policy Board level. Tom McCloy.

MR. TOM McCLOY: Toni, thank you for the explanation and the examples. It made it a lot clearer for me. I’m just curious; did we pick one of these options last year for the 2008 summer scup quota?

MS. KERNS: Last year in 2008 the summer scup quota we did more of a negotiation process. It somewhat equalized overage, but we automatically forgave New York of their overage, so it is a little bit of a change from that option.

CHAIRMAN CARPENTER: Dave would like to address that as well.

MR. DAVID SIMPSON: Yes, it is a modification of the equalized overage approach where we recognized that New York’s overage was very small on a

percentage basis. We just decided as a group that we’d forgive that and then start with the larger overages for the states, so that everyone got something.

DR. DAVID PIERCE: Some of the points I was going to make have been made such as this is for two years, and the bigger issues will be addressed by the Policy Board. The document does a good job describing what needs to be done by the Policy Board to address the bigger issues that have been noted in previous board meetings and certainly will take up some time at the Policy Board, I assume, this week.

I’m very pleased with the statement of the problem. The plan development team did good work on that, Toni, because it does make it clear that this is a process to reconcile quotas, addressing minor overages, and then it describes why minor overages occur as shown on Page 4, at the very bottom. Indeed, these minor overages occur as described here.

Each state is faced with a very difficult situation regarding how to manage these small quotas that we have, and it can only get worse in 2010, especially with black sea bass. That good language describes the nature of the problem, and, of course, the objectives are there as well. I won’t repeat them.

I will only highlight one point, Toni. You touched on it, but I think in reworking the document, assuming we adopt it and bring it forward for public comment, at the top of Page 7 where it says “distribution process; multiple options can be adopted”, you were quite correct when you pointed out that really we start with Option 4, the negotiated distribution process; and if that doesn’t work, then we pick either Sub-option 4A, 4B or 4C.

Those are the three options before Option 4, so really multiple options can be adopted; you might want to tinker with that a little bit because it is either Option 4 and then one of Option 1, 2 or 3. We select one of those; the board selects one of those to determine how we will proceed if indeed the negotiated distribution process for some reason doesn’t work out. Those are the only comments I have regarding the document. Good job, Toni and the plan development team.

CHAIRMAN CARPENTER: So, Dave, as I understand it, you’re just saying Option 4 on Page 7 should be Option 1 under the distribution process. That would be the starting point; is that what you’re saying, and then the others would fall under that, so it is moving it around on the page?

DR. PIERCE: That's right.

MR. MARK GIBSON: Mr. Chairman, I think this is a good range of options to go forward to public hearing, and I compliment staff for developing them. I do agree with some of the other speakers that there needs to be some provision somewhere about these recurring overages. If it is not the place to do that, that's fine, but as we extend flexibility to balance the ledgers, there may be some incentive for states to be looser in their quota monitoring not only in these species but in a number of them. As we extend that book-balancing flexibility, there needs to be some consequence of that somewhere else in the commission process, so I would just echo those concerns.

CHAIRMAN CARPENTER: Thank you, Mark. That was one of my thoughts when I read through this is does this set us up to fish all you can and try to settle up after the season is over. That is a concern, but I think that is a concern that is broader based than just these and needs to go to the Policy Board. Dave.

MR. SIMPSON: Yes, I think that is a fundamental question or issue even for this addendum, and it might be wise to include it in the problem statement to make it clear that this addendum is intended to address inadvertent overages that occur despite the best efforts of each state to stay within their quota.

That was certainly a fundamental assumption of going into the process we used last year that states were vigilant in monitoring their landings, they were proactive in closing when they could see a closure occurring. If you remember, a lot of these overages happened in September in six to twelve days.

We landed 60 percent of our quota in twelve days with a very conservative trip limit, so states can be taken by surprise. I think that's something that the board should be mindful of when they look at these options and consider what distribution systems to put forward so that you don't encourage intentional overages, look at how it is going for the summer, see that some states aren't landing their entire quota, and then play it out to 110 or 120 percent of your quota or whatever you think you can get away with. I really do think that's important.

As the others all compliment Toni and others who contributed to this, it is a very good document. I think it makes a difficult topic because of the calculations as clear as it could be. I would point out a couple of things that I mentioned to Toni before on Page 9, just so people are following clearly, the

transfer scenario of Option 1 and 2 are reversed, so that first one is actually the equal shares option, and the second one is the allocation based on initial shares.

The other thing I would suggest is that we add a table at the end of each step that captures the net settlement for each state so it is clear that in the end Massachusetts ended up with this balance of transfer received, net overage, percent overage, so that all three states are clear so that you don't – so you don't have to do the arithmetic and look back through multiple tables to see what each state got. I think that will help for clarity for the public as well as the board when we see this again in the fall. Thanks.

CHAIRMAN CARPENTER: Thank you. I think we can add a sentence about it being supposedly inadvertent and not planned overages. The changes to the table I think can be handled. Are there any other points? Remember, now, the action we're expecting here today is to approve this for public hearing, and I'm ready to deal with a motion. Dave Pierce.

DR. PIERCE: **I would move that the board approve Draft Addendum XX for public comment.**

CHAIRMAN CARPENTER: Dave, would you consider amending your motion to include as amended at today's board meeting, the suggestions that we've just outline?

DR. PIERCE: That is my intent, right.

CHAIRMAN CARPENTER: Do I have a second. I've got multiple seconds all the way from New York, Rhode Island and Connecticut. Dave, you're the closest; you win. All right, is there any discussion? Is there any need for a caucus? Are we ready for a vote? All those in favor please raise your hand; all opposed same sign; any abstentions or null votes – one abstention. **The motion carries.** We have got a question from Toni.

MS. KERNS: Can I see just a quick show of hands of those states that think they may like to have a public hearing on this addendum.

DISCUSSION OF SCUP AND BLACK SEA BASS RECREATIONAL HARVEST

CHAIRMAN CARPENTER: We have got six. Thank you, staff will be working with the states to set up the public hearings. As I mentioned earlier, we've

just recently learned of some important information about Scup and Black Sea Bass Recreational Harvest. The Wave 3 data was just published I think on Friday or released on Friday. I'm going to ask Toni to bring us some information on that at this time.

MS. KERNS: I apologize for not getting this information to the board sooner. I just worked out the numbers this afternoon. This table shows, in the dark blue, which is the first set of columns under each state, the estimated harvest for 2009, Waves 1 through 3, for summer flounder in numbers of fish.

The column that comes after the red is the state – I'm sorry, the first column is your 2009 allocation. The second column is your 2009 estimated harvest. Both are in numbers of fish. As you can see here, some states such as Delaware are about half of their quota. These landings are only through Wave 3, which Wave 3 ends in June, so this does not account for the fish that have been landed in July and these first couple of weeks of August.

Other states such as New York are about a third of way, as well as Virginia, through their allocation. Next we will look at the estimated harvest for black sea bass. I apologize but I didn't have enough time to convert into a table, so I'm going to verbally let the board know this is your 2009 estimated harvest in numbers of fish by state.

If you recall for black sea bass in the recreational fishery we look at a coast-wide harvest allocation. 615,000 fish have been harvested; when you convert that to pounds, it is about 922,000 fish. The coast-wide quota, after you take out the research set-aside, was 1.1 million fish. That means there are about 215,000 pounds of left after June. The fish that have been harvested again in July and August are not accounted for. We're getting very close to the coast-wide allocation for black sea bass.

