

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

**Crowne Plaza Old Town  
Alexandria, Virginia  
February 2, 2010**

Approved May 4, 2010

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1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of November 2, 2009 by consent** (Page 1).
3. **Move to approve the recommendations by the technical committee for state regulations for 2010 for summer flounder** (Page 4). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 5).
4. **Move that for the states of Massachusetts through New York adopt an open season of May 24 to September 26 with a 10-1/2 inch minimum size and a ten-fish limit; and for the party and charter vessels during Wave 3 through 5 allow a reduced 30-fish, 30-day bonus season** (Page 11). Motion by David Simpson; second by James Gilmore.
5. **Move to amend the motion to increase the fish from 30 to 40 and days from 30 to 35** (Page 14). Motion by Rep. Peake; second by Pat Augustine. Motion carried (Page 15).
6. **Substitute motion for status quo for all states** (Page 16). Motion by Mike Johnson; second by Pat Augustine. Motion was defeated (Page 16).
7. **ORIGINAL MOTION AS AMENDED REWORDED ON PAGE 24: Motion to approve for the states of Massachusetts through New York Scup Recreational Fishery an open season of May 24<sup>th</sup> to September 26<sup>th</sup> with a 10-1/2 inch ten-fish limit in Waves 3 to 5; allow a reduced bonus season of 40 fish for 35 days with an 11-inch fish minimum size limit.** Motion carried (Page 17).
8. **Move for the southern region to stay status quo** (Page 17). Motion by Tom Fote; second by Roy Miller. Motion carried (Page 17).
9. **Move to amend the 2010 black sea bass specifications by increasing the total allowable catch, TAC, to 4.5 million pounds, allowing a total allowable landing, TAL, level of 3.7 million pounds. This increased TAC/TAL will be approved contingent upon the National Marine Fisheries Service implementing a federal TAC/TAL in these same amounts** (Page 18). Motion by Red Munden; second by Jack Travelstead. Motion carries (Page 19).
10. **Move to recommend to the National Marine Fisheries Service the 2010 black sea bass recreational measures be set at 12-1/2 inch minimum size limit, 25 possession limit, and a season of May 22<sup>nd</sup> to September 12<sup>th</sup>, contingent on the National Marine Fisheries Service increasing the TAL for black sea bass. If the recommendation is adopted by the National Marine Fisheries Service, the states would adopt those same measures approved by NMFS for the 2010 fishery** (Page 24). Motion by Red Munden; second by Pat Augustine. Motion carries (Page 24).
11. **Motion to adjourn by consent** (Page 24).

## ATTENDANCE

### Board Members

David Pierce, MA proxy for P. Diodati (AA)	Gil Ewing, NJ, proxy for Asm. D. Fisher (LA)
William Adler, MA (GA)	Craig Shirey, DE, proxy for P. Emory (AA)
Rep.Sarah Peake, MA (LA)	Roy Miller, DE (GA)
Bob Ballou, RI (AA)	Bernie Pankowski, DE, proxy for Sen.Venables (LA)
Mark Gibson, RI, administrative proxy	Tom O'Connell, MD (AA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Bill Goldsborough, MD (GA)
David Simpson, CT (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Lance Stewart, CT (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Craig Miner, CT (LA)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
James Gilmore, NY proxy for Gerald Barnhart (AA)	Red Munden, NC, proxy for L. Daniel (AA)
Pat Augustine, NY (GA)	Bill Cole, NC (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Tom McCloy, NJ, proxy for D. Chanda (AC)	Pat Kurkul, NMFS
Thomas Fote, NJ (GA)	A.C. Carpenter, PRFC

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

### Ex-Officio Members

#### Staff

Robert Beal	Kate Taylor
Vince O'Shea	Mike Howard
Toni Kerns	

#### Guests

Chris Batsavage, NC DMF	Mike Luisi, MD DNR
Jessica Coakley, MAFMC	Rick Robins, MAFMC
David Perkins, USFWS	Alexei Sharov, MD DNR
Rob Winkel, NJ Federation of Sportsman	Chip Lynch, NOAA
Skip Feller, Rudee Angler	Gene Kray, PA
Adam Nowalsky, RFA-NJ	Pat White, ME
Tony Bogan, United Boatmen	Dan McKiernan, MA
Matt Oliveira, Bounty Hunter Fishing	Peter Himchak, NJ
Eric Morrow, Bounty Hunter Fishing	Sean McKeon, NCFA
Keith Baker, Warham, MA	David Sikorski, CCA-MD
Gerald Poyant, Hyannis, MA	Joe Huckemeyer
Marty Buzas, Cape May, NJ	
Ed Liccione, CCA MD	
Carrie Kennedy, MD DNR	

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, February 2, 2010, and was called to order at 8:00 o'clock a.m. by Chairman A.C. Carpenter.