Then this last table shows the scup 2009 estimated harvest. It shows the northern region and then the states in the southern region that have landed scup. This is also in numbers of fish. When I look at the conversion over to pounds, as we look at scup, I see for the northern region that 97 percent of the 2.5 million pounds that is allocated to the whole coast is 1.27 million pounds, and the total landings for the northern region in pounds is 1.27 million pounds, and so the northern region is actually already over their quota for the year by 70 pounds as of the end of June, as I stated before, so any fish that have been harvested from July through today in August would

be additional overage for the northern region. Does anybody have any questions of these numbers?

CHAIRMAN CARPENTER: Yes, can you repeat the numbers for the black sea bass, the total poundage quota and the total taken so far.

MS. KERNS: The total poundage in quota is 1.138 million pounds. The total quota that has been taken so far is 922,912 pounds of fish. That leaves 215,087 pounds of fish.

CHAIRMAN CARPENTER: Which have probably already been caught since this is as of June 30th. It seems like we've got a situation here with the black sea bass and the scup both to deal with. Before we enter into too much discussion, let me call on Pat Kurkul to give us what the implications for 2010 are going to be as a result of the numbers that we're seeing right now, if you would, please, Pat.

MS. PATRICIA KURKUL: I appreciate that Toni was able to provide this information to the board. We've been looking at the same information and becoming increasingly concerned. As you know, there is only a slight increase in the recreational harvest limit for 2010. Of course, we went over the recreational harvest limit last year by quite a bit.

Last year the harvest limit was 1.83 million pounds and over 4 million pounds were harvested. We've had at least three years of overages now. With the restrictive recreational harvest limit for 2010 on top of what could be a really large overage for 2009, we're looking at the need for very restrictive regulations in 2010, especially if we don't take any action to try to deal with the overage this year.

MR. SIMPSON: I'm trying to recall; I think our season opens May 24th for scup, is that right, in the northern region; some latitude for partyboats; so in six weeks at 10-1/2 inches and a ten-fish limit in the private boat and shore mode, we caught the entire annual quota; is that right?

CHAIRMAN CARPENTER: That's apparently what the data is showing.

MR. SIMPSON: I think that begs the question of again the quality of the estimate and/or it speaks to the allocations and quotas that are set. You know, if you look at what comes out of the SSC, we could be fishing at, what is it, 27,000 tons, and the quota was set at 5,500 tons. The recreational fishery is a good barometer of fish abundance.

When they're not around, when they're not very abundant, their catch drops dramatically; and when the ocean is full of them, you can't hold them back, clearly. I don't know what we would offer up to the public next year, a two-fish limit. You know, we joke in Connecticut that everything should be 28 and 2 just like striped bass, because that's been the only stable fishery we've had besides bluefish. This is just amazing and I don't know what to say about it.

MS. KURKUL: Well, especially for scup, I think one of the major changes that we've had in the last couple of years is this differential treatment for the charter/partyboats than from the private anglers, and that's when we've seen the real increase and real overages. I think there were some questions last year about being able to accurately make decisions, being able to make good decisions about what the measures should be because of the difference in the treatment of the modes and being able to get good technical advice as a result of that.

MS. KERNS: I just want to remind the board that the season for Massachusetts opens a little bit earlier than the rest of the states, and they have about a ten-day advantage on the other states. They open May 15th. The closing date for Massachusetts is September 17th, and then the closing date for the other states is September 26th. Then the for-hire for Connecticut, New York and Rhode Island is June 12th through October 15th. The for-hire fishery goes later into the season than the private angler.

MR. SIMPSON: Okay, I remember from two years ago what each state did. I can't recall last year or for this year what states did, but if people could help me – Massachusetts, I know, has their so-called bonus season for the partyboats in the spring. Two years ago Connecticut, Rhode Island and New York had theirs in the fall. Did anyone change that?

In other words, was any state utilizing their bonus season in the spring or have they reserved it to the fall, in which case the party and charterboats would be at 11 inches, which they are year round, not 10-1/2, 11 inches, and they will be limited to ten fish as well. So, if the other states could help me with what they did this year with their party and charterboats to see how much a potential impact it was there.

CHAIRMAN CARPENTER: All right, I have a list that is going here, but let me suggest that we deal with discussions dealing with scup first and then we'll come back and deal with black sea bass. To Dave's question, was there any response?

MR. GIBSON: We didn't activate in the spring, the bonus part of it.

MR. AUGUSTINE: We're in the fall.

MR. JAMES GILMORE: We did the same thing as last year, so we didn't change it.

MR. SIMPSON: So, only Massachusetts' party and charter vessels were exercising their bonus season in the spring; is that right, David?

DR. PIERCE: Are we talking about black sea bass or scup? Oh, scup, all right, because I thought we were on black sea bass and I couldn't follow what you were saying.

CHAIRMAN CARPENTER: It looks to me like the scup situation would require an emergency action on the part of the board if you all wanted to close earlier or each state has its own way of reducing or closing the season early to try to minimize the overage for 2009. All right, on scup I've just been handed a note here that there are 1.2 million pounds left and it's not an immediate problem. That was an interesting exercise to run through. Pat, would you like to help us?

MS. KURKUL: Well, I'm not sure I would say it's not an immediate problem. That was still as of the end of June, and the Wave 3 for this year, the landings are double what they were for Wave 3 last year. Last year we were at 4 million pounds, and this year our recreational harvest limit is only 2.6 million pounds.

Although I don't think we're over – I don't think we were over at the end of June. I think there is a possibility that we're over today, and we're certainly going to be over – there is certainly going to be an overage for the year. I still think there is an issue.

CHAIRMAN CARPENTER: All right, so I guess we're back to my original questions; do any of the states want to propose any kind of solution for the balance of 2009 with regard to scup? Tom.

MR. TOM FOTE: What numbers are they using for the overages; are they based on – are they using recreational survey or are they using the for-hire survey? I know when we look at the numbers, because basically most of the Marine Recreational Statistical Survey comes out of party and charterboat landings, because that's where they sample in the Mid-Atlantic, so I'm trying to find out where are they getting the New England numbers? Is it from the for-hire or is it coming out of MRFSS?

CHAIRMAN CARPENTER: I do not have the answer to that. Toni, do you?

MS. KERNS: I pulled the number off of the MRFSS Website, so it is coming out of MRFSS. I cannot answer currently how MRFSS estimates their for-hire sector precisely.

DR. PIERCE: Regarding what to do this year, I would strongly suggest that we can make no changes because we are dealing with a recreational fishery; we are dealing with party and charterboat operators who have already booked trips. This is a recurring problem. We can't stop the fishery mid-year without doing great injustice to those individuals who have scheduled trips and in many case have already accepted money for those trips.

These are businesses that have planned throughout the entire fishing season with the limits that we have set for them for the season. Scup, 1.2 million left, probably that's not what we have left; where we'll stand at the end of the year, we'll just have to wait and see and then go from there.

Now, I've got a question regarding the data that we're reviewing. Again, this is the first time I've heard it, all of us. This is a question I've asked Pat Kurkul before and she has given me a very good answer for it, but I need to make sure that somehow something hasn't gone awry. That is we have a research set-aside for scup, for black sea bass, for fluke, and that research set-aside has been used by large numbers of recreational fishermen, so I understand, party and charterboat operators through an auction.

They get the fish through the MFI. They have now specific rules and regulations that exempt them from state rules because now they're operating under, in a very interesting way, the research set-aside created for them. So, my question is can we be assured that the data that has been looked at by Toni does not include a data base that has been corrupted by an application of a sample of a trip or trips that occurred under a research set-aside that would not have been representative of the fishery as a whole?

It's a key issue. I know that there is a procedure that is being followed by the National Marine Fisheries Service to make sure that information does not get factored in through extrapolations, but, again, I need to know what Toni has looked at to make sure we're looking at actual projected landings that have not been affected by research set-aside trips.

CHAIRMAN CARPENTER: Thank you, Dave. Obviously, this information has not been audited yet by anybody, but it has been approved by the folks at MRFSS when they released it, right? But, my point that I want to make is research set-aside is 3 percent. Even it is double counted, it's still only 6 percent, and the pattern is what we're looking at here of a major overage that is going to occur in 2009.

Now, we can nickel and dime this with the 3 percent research set-aside and spend an hour talking about that, but I think that misses the point. The point is that it is the best information we've got. We're on track to go over again in 2009, and I guess the word is be prepared for the two-fish creel limit in 2010 if you're not willing to change or take any action for the balance of 2009. Pat, you had your hand up.

MS. KURKUL: I was going to respond to that, but it is up to you, Mr. Chairman, whether you want to go in that direction or not.

CHAIRMAN CARPENTER: I don't see the need at this point in time in the hour of the day and the amount of the agenda time that we have left. Are there any other comments or desires on the part of scup? Pat Augustine is next on my list.

MR. AUGUSTINE: Mr. Chairman, I think no action needs to be taken by this board. I think we need to let the cards fall where they may. This is another case where to meet the needs of a particular state this management board agreed to go along with a request to have a spring season that was out of sync with the other states.

Maybe that's true or maybe not true, but it appears that difference of the 10 or 15 days with the limited quota that we have has put a crunch in the situation. I am not pointing fingers at Massachusetts; I'm saying it happened.

DR. PIERCE: You are.

MR. AUGUSTINE: Well, I am, then, but the fact of the matter is we've done this in other fisheries, and everytime we've made an exception to satisfy one group's or region's area, in the final analysis some other state pays the penalty. In this particular case if we're looking at actions for next year, we really need to make sure that as we go setting quotas – now 2010 has been taken care of – that this doesn't happen again. It is a pattern.

New York will take it on the chin and Connecticut will take it on the chin. Our season for partyboat and

charterboat is September 15th through October 15th. If we take management action now, those folks are going to be disadvantaged again, and there lies the problem with our approach that we're taking to address this issue.

Only one other point, and that is to your request for what should we do. The most difficult part for most folks to accept is the fact that when you had the assessment and the S&S Committee looked at where we were relative to the stock status, and we look at the decision that was made to constrain the quota for 2010, as Dave Simpson has pointed out, it is extremely difficult to swallow the fact that your spawning stock biomass is somewhere at about 204 percent of where it has to be or where it should be, and yet we're being very uncertain about the status of the stock. In my mind there is a disconnect.

That issue was addressed by Dr. Boreman. Let's not go back and readdress that, but the fact of the matter is there has got to be a closer connection between the monitoring committee and our technical committee and the SSC early on in 2010 when we set the quotas for 2011. My suggestion is do nothing; bite the bullet -- if we're going to be over, we're going to be over -- and then address this for the next cycle.

CHAIRMAN CARPENTER: Thank you. I'm getting the sense of the board that we are finished our discussions with scup. One last thing, Dave.

DR. PIERCE: Well, in light of the accusation, Mr. Chairman, maybe I missed something. I don't see any state-by-state breakdown of scup landings. Did Toni say anything that would indicate that indeed there is a problem with the beginning part of May? If there is a problem, then, all right, let's identify it and then Massachusetts in particular will be able to address it, but it has not been identified as being the problem. I don't know what data Pat is using to make that accusation. If it's true, fine, we'll deal with it, but --

CHAIRMAN CARPENTER: All right, we're not going to get in a kicking contest over something like this at this point. I'm moving on to black sea bass. We know that the quota is 1.13, and we've got 215,000 pounds left. Is there any interest on the part of any member of the board to discuss black sea bass? Jack Travelstead.

MR. JACK TRAVELSTEAD: Can staff tell us, based on prior years' harvest, for the remaining part of the year how much we would go over if we do

nothing here today? How bad do they project the overage would be?

MS. KERNS: Jack, I haven't had time to look at the average percent of catch in the upcoming waves yet. I just made myself aware of this situation. I can give you your projected information later on but not today, unfortunately.

CHAIRMAN CARPENTER: Vince, do you something to add to that?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Well, this is on the scup number. We just went to the MRFSS Website, and what they're showing is the two biggest states are 939K, which is Massachusetts; the second biggest state is 206,000 pounds and that is New York. Everybody else is in the tens of thousands -- oh, numbers of fish.

CHAIRMAN CARPENTER: Thank you. Jack, back to your discussion.

MR. TRAVELSTEAD: Well, I'm concerned about this. I mean, the numbers that were reported show that we have just about 200,000 pounds of fish left after the end of June. There is a heck of a fishery in July and August, so we're clearly over quota. I don't think there is any doubt about it. Isn't it irresponsible on our part if we don't do something about that here today?

I mean, it's a question of do you cause some economic harm to charterboats and headboats that Dr. Pierce raised, who already have customers lined up and in some cases have already been paid for trips; or, do you make everybody suffer next year because you're going to have to deduct another huge overage? I expect that hurts everyone, both commercial and recreational. It is not pleasant task, but I think we need to talk about doing something here today.

CHAIRMAN CARPENTER: I personally think that when you're faced with information like this in a mid-season situation and you know that you're going to have to pay it back and it is not just going to be the recreational part, the commercial is going to be affected as well, yes, I think it is irresponsible not to do anything, but I'm not getting much effort to get any kind of motion on the floor. Tom, do you have a motion?

MR. FOTE: No, I have a question. You know, if we did an emergency action as the commission is mandated, I know in New Jersey it would probably

be a month or two before we could do anything, anyway. Then you would be starting a derby process, that people would be going out knowing that it is going to shut down, so you have an effort transfer to go out for sea bass.

You know, it's not where you can shut it off immediately. How much of this time do most states have where they can shut it down, because if we're going to do action and the commission is going to do action, and yet it is going to take some states two or three months to do this, I'm just concerned about when we get it in place.

MR. TRAVELSTEAD: Well, Tom raises a good point. I wonder if we could get a sense around the table if we wanted to shut it down how quickly could states go through that process. Virginia, for instance, could shut it down next Tuesday when our commission meets.

CHAIRMAN CARPENTER: For our purposes we can shut it down within ten days based on an ASMFC requirement. Dave.

MR. SIMPSON: Ten days after the commissioner signs it; that would take about a week, so call it two or two and a half weeks.

MR. GIBSON: We have emergency action authority that can act rather quickly if the department concurred that there is a – I forget what the exact language is, but it has to be an imminent peril to human safety and health and things like that. The department would have to concur that in fact an emergency exists and that the potential losses, you know, next year economic losses would overwhelm any penalties or any losses they would have this year.

DR. PIERCE: Well, in light of the significance of the action, if indeed we were to go in this direction, it would take us a while, maybe – well, it depends on whether it is an emergency or not and at this point in time I'm not sure whether it can be justified as an emergency. This is MRFSS data subject to revision, and there still is a large amount of quota left.

Yes, this is through the end of June. In Massachusetts we have gone through our peak season, so I don't envision there being a large increase with our already having gone through June. Emergency action, sure, we can take that fairly quickly, but there has to be good justification for that. Otherwise, we would go through the normal administrative procedure that would involve likely a few weeks.

MR. GILMORE: Mr. Chairman, we could do this through an emergency rule which would take about two weeks, but I kind of agree with David. We need to do the responsible thing, but none of us have seen the data yet, and I would look at it because I have to go through a justification with that data to do an emergency rule. I've got to do a little homework before I can just say it is going to be done.