### **CALL TO ORDER**

CHAIRMAN A.C. CARPENTER: Good morning, ladies and gentlemen. I would like to call the Summer Flounder, Scup and Black Sea Bass Board to order. They will be passing around an attendance list so if you'll just sign in, there will be no need for a roll call. It looks like we have a quorum.

There are a couple of things I would like to start with in the way of announcements this morning. One, we have Mr. Rick Robins with us, who is the chairman of the Mid-Atlantic Council. Rick, I would like to say thank you for your attendance here and all of the work that you have spearheaded on the Mid-Atlantic to help us out.

As long as I'm talking about the Mid-Atlantic, the Mid-Atlantic is going to hold a workshop later next month on catch shares. They have extended an invitation to the commission to have members of this board, who are interested, to attend. Any member of this board who wishes to attend can work through their state administrative commissioner and Vince to make arrangements to find out about more information.

### **APPROVAL OF AGENDA**

CHAIRMAN CARPENTER: With those two announcements out of the way, the second item on the agenda here is the board consent of the agenda and approval of the November 2009 minutes. Are there any additions or changes to the agenda? Seeing none, the agenda is approved as it stands.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN CARPENTER: The proceedings from the November 2009 meeting; are there any additions or corrections? Seeing none, they are approved.

### **PUBLIC COMMENT**

CHAIRMAN CARPENTER: There is a microphone on the back table for public comment, and this is for items which are not on the agenda that you would like to bring to the attention of the board. Is there any desire for public comment at this point? Seeing

none, we will take public comment before any motions are voted on by the board.

Item Number 4 is consider approval of the summer flounder recreational proposals by the states. I'm going to ask Chris from the technical committee to go through that and Toni will also have some comments on it.

### **PRESENTATION OF THE SUMMER FLOUNDER RECREATIONAL PROPOSALS**

MS. TONI KERNS: Chris and I are going to tag team this presentation. At the December joint meeting with the Mid-Atlantic Council, the board and council adopted conservation equivalency measures for the summer flounder recreational fishery, to establish regulations for the 2010 fishery. Each state was tasked with developing proposals to account for past management history, fishery performance and evaluation of measures on their state's previous landings.

The states' proposals included summaries of their fishery performance since the onset of conservation equivalency, which was in 2002. There were detailed analyses for the more recent two years of conservation equivalency. Those states with liberalizations were asked to analyze the method from the last time that state could liberalize their regulations and how the performance was for that state when they did liberalize. The technical committee had some general comments about those state proposals, and I'm going to let Chris go forward from here.

MR. CHRIS BATSAVAGE: In general, each of the proposals submitted by the states assumed effort and availability in 2010 will be similar to prior years. At the time of the review, Wave 5 data for 2009 was not available, so we're working with Waves 1-4. The technical committee recommends using projections calculated for the 2009 harvest that was in the memo.

This slide kind of gives a summary of the management measures that were most effective at constraining harvest for the states during conservation equivalency. Size limits increased in all of the states since 2002, and that has been an effective measure in general and maybe more so in some states than in others.

Season closures were implemented more in the northern states and have been effective at reducing effort and thereby constraining harvest. Season

closures are not used as often in the states from New Jersey to North Carolina for a couple of reasons. Size limits in some cases were effective enough to constrain harvest there or in other cases season closures weren't a preferred management option for that particular state.

The creel limits in all the states also decreased or were implemented during conservation equivalency, but they really just account for a minimal amount of reductions. It is something that you don't want to rely on as far as constraining harvest, and that is due to the fact that most angler trips land three or less summer flounder per person, so you would have to drop the creel limit down quite a bit to get an effect.

Availability has an effect on what the harvest can be in a given year and how effective the management measures will ultimately be. They could be affected by things such as weather and water conditions, both good and bad, and this affects all the states. If we have bad weather or a cold spring, things like that, that is shown to keep harvest down lower than what we would expect with the set of management measures in place.

Alternatively, real good weather or favorable fishing conditions especially on the weekends has resulted in harvest that was greater than what was expected with the set of management measures put in place that year. Year class strength is another sign of availability that has had an effect on harvest in a few states, Massachusetts, Rhode Island, New Jersey and Virginia in particular. This has been seen where you have, for instance, the same size limits two years in a row; in Year Two a good year class comes through and harvest goes up much higher than what is expected, so availability definitely comes into play when we do any of this.

MS. KERNS: The staff passed out the summaries of each of the states' recreational proposals which is before you. In the supplemental materials staff e-mailed out to the board the full state proposals, if there are any specific questions on one of those proposals. There were copies in the back of the room as well.

MR. BATSAVAGE: Okay, three states were required to reduce their harvest due to overages in 2009; New Jersey by 1 percent; Delaware by 2 percent; and Maryland by approximately 24 percent. In contrast, the other six states were able to liberalize their regulations due to underharvest last year, and that ranges anywhere from 77 percent in Virginia to 194 percent in Rhode Island.

A few general comments by the technical committee on some of the proposals; for Rhode Island, the technical committee was concerned with any of the options with a minimum size limit as low as 19 inches having a higher risk level. In the past decade harvest levels have been around 200,000 fish or so when they've had a 19-inch minimum size limit.

With New York, the technical committee recommends a closure during the peak season if the minimum size decreases. They have options for staying at their current minimum size and also for decreasing. The technical committee does not recommend the adoption of Option 4, which is a 21-inch minimum size, a two-fish creel limit and a May 1<sup>st</sup> to August 30<sup>th</sup> season; or, Option 6, which is a 20-inch minimum size limit, two-fish creel limit, and a May 2<sup>nd</sup> to June 15<sup>th</sup> season and then a July 3<sup>rd</sup> to August 17<sup>th</sup>, mainly because those options have a greater risk of exceeding their target for that year.

For Maryland, there is no clear method to evaluate the proposals with area and mode splits. They have had some options in the past where they have a different minimum size limit and creel limit for the Chesapeake Bay than they do on the seaside fishery. The technical committee does not approve Option 1, which basically splits the Bay and Ocean Fishery. The sample sizes and data that were available are not sufficient to evaluate the regulations to do these area and mode splits.

North Carolina, on a similar theme, the technical committee is concerned with the fact there is, again, no clear method to evaluate proposals with area and mode splits. North Carolina has two different size limits for flounder in the state, and basically what they have done is put in a 15-inch minimum size limit in most of the coastal waters where summer flounder are found, and it's 14 inches where summer flounder are not commonly found.

Again, the sample sizes and date available are insufficient to evaluate these regulations with area and mode splits. Basically, this is to deal with the co-occurrence of southern flounder. The areas where it is 14 inches tend to be the lower salinity areas in the upper estuaries where summer flounder are seldom if ever found.

MS. KERNS: That's all of the proposals. The technical committee did approve all the proposals except for the one proposal from Maryland which split the bay and the estuarine waters, but just caution the board on the ones that Chris went through, that they were concerned with the high level of risk of

exceeding the target for this, but they did meet the technical evaluations of the numbers.

CHAIRMAN CARPENTER: Are there any questions or comments? Yes, Jim.

MR. JAMES GILMORE: I actually have two questions. Toni, last year when we did this, we all submitted the numbers and I think in New York we're probably going to go with one of those options. It is just that we still have to go through our advisory councils. If we came up with another option later on but follow that general approach that you guys looked at, is that something that could be considered?

MS. KERNS: In the past the board allowed states to put new options that follow the same projection path that they had set up to do their proposals; and as long as those didn't vary from the methods that they had done, that those could be approved. The only thing that wouldn't be available is for the technical committee to evaluate the level of risk that proposal may or may not have.

MR. GILMORE: That goes to my second question. This is for Chris. We were allowed to liberalize up to 78 percent. In the numbers we submitted, there were two that were rejected. One of them was 79 percent so that made perfect sense; we were above how much we could liberalize.