MR. McCLOY: If the commission's emergency action was effective today, we could have it in place by the end of September.

DR. LOUIS DANIEL: I could issue a proclamation and it would be in effect in 48 hours.

CHAIRMAN CARPENTER: Maryland.

MS. GINA HUNT: We could issue a public notice that would also be effective within 48 hours.

CHAIRMAN CARPENTER: And Delaware.

MR. CRAIG SHIREY: We could go to emergency regulation within two weeks, probably, but whether the public would get that information would be difficult. We'd still have landings going on without people aware that there has been an emergency closure.

EXECUTIVE DIRECTOR O'SHEA: At some point, Mr. Chairman, we'll be able to put the commission's definition of criteria for emergency action up on the screen for you, if that would be helpful.

CHAIRMAN CARPENTER: Yes, I think it would be. In the meantime I have Jack and then Dave.

MR. TRAVELSTEAD: A number of states have suggested that we don't have enough information right now to make a decision. I agree to a point and I'm wondering if before we leave here this week the staff could make some projections about what the quota overage would look like if we don't do anything, and perhaps we can meet at the Policy Board or something and look at that later in the week.

CHAIRMAN CARPENTER: I think we can get the projection information, but procedurally can we meet as part of the Policy Board?

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I think one option that you might have is, you know, at the end of each meeting you make a motion to adjourn so I think you could make a motion to adjourn for the day with the intent to reconvene

tomorrow-type thing; basically extend over for the purpose of considering this specific question. That might be an option.

MR. SIMPSON: I think the point that David made is the most important one. Yes, technically we can all get this done within about two weeks or most of us can. If this were a commercial fishery, I would have some faith that we could, as a practical matter, do it because we can send a notice to that short list of people. Here we're talking about 2 million anglers that we're going to try to communicate with that in ten days their fishery is closed. It can't be done.

And just think about the law enforcement spot that we would be in; we could not enforce this. The outreach that would be required is just daunting. It cannot be done as a practical matter in season, and that's why we've managed recreational fisheries the way we have for years.

MR. ROY MILLER: Mr. Chairman, I would like to bring up the point Mark raised. Our state has similar language apparently to what Rhode Island has in that the resource has to be in imminent peril. We use that same phraseology. I'm not entirely sure, if challenged, we could win that one in this particular case to prove that the resource is in imminent period, so that concerns me. Thank you.

CHAIRMAN CARPENTER: Thank you. Is there anyone who has not spoken to this issue that would like to? Dave, you've had your hand up, and I'm going to recognize you and then I'm call for a motion. If we don't have one, we're going to move on to the next agenda item.

DR. PIERCE: You did have me on the list, Mr. Chairman, so I'm not jumping in for no good reason. Once again, what are the total landings according to MRFSS? Vince gave us some numbers, some state information, but I need to know what the total take is as of the end of June.

CHAIRMAN CARPENTER: All right, we're talking about black sea bass.

DR. PIERCE: We're talking about scup.

CHAIRMAN CARPENTER: No, we closed the discussion on scup a long time ago. We're talking about black sea bass. All right, is there any board member that wants to propose a motion on black sea bass? I see no board member wishing to propose a motion; therefore, the only thing that I'm going to

say is you are all on due notice that 2010 is going to be a problem to deal with.

We're catching 2010's fish right now as we sit here and speak; so those charter and partyboats that we're saving this for, let's see how many trips they can book next year with a two-fish limit. Jack Travelstead.

MR. TRAVELSTEAD: Can we still have staff get us those projections by the end of the week?

CHAIRMAN CARPENTER: Yes, we will get that taken care of by the end of the week. All right, moving on to the next agenda item is an **update of the Mid-Atlantic Council's** progress on ACLs and AMs. Toni, do you have something on this issue?

UPDATE OF THE MID-ATLANTIC COUNCIL'S PROGRESS ON ACLS AND AMs

MS. KERNS: I do, thank you very much, Mr. Chairman. Staff is passing out a paper that was written by Rick Robins, Chairman of the Mid-Atlantic Fishery Management Council, concerning risk which will be part of the discussion that we have. I will try to go through this quickly. As everyone here knows, the Mid-Atlantic Council is developing an omnibus amendment to deal with the changes from the reauthorization of Magnuson, including the annual catch limits and accountability measures for all species.

This will include summer flounder, scup and black sea bass. In July the council had their Scientific Uncertainty Committee, which is also called the SUN Committee, get together to discuss approaches to dealing with scientific uncertainty in terms of acceptable biological catch and setting ACLs and AMs.

The committee agreed on an overall approach to deal with uncertainty, and for uncertainty they would like is the definition of that which results from limited knowledge. It is the inability to know exactly what the current state of the stock is, its past and future dynamics and its effects of management actions on the stock.

The approach that the council agreed upon was looking at a four-tiered system to develop their acceptable biological catch control rules, so each of the species will fit into one of the tiered system and then there will be options on how to deal with each tier for those species. They will need to develop

methods on how those four tiers will apply to each of the species.

In determining that four-tiered approach the SUN Committee followed these following principles. To respond to stock status, the level of risk can be higher for healthy stocks. They didn't want to penalize any stock if it had more information than another stock. They wanted to promote the integration of uncertainty at all stages of the assessment process, and then to promote the integration of estimations of reference points in stock status.

They also wanted to be able to provide the SSC with the flexibility to respond on a case-by-case basis. To remind the board of some of the new guidance and terms that are being used when looking at ACLs and AMs – and I realize some of you received this information when Lori went through the New England Council Herring Information, so I'll try to be quick.

There is an overfishing limit which is corresponding with what we used to think of as msy. This is the amount which we cannot exceed. The SSC will set the acceptable biological catch. The acceptable biological catch accounts for any scientific uncertainty that is seen within the assessment or in general information of the species' life history.

There is an annual catch limit that also can be set, and the annual catch limit would account for any management uncertainty for that species. Then annual catch targets can be thought of as like a soft quota where – you can never exceed your annual catch limit, but if you wanted to sort of set some preventative measures you could use a soft target and set an annual catch target which could be exceeded.

The council has gone through each of their species and determined how they are going to propose the ACL framework for those species. For summer flounder, scup and black sea bass they have determined that the annual catch limit is going to equal your ACT. Then because of the differences that are seen between recreational and commercial, the ACT for each sector can be set, and that can account for management uncertainty in the recreational side of the sector.

Then the council can account for any management uncertainty on the commercial side by setting a commercial ACT. So if there are differences in the management uncertainty between the two sectors, that can be accounted for specifically for those sectors and not force the council to account for

management uncertainty in the annual catch limit for a combined – looking at the sectors combined.

EXECUTIVE DIRECTOR O'SHEA: I think there is one thing that is important here that will give context to what Toni just said. Under the law, if you exceed the annual catch limit you trigger accountability measures in the law. The idea of the annual catch target would be as a mechanism to avoid bumping up or tripping over the annual catch limit, which then activates mandatory accountability measures.

I think she will get into the accountability measures, but that was in the council's thought process of splitting the two sectors, the recreational sector and the commercial sector, so that if you triggered accountability measures in one sector it wouldn't apply to the other sector. Thank you.

MS. KERNS: As the recreational sector has its own ACT and the commercial sector has its own ACT, each sector will also have their own accountability measures. Currently in the Summer Flounder, Scup and Black Sea Bass Plan, because we have provisions for accountability for commercial overages, those would act like accountability measures.