One was slightly below and that one was rejected, and then others varied from 40 to 60 percent. I was just trying to get a feel for was there a percentage, just a rough idea, because that is kind of the tough thing. If we did come up with another number and it was 68 percent; is the technical committee going to have an issue with that, and how did you guys determine what was too a liberalization?

MR. BATSAVAGE: In addition to just looking at the calculated liberalizations, we also looked at past performance under similar regulations. That is in the case of Rhode Island, too, where we looked and saw that – you know, the way the calculations were done, although it shows that they're liberalizing below the maximum amount, in years past at a similar size limit they had landings that were higher than what the 2010 target is.

With New York, we kind of looked at that. Also, too, from deliberating over this over the last few years, it seems that effort control seems to be one of the more effective ways to constrain harvest in the New York. The technical committee was concerned about opening up that mid-season closure and dropping the

size limit even though the liberalization works out to be less than 78 percent.

That also falls back on potential availability from year to year. There wasn't a percentage cutoff that you have to be below a certain amount. We just kind of had to look at the whole body of information when we made those decisions.

MR. PATRICK AUGUSTINE: A follow-on to that, Chris; it seems that New York has gone through the throes of being over, over, over, and last year or the year before we ended up with that penalty to balance the scales out, two years ago, and we took it on the chin and we stepped up to the plate and accepted what you folks threw at us and told us we had to do.

As a result in 2009 we did good; we did really good. In my mind it is a question if we, New York, can respond the way the technical committee has asked us to do, to split hairs with one of those options which may make the difference because of the way Long Island is, 120 miles long, you have literally three different fisheries on Long Island, that it would just seem that within the realm of error, 79 percent – you said the other extenuating circumstances that you considered was past history, but that doesn't show up in the language here.

I would like to have something in writing to clarify when we go back home to talk our fishermen, who have been very concerned about these options which they felt will give them an opportunity not only to catch fish but basically to survive. Again, one extra option may not mean much to the technical committee, but it may mean the difference between being in business or out of business in New York. If there is any way that you folks can go back and reconsider that or at least put something in writing, an e-mail or something to New York saying, well, this is what we did and here is what we thought, we would appreciate it. Thank you.

CHAIRMAN CARPENTER: You've got seven options here, and the only ones the technical committee disapproved were Option Number 4 and 6, what else do you think you might want to be looking at?

MR. AUGUSTINE: Well, the only one that I would suggest is that if you approve the other ones – several of the others are there. They're there, fallback. We have no one in New York that I know of that would be in favor of Option 6 or 7. They went through the split season; it was a real problem for everybody, bait

and tackle people, everybody, partyboat and charterboat people.

In many cases I know for a fact that most folks finally got to the point where they threw their hands up and said, "To hell with it, we're going fishing", which is not a way to manage a fishery. In this particular case if we're splitting hairs on Option 4, that actually is a 77 percent reduction, May 1<sup>st</sup> to August 30<sup>th</sup>.

Maybe we'll have all good weekends and we'll catch our quota, but if we don't it will be like we did last year where you had five out of six weekends were no fishing because of bad weather, so for splitting hairs at 1 percent within the option where we are targeted with 78 percent and not to be able to include Option 4, May 1<sup>st</sup> to August 30<sup>th</sup>, that takes care of both ends of Long Island.

CHAIRMAN CARPENTER: Let me correct something I said. I said that they didn't approve it. What they are doing is they are not recommending it. They're cautioning against using that, which is a little bit different than what they did with Maryland when they said no way you can use that one. Does that solve New York's problem?

MR. AUGUSTINE: No, it doesn't because if the technical committee doesn't it, it doesn't approve it. If you're telling us we could do it, that's fine, that's what we really need to hear. If you say we can do it, we can do it.

MR. KERNS: Pat, the technical committee is cautioning you in those two proposals because of the high level of risk of exceeding your target, and so they're trying to tell you that we think you potentially will go over your harvest target. They're trying to be honest with the state and let them know what they're thinking, but they did approve all of your options.

MR. AUGUSTINE: Thank you for that clarification.

CHAIRMAN CARPENTER: Are there any other comments? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: This is an interesting discussion because one of the dilemmas the technical committee is in is by opining on an option, they sort of create a situation where the state can come back and say, 'Well, the technical committee said we could do it' if it doesn't work as opposed to just saying we approve or we don't approve it, so just to highlight the cautionary note here. Regardless of what the technical committee

says, it is my understanding it is still the responsibility of the state to stay within their quota.

CHAIRMAN CARPENTER: And if they don't they pay the penalty next year, so I personally think the technical committee has done a very good job looking at these and saying, yes, this technically meets the arithmetic. Whether it meets the real world or not is what the state is gambling on and is going to have to pay the penalty in future years. I appreciate the technical committee's guidance on that, and I think everybody ought to understand that. Tom Fote.

MR. THOMAS FOTE: You can be as precautionary as you want, as we all found out over the years, but it depends on the weather and it depends on what happens. I appreciate it and I think the technical committee is doing the right job in warning us, but it also depends on what happens in a year.

I have come in and have been totally surprised in bad weather years when all of a sudden everybody winds up being over, and in good weather years we wind up being under. Since we're still dealing with MRFSS for the most part, we're going to be playing that silly game until we get that corrected. I understand the concerns.

I really appreciate them and we will look at them and study them the same way we will in New Jersey. But, again, we can take all the precautions we want, and I found out weakfish one year, when we caught all the weakfish along the whole east coast and New Jersey, which I still can't believe, but that is what happens when you're dealing with MRFSS.

CHAIRMAN CARPENTER: Thank you very much. Is there a motion to approve the state proposals as submitted?

MR. AUGUSTINE: Mr. Chairman, **I move to approve the recommendations by the technical committee for state regulations for 2010 for summer flounder.**

CHAIRMAN CARPENTER: Is there a second; second from Bill Adler. Is there any discussion? Dave Simpson.

MR. DAVID SIMPSON: I just wanted to point out for the record that the Connecticut options are all designed around achieving just a 35 percent increase. We took a very conservative approach this year, because the regulations we had in place last year were supposed to achieve 77,000 pounds, and it fell short of that. This stock, unlike some others, is not

rebuilt. We haven't reached the target yet, and I thought it was critical that we be conservative. I just wanted to make that point for the record.

MR. MARK GIBSON: It is my understanding that this motion means that those options that the technical committee recommended that we not approve drop off the table and only those that were fully endorsed by the technical committee remain?

CHAIRMAN CARPENTER: No, that is not how I understand his motion. My understanding is that it is only Maryland's proposal to split the bay and ocean has been rejected by the technical committee. The other options that were noted were precautionary statements on the part of the technical committee that a state choosing to use one of those runs the risk of going over, but it is an approved and you can go with it.

MR. GIBSON: Thank you for that clarification. To Rhode Island, we share those concerns about dropping the minimum size, and we will be very deliberative in making recommendations to the director, and they will be included simply for completeness. I frankly wanted to illustrate what happens with MRFSS numbers when your catches come in well under the projection and an opportunity for large liberalization is there. You can see what happens with these numbers, and we will have more to say about MRFSS numbers I think in the scup discussion and perhaps at the Striped Board as well.

CHAIRMAN CARPENTER: Is there a need for a caucus? Is everybody ready to vote? All in favor please raise your hand; all opposed same sign; any abstentions, one abstention; any null votes. **The motion carries.** Toni has some information that we all need to follow through with now.

MS. KERNS: As in every year states will now go home and promulgate which option they're going to put forward for the 2010 fishery. Staff just reminds the states to please get your regulations as soon as possible to me. The commission, as outlined in Amendment 12 of the plan, is to send a conservation equivalency letter to the National Marine Fisheries Service by March 1<sup>st</sup>. The sooner you can get me your regulations, the better.

If you can't get your regulations to me by March 1<sup>st</sup>, if you could please send me an e-mail letting me know what date to expect those regulations, so that I can give a heads up to the National Marine Fisheries Service on the expected date of our submission of that letter.

CHAIRMAN CARPENTER: Item Number 5, approval of scup recreational proposals; again, Toni and Chris.

## APPROVAL OF SCUP RECREATIONAL PROPOSALS

MR. BATSAVAGE: Okay, with presentation we'll start by going over the harvest estimates for 2009 and some of the issues with having to project out, the harvest trends that we've seen over the last five years. We're going to talk a little bit about the sample sizes that were available to do creel limit analysis and also the level of precision of the estimates