Whether or not additional accountability measures will be added to the plan is still under development, but paying back your overage for an individual state or paying back a coast-wide overage can act as an accountability measure. For the recreational side accountability measures are still being discussed and developed.

The council is also discussing developing a risk policy on how we look at risk under uncertainty. Risk is the probability of overfishing or exceeding F. The National Standard 1 Guidelines state that councils should develop risk policies. What the council is doing is looking at setting a policy for how much risk is acceptable for scientific decisions.

For example, if you have good stock status and high certainty of your assessment, then a greater level of acceptable risk can go forward. The council is also looking at how much risk is acceptable for management decisions, and they will set those policies. Then the council's species' committees will follow those policies for management uncertainty, and then the SSC would follow those policies for their decisions under setting the ABCs.

What is next in the omnibus draft amendment is the council will develop ABC Control Rules for each of the tiers of the system. They will develop a risk

strategy for each tier, and they will assign the Mid-Atlantic stocks into each of the four tiers for uncertainty levels. The FMAT is going to be continuing to develop the draft omnibus document through the fall and winter. The council will consider approval of that draft document in April of 2010. This document will include information on summer flounder, scup and black sea bass for federal waters.

CHAIRMAN CARPENTER: Are there any comments or questions? Tom Fote.

MR. FOTE: In looking at the discussion of paper interaction on the Mid-Atlantic Council Scientific; are we going through that, too, at this time?

CHAIRMAN CARPENTER: That's the next agenda item. Any further discussion on the update of the ACLs and AMs? Vince has got a comment.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, again, back to accountability measures, to be clear, there are two types of accountability measures that are being contemplated. One would be something that would happen sort of within the season, and then a second type of accountability measure would be something that would be more proactive for the following season. So, just so folks are clear, there are different types of accountability measures contemplated under the law. Thank you.

CHAIRMAN CARPENTER: Thank you, and this is going to have an impact on us as much as it does on the councils. Arnold Leo.

MR. ARNOLD LEO: Arnold Leo; I'm consultant for commercial fisheries, Town of East Hampton. I want to comment on this whole process that has been imposed on fisheries management by the Reauthorized Magnuson-Stevens Act. Actually in Section 302 of the Reauthorized Act, it still is required that the councils be made up of commercial, recreational and other representatives.

The "other" includes the scientific or academic community and the environmental community. I think there was a definite intention in making sure that the councils were comprised in that way. Now, with the requirement that the SSC set an ABC, which then really is the ultimate decision that controls what the councils can do – and by the way ultimately on the jointly managed species what ASMFC may do – it is understandable that the SSC, which is made up entirely of scientists mostly from the academic

community, they tend to think about the uncertainty of scientific methods.

And that's fine, but in determining the ABC they have to use the data that is available, and there is the catch. In a lot of cases the data simply stinks, and yet we're controlled by what the SSC determines on the basis of data, which, you know, they look at and say, "Oh, oh, too much uncertainty."

Now, in the case of scup I think that's a really good example where if we didn't have the SSC drawing the line where the quota may be, the council would have come up with a very different conclusion. The results of this process, the detrimental results of this process are being realized here today with the recreational problem that the scup quota is already exceeded and the black sea bass quota is just about exceeded.

By the way, in the Town of East Hampton, as a consultant for commercial fisheries, I am also speaking for the party and charterboat fleet. The town considers them part of the commercial industry there. I just want to, you know, make that point on record because it is becoming a bigger and bigger problem. All of fisheries management is driven by the data, and the data is often not very good and yet we're being stuck with what the SSC has to do with the data before it. Thanks.

CHAIRMAN CARPENTER: Thank you for congress. Tom, and then we're going to move on.

MR. FOTE: I agree with Arnold. I mean, Arnold and I have disagreed over the years, but on this point I really agree with him. I mean, I'm wondering when the ACCSP is going to come up with a real decision on when we're going to get better MRFSS data. We still have all these outliers that come up every year. We still have bases that we know are anomalies in the data, and yet we're stuck to use them because that's the best data we have available.

You know, I'm just looking at the process here. I'm going to get to this when we go to the next agenda item, but I'm looking where the AP comes into this process, because at one point we put the AP after the Monitoring Committee because they would look at the monitoring data and make recommendations to the board, but there is no sense to them making those recommendations at that point, because, really, by that time it is a done deal. By the time it comes to the board there is not really any input for the fishermen because we've already gone past where they could

put any input into the Monitoring Committee and to the SSC.

CHAIRMAN CARPENTER: Thank you, and looking at the time of the day and the lateness of the hour here; is there anymore discussion on this particular issue? Do you want to take up the **Monitoring Committee's Role?**

DISCUSSION OF FUTURE ROLE OF THE MONITORING COMMITTEE

MS. KERNS: For those of you that were not at the joint meeting with the Mid-Atlantic Council to set the specifications for summer flounder, scup and black sea bass, there was a discussion of what the role of the Monitoring Committee should be now that reauthorization of Magnuson has determined that the SSC will set the ABC.

Currently in the FMP the role of the Monitoring Committee is to review all the available data – that includes assessment and fishery data – and then recommend measures to the board and the council for research set-asides, the quotas, fish sizes, mesh sizes, possession limits, trip limits, seasons and closed areas.

With the changes and the SSC setting the ABC, the setting of the quota alters the Monitoring Committee's role slightly, possibly. The Monitoring Committee's membership is made up of staff representatives of the Mid-Atlantic Council, the New England Council, the South Atlantic Council, the Northeast Regional Office, the Northeast Fishery Science Center, the Southeast Fishery Science Center and the commission.

For scup and black sea bass there are not members of the Southeast Fishery Science Center on the membership for the Monitoring Committee in the FMP. This is what is stated in the FMP. The commission's addendum states that their membership for the Monitoring Committee should be a representative of the plan review team. This is not what is the current practice of the commission.

Currently all of the states' technical committee members are invited to the Monitoring Committee, so we're actually sending more individuals than what our addendum states should be our membership. The Mid-Atlantic Fishery Management Council's executive director is the chair or his designee will chair the committee.

We did our white paper to discuss what the future role of the Monitoring Committee should be. The first question that we are asking is what species should be considered under this discussion. Should it be just summer flounder, scup and black sea bass or should we consider all joint plans that have monitoring committees, and that would include also bluefish and spiny dogfish?

The second question is that the reauthorization mandates that the SSC serves as an independent scientific body to the council, and what is the appropriate SSC interaction with other technical groups? Option 1 is the SSC could be biased by outside opinions or advice, and so therefore the interaction with groups such as the Monitoring Committee would not be appropriate; or, Option 2, that the SSC should have an opportunity to review as much information as possible so that it would include the Monitoring Committee's comments. The SSC would retain independence and filter through the available information when making their recommendations.

The third question is what is the role of the Monitoring Committee. The SSC is focused on risk and scientific uncertainty when developing their recommendations. The ABC is reduced by risk and scientific uncertainty as determined by the SSC to establish a recommendation for an annual catch limit, which cannot be exceeded.

Based on this approach, what should the Monitoring Committee's role be? Option 1 would have the Monitoring Committee should make recommendations for annual catch targets, so that would account for any management uncertainty. The Monitoring Committee would also make recommendations on fishery measures, including things such trip limits, triggers and mesh sizes.

Option 2, the Monitoring Committee, in addition to the above, would also comment on risk and uncertainty for the council and board to consider. Lastly is looking at the sequencing of how the SSC and the Monitoring Committee's meeting should be in terms of order. Option 1 would be having the Monitoring Committee meet prior to the SSC, which would allow the SSC to have the benefit of the Monitoring Committee's input and recommendations for the ABC and the ACL.

This would preclude the Monitoring Committee from making recommendations on the implementation of the final quota because the SSC would not have made their decision yet, so the order would be the

Monitoring Committee; then the SSC would meet; then we could have the AP meet just to respond to specific fishery measures but not to respond to the actual quota itself because that would be set by the SSC, and then the board could get the advice from the SSC and the AP at their meeting.

Option 2 is to have the SSC meet prior to the Monitoring Committee, so then the SSC obviously would not have input from the Monitoring Committee on the ABC and the ACL. However, the Monitoring Committee would be able to continue to make recommendations on the ACT, so accounting for management uncertainty and also make implementation recommendations. The order for this option would be SSC, Monitoring Committee, AP and board.

Option 3 is to have the SSC and the Monitoring Committee meet concurrently to make recommendations. This would allow for full interaction between the two groups, but the independence of the SSC may appear to be compromised. We would have a joint meeting; then the AP could meet; and then the board would hear recommendations.

The last option is to have two meetings of the Monitoring Committee; one prior to the SSC and one post-SSC, and that would allow the Monitoring Committee to provide input to the SSC's recommendation on the ABC as well as to provide input on the final SSC decision. This would be the most resource-intensive because we would have to have two meetings of the Monitoring Committee. We could potentially have one of those meetings be via conference call or web. Are there any questions?

CHAIRMAN CARPENTER: Thank you; are there any questions for Toni. Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, it seems like the meeting of the AP is after the fact and it is like there is nothing they can do. I didn't know whether the Monitoring Committee and the AP meets before the SSC gets hold of it, because everything after the SSC seems to a waste. The SSC acts; that's the end of it; you can do all you want; you can grunt and groan and nothing is going to happen. I didn't why the AP has to be always after the decision has been made.

CHAIRMAN CARPENTER: Having the AP meet before either of the other groups doesn't make any sense either, so I think at some point we need their input. I agree that it is a new world that we're

playing in, and the reauthorization is coming home to roost.

MR. ADLER: Mr. Chairman, I didn't mean the AP meets before let's say the Monitoring Committee, no.

MR. AUGUSTINE: Mr. Chairman, I've participated at the council in development of the SSC and the direction we were going with that and on ACLs and AMs and participated in the development of this. It just seems to me that the options that we have are relatively clear; and when you're ready, if we have to make a motion or give some direction to the board, I would appreciate it.

Relative to the recent comment, it would seem to me that the MC – and we discussed this only briefly, but it doesn't show up in the document – that the MC, whatever they produce, when it goes then to the SSC, the AP should be or could be privy to what the MC has agreed to or at least share it as a second step.

I do think that under Option 1 it would be MC that has all the background information and additional information that would be helpful to the SSC, but not to have the two of them work together in a joint meeting. It would seem to me at that point in time, when the MC has done their deliberations, the AP should have privy to that before it moves forward to the SSC either for informational purposes or other. I would recommend that we might suggest that.

CHAIRMAN CARPENTER: All right, let me get to other questions. Tom Fote, Jack Travelstead and then I have a comment. Well, let me put it in now. The purpose for this discussion is that we're trying to get a sense of the board so that your chairman can go back to the Mid-Atlantic Council Meeting and work out a procedure – the chairman and our staff can go back and work out a mutually agreeable plan with the council, staff and scientists. That is what we're seeking here is input on what makes sense and what doesn't. Tom Fote.

MR. FOTE: When I look at the Monitoring Committee over the years, they are an independent body such as an SSC. I mean, when we talk about stock assessment people that have been working hard over the years putting in a management plan for striped bass, summer flounder, scup, sea bass, and they come and those people have a vast knowledge of where these plans came from, where the models have been adjusted to, and everything else, so I don't look at them as a biased body.

I look at them as independent scientists from states working on the Monitoring Committee. I can look at a lot of these people who sit around as state directors and that's where they started their background is looking and trying to do – Louis and Mark Gibson and a few others sitting around this table. I don't like calling it biased at the Monitoring Committee.

I also think that the Monitoring Committee should be part of the SSC. These are the people that are working on the actual models and when they're going into the scientific decision, what you want is even more information. You want the information of where the models came from, where the details came from.

When you get an SSC, they're basically going through a quick process of looking through this, so I'm not sure if that's the best way of doing it. I do agree with Bill and Pat is that there is no sense for the AP to meet after the Monitoring Committee and the SSC. I think it is appropriate someplace that they should meet after the Monitoring Committee, before it goes to the SSC, to give their input.

Isn't the SSC supposed to be taking all the data that is out there available? The comments of the fishermen are important to basically look at that data. Otherwise, we might just as well completely ignore them, and we seem to be doing that in this present process. I will leave it at that.

MR. TRAVELSTEAD: After the joint meeting of a couple of weeks ago, I walked away from there thinking there was a slightly different option than the four that are listed up on the screen. There seemed to be a willingness on Dr. Boreman's part, the Chairman of the SSC, that there should be a joint discussion between the SSC and the Monitoring Committee.

It would be a pre-decisional meeting in that following that the SSC would have to meet again to come up with their final recommendations. That in part looks like Option 3. I think it should be a joint meeting of the SSC and Monitoring Committee at least for purposes of discussion. After that meeting the SSC would meet separately to make their final recommendations.

Then there probably needs to be yet another meeting of the Monitoring Committee to consider the other things like trip limits and triggers and mesh sizes and seasons and things of that nature. I'm thinking we really need another option up there that is sort of a combination of three and four.

CHAIRMAN CARPENTER: It sounds like we need about an eight-month lead time for this stuff, too.

MR. TRAVELSTEAD: Well, some of it I think could be done by conference call, as Toni suggested, or by webinar or something like that.

CHAIRMAN CARPENTER: Well, another option that strikes me is that the Monitoring Committee could complete their task as they always did and provide whatever scientific input to the SSC. There wouldn't be a need for a second meeting if the SSC agreed with whatever the MC came up with in terms of a quota. So, Option 4 does look to me like it has some advantages. Vince had his hand up so let me call on him.

EXECUTIVE DIRECTOR O'SHEA: Well, two things to what Jack is saying. I have the same recollection as Jack, and I think one of the issues that we were talking about is would it even be possible for sort of a telephone conference for that Monitoring Committee and the SSC to sort of huddle.

I think the broader comment I wanted to make is that one of the things that we're faced with here and we're wrestling with is it is a new world after the 2006 Magnuson Reauthorization; and like it not, the law is now trying to isolate the scientific decision a bit more than where it was in the past, so the idea of trying to get the AP to meet with the SSC or other groups to meet with the SSC, when we take this back to the council there are going to be concerns about that.

People looked back at the way things were done in the past and decided it could be improved upon by more rigorously isolating the SSC and putting the SSC in a different position than the Monitoring Committee and making that advice binding. We can ask for different things but the view on the other side of this is going to be some constraints that they see in the law.

CHAIRMAN CARPENTER: Thank you, and we'll certainly have to recognize that. Dave Pierce.

DR. PIERCE: The SSC can gain a lot from the expertise and the knowledge of the monitoring committees. That ensures, if there is any such thing as ensuring anything, but it ensures, let's say, state input that might otherwise be lost because the SSCs do not really involve state personnel. There is a lot of good science coming out of the state biologists.

I am strongly in favor of any option that provides the SSC with the benefit of monitoring committee advice, and I say that especially in light of what happened with the black sea bass discussions we had at our last board meeting with the Mid-Atlantic Council when the SSC perhaps would have made a different decision on the black sea bass quota if the Monitoring Committee had an opportunity to meet beforehand and to advise them, but that's another issue.

Regarding the discussion paper, I would strongly support Option 2, all joint and complementary managed species, including bluefish and spiny dogfish. Our monitoring committees definitely should be involved in those discussions pre-SSC meeting. Regarding the second question, Option 2 is my preference; the SSC should have the opportunity to review as much information as possible, including the MC comments, and, of course, the SSC retains its independence. That goes without questions, but it needs to benefit from the monitoring committee's knowledge.

Regarding the next set of questions, I prefer Option 2, that the Monitoring Committee should also comment on risk and uncertainty for the council and the board to consider, in addition to the quota implementation recommendations of Option 1, so basically it is Option 1 and Option 2 together, combined in some way.

Then I agree with Jack Travelstead; I do believe that there is some combination that we haven't yet identified. John Boreman was very receptive to monitoring committee input. He also surprised me at the council and board meeting when he said he would be receptive to comments from the audience.

I had thought that the SSCs were pretty much where you sit around the edge of the room and you be quiet, but, no, he was very receptive to that, so monitoring committee members can be there as well. My preference is Option 3, that the SSC and the Monitoring Committee meet concurrently to make recommendations, but if that doesn't work for the Mid-Atlantic Council, if that does provide some sort of a procedural problem, then Option 4, recognizing that it does mean more work for the Monitoring Committee but they need to be plugged in before the SSC and a followup after the SSC.

They won't be able to tinker with the numbers that come out of the SSC after the SSC makes its fateful decisions, but it can react to those particular recommendations, give us their perspective, and then,

of course, anything else that relates to how we will manage those quotas for the commercial and recreational fishery.

CHAIRMAN CARPENTER: Thank you. Is there any disagreement with what Dave has laid out; Option 2 for Question 1; Option 2 for Question 2; Option 2 for Question 3; and Option 3 of the sequencing with 4 as a backup? Bill Adler.

MR. ADLER: All right, once again, I have no problem with the first things, but when we get down to little blocks here, keeping the AP down at the end I think it would not be good. I would prefer to see the AP somewhere – if you took Option 4 on the last page there, just to crank in the AP right after the MC but before the SSC.

I have no problem with the MC meeting again afterwards, but other than that, if you put the AP down right next to the board, then I don't even think they need to meet because it is useless. I think that the SSC should have the – before they make a final decision should have some input from the AP since they're already got input from the MC. I don't know where in the alphabet I am right now. But, anyway, I would think that the AP should be cranked in a little before the SSC gets its final thing.

CHAIRMAN CARPENTER: Thank you. You know, the AP under the new system is to react to a number after it has been established and not to try to influence the number it is established. I don't think there is a particular problem with – somebody made the suggestion that after the Monitoring Committee had met, that the AP would be advised of what their recommendations were. I don't think that is a particular problem, and I think that may be workable, but I don't think they would need to meet before the SSC meets. Pat Augustine.

MR. AUGUSTINE: I partially agree with you, Mr. Chairman. It just seems to me that the AP has got to get into the action somewhere before the SSC. The only two changes I would recommend, similar to Mr. Adler, under Option 1 I would say MC, AP, SSC, and then board. Under Option 4, I would say MC, AP, and then follow that route.

And as has been suggested, I think Jack Travelstead suggested maybe the second MC meeting could be strictly a telephone conference call. But, I do think because the AP having the experience that they have and the ability to decipher what is going on and maybe some clarity for the Monitoring Committee, I really believe they were established to supply that

kind of information. So it would be MC, AP, SSC, MC, AP, those two. If we can suggest those, I would appreciate it.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, it is my understanding that our practice in the past has not included a role for the advisory panel in the initial specification-setting process. We have used them to consult with them in November prior to setting the recreational rules. This is an interesting discussion about a change in their position when it seems like they've been accepting sort of a different role up until now.

CHAIRMAN CARPENTER: Yes, I think it is a reflection of a change in the pressure point. Yes, Louis.

DR. DANIEL: I guess just a question for clarification. I haven't been involved with the councils much since the Reauthorized Magnuson Act, but I know when I was very involved with the SSCs there was a biological sub-group and there was a socio-economic sub-group. I guess that is still the way it is.

Do the socio-economic folks on the SSC for the councils discuss these ABCs or is it purely a science-based discussion? I think that has a lot of bearing on how we arrange these boxes. If it is a pure scientific decision on the output of the model and there is no discussion by the socio-economists and it is just simply a number, then I'm cool with Option 3.

I think the appearance of compromise to the SSC is of no consequence to me in comparison to the full interaction between the two groups. But, if the socio-economic folks are going to discuss these ABCs and the impacts socially and economically, then the AP needs to be plugged in before the SSC does, before the SSC to hear those discussions, it would seem to me.

CHAIRMAN CARPENTER: As I understand, it is only one SSC and the socio-economic people are at that same people.

DR. DANIEL: So wouldn't those socio-economic folks benefit from the public AP comments? I know in the South Atlantic we had a separate group. It wasn't all melded together. They had met separately during the meeting week, and then they came together to give their recommendations. If the SSCs from the councils are discussing the socio-economic aspects of the ABCs, then it would make sense to

have the APs provide that input prior to the SSC meeting.

MR. JACK TRAVELSTEAD: Partly to Louis' point, I think you have to understand or remember that the SSC is being asked to comment on scientific uncertainty. That's why it makes sense to have other scientists that are on the Monitoring Committee assisting in that process. I don't see what role the AP would have in commenting on scientific uncertainty. I think they could play a big role in commenting on management uncertainty, which comes in later in the process after the SSC has set the ACLs.

CHAIRMAN CARPENTER: Thank you. I think we have had adequate discussion. I think Vince and I and the staff have a feel for where the board wants us to try to go with this when we meet with the council. I appreciate a very lively discussion, and it is time to move to the next agenda item.

PLAN REVIEW TEAM MEMBERSHIP

MS. KERNS: As I stated in my previous presentation, according to ASMFC's addenda the plan review team would make up ASMFC's membership on the Monitoring Committee. Currently all of the states biologists have been attending the meeting. If we were to start following the rules of our plans, then for summer flounder the PRT is made of myself as the Chair; John Maiolo, who is the socio-economic scientist appointed to the Summer Flounder, Scup and Black Sea Bass TC; Mark Terceiro, who is a member of the Northeast Fishery Science Center – the Northeast Fishery Science Center already does have a seat on the Monitoring Committee as outlined in the FMP – Najih Lazar, who is a former Summer Flounder TC member and now works in a higher-level position in Rhode Island; Paul Caruso, who is the TC member for Summer Flounder, Scup and Black Sea Bass; and Wilson Laney with the U.S. Fish and Wildlife Service.

The black sea bass the plan review team is made of myself as the Chair; Beth Burns, who works for North Carolina; and Mike Armstrong, who works in the state of Massachusetts, but is not the Massachusetts TC member. The scup plan review team is made of myself as the Chair; Paul Caruso, who is the Massachusetts state TC member; and Greg Wojcik, who is the Connecticut biologist on the TC.

If we were to follow the guidelines in the addendum, then those would be the individuals coming to represent ASFMC for each of the Species'

Monitoring Committee. The guidelines for the plan review teams' membership makeup is to have no more than six members per team. You can see from what we just went over, some of the plan review teams are not fully populated and the summer flounder one is fully populated, but it may or not be who the board wants to see on the plan review teams, especially since some of these lists have not been updated in some time.

CHAIRMAN CARPENTER: We have a list of vacancies on the plan review teams. In the interest of time I think I'm going to ask Toni to circulate a memo to the board listing the vacancies and ask for nominations. Do we need to vote on that as a board member?

MS. KERNS: We would need to vote on it as a board to repopulate the –

CHAIRMAN CARPENTER: Is that something that we can do through a mail ballot?

MS. KERNS: Yes, it is.

CHAIRMAN CARPENTER: I'm getting a nod that it is. Dave Simpson.

MR. SIMPSON: Toni, I believe you said you're contemplating or were contemplating a change in the composition of the Monitoring Committee to be only members of the PRT; is that right?

MS. KERNS: It is not that I am contemplating it; it is that the plan says that that is who should be on the Monitoring Committee from the ASMFC; and with this close look at the role of the Monitoring Committee, we also took a close look at what the plan says of who should be showing up and saw that we were not following our own instructions on who should be coming to the Monitoring Committee.

The board has the ability to make revisions to addenda; so if it's not how the makeup of the Monitoring Committee is not what you would like to see, then you can revise that addendum or you can revise your plan review team members as you see fit.

MR. SIMPSON: Then that is how I understood what you said. I think the Monitoring Committee has been well served by having membership from each state. We have talked at length about the importance of the contributions that the Monitoring Committee makes, and I think they come from all of the members of the Monitoring Committee. I think it is important for

each state that is in the plan to be represented at those meetings.

CHAIRMAN CARPENTER: All right, I think we're going to handle that item through a mail ballot and a poll. Do you have a problem?

MR. FOTE: Yes, I don't know what you're going to send out in the mail ballot. Are we basically sending –

CHAIRMAN CARPENTER: We're going to send out a list of vacancies to all of the state directors, asking them to nominate people to fill the vacancies; or, if they want to change somebody that is on there now on any one of the committees, so you will have that. We will then develop a ballot of who has been nominated for what positions, and there will be a ballot that is mailed out to have the board vote on so that we can get this committee constituted.

MR. FOTE: But that doesn't address what Dave just said that the declared membership should be every state that has an interest. According to the rules, which I'm understanding what Toni said, that is not allowed, so that is a whole different story. I mean, that's what I'm trying to figure out here.

I know we're short on time, but I think he made a good point that we've been sending representatives from the states to the Monitoring Committee. I don't think we can deal with that with a ballot. I don't know if we can vote here or now at this time, but we should be figuring out what we're going to do with this process and how we're going to address that issue.

CHAIRMAN CARPENTER: All right, we'll try to do it through the mail; and if it doesn't work that way, we will put it on the agenda for our next meeting. Yes, we can just increase the membership of the PRT to be all of the individual committee members so I think we can get enough of them there. I think if we can get them all populated I think we can handle it, from what I understand.

OTHER BUSINESS

Staff has just passed out a memo dealing with the 2010 Scup Winter 1 Trip Limits. In the interest of time, I'm going to ask New York, Connecticut, Rhode Island and Massachusetts to become a subcommittee of four to review this document, solve the problem, come back to us at our November meeting with a recommendation for specific language that will solve the problem that we all think we have.

In the meantime I think we will be figuring on – I think the 2010 Winter is going to start with 16 days because of where January 1st falls, and we'll run from Saturday to Saturday. Without objection, that is how we're going to handle that issue. It will be January 1st to January 16th. Tom, the last thing.

MR. FOTE: My comment is how the meeting progressed two weeks ago down here in D.C. As I said before, the only governor's appointee and legislative appointee that were here for the three board meetings was that New Jersey had the only full delegation, and the rest of the states only had state directors. Dennis Abbott showed up representing New Hampshire for bluefish.

I basically brought that up and I tried to make a vote that we would bring back some of the discussion here, so at least some of commissioners that weren't there would have the opportunity since we only had a third of the commissioners there. I realized at the time that why am I – first of all, I went there for two days.

The expenses to the commission, because we would only be coming in for a day, it cost a lot more for the airfare. We basically had no purpose there. I mean, for a lot of what was going on, we basically made motions that we never even got a chance to vote on. I'm trying to figure out – you know, I said we should be here, we should have a process, but I understand why a lot of those governors' appointees and legislative appointees are not showing up because over the last two years because we have just become rubber stamp for what is going on for the SSC.

I know we have to review how we do these meetings and how the process goes on. We basically have to make a motion and it had to be – we ruled for the suspension. It had to be voted on by the council first and they decided they didn't want us to bring it back. They voted against it and we had no choice.

I mean, I was very discouraged in the process. I know it is a growing process and we've got to figure out a better way of doing this. Otherwise, there is really no point for us to spend the expense to send three commissioners to a meeting where we're just rubber stamping something. That's just how I feel.

CHAIRMAN CARPENTER: Thank you, sir. Was there a public comment in the back? Step forward, please.

MR. GREG DiDOMENICO: Mr. Chairman, just briefly, I think. Greg DiDomenico, Garden State

Seafood Association. Mr. Chairman, was it your intention to have the few states, New York, New Jersey, Connecticut and Massachusetts discuss the 30,000 pound trip limit issue and come to some type of action or resolution on that issue? Have you postponed that or that would take place in November?

CHAIRMAN CARPENTER: I'm asking those four states to come back with a recommendation on how the starting and ending dates to deal with.

MR. DiDOMENICO: Okay, because I understand a desire to clear up the starting and ending date issue, but I want to make a brief comment regarding the 30,000 pound trip limit. I know there is a loophole. I don't know the extent of which that loophole is being abused or being used. We're very supportive of the way the fishery – the Winter 1 Fishery is working very well right now.

It stabilized the market. The availability of scup has allowed us to catch that quota. We're very encouraged by next year's additional quota for the Winter 1 Fishery, and we're very supportive of the 30,000 pound limit, the way it is working right now. We don't support any changes. Quite frankly, we would entertain changes if we were very, very sure or very convinced that there was some abuse of the loophole or the 30,000 pound trip limit as it stands.

CHAIRMAN CARPENTER: Yes, I think the problem is not the 30,000; it is how many times you can land 30,000 in a two-week period.

MR. DiDOMENICO: Well, exactly, and until it is demonstrated that is occurring in New York or Connecticut or anywhere else; you know, I don't want to support something that is giving somebody an unfair opportunity or advantage. But right now the way it works in New Jersey, 30,000 pounds within a 15 or 14 or 16 day period is working very well, and I don't know of any significant violations or other things that are occurring where that is being abused.

CHAIRMAN CARPENTER: Yes, I don't think New Jersey has got a dog in this fight. Mr. Deem.

MR. JEFF DEEM: You didn't ask for a comment from the audience on the SSC and AP. I'm Jeff Deem. Is too late to comment on the relationship between the SSC and the AP, just a thought?

CHAIRMAN CARPENTER: We'll entertain the thought.

MR. DEEM: I appreciate that very much. I think it is important for the reasons of scientific uncertainty that the AP does get to contribute to the SSC. Scientific uncertainty has a lot of room for error in it. I think if we can just go to the spiny dogfish, which I know everybody loves to bring up, but if we go to the spiny dogfish situation, I think people that would be on the AP were telling us for years that there was some scientific error there.

It did take years before that actually made into what the science was willing to accept. I think that you should consider – and this appears to be the only way that people in the field get to contribute before the final thing is set. I think what observations are made in the field has a big role in what scientific uncertainty is considered. Thank you.

ADJOURNMENT

CHAIRMAN CARPENTER: Thank you very much. With that, we will be adjourned.

(Whereupon, the meeting was adjourned at 1:40 o'clock p.m., August 18, 2009.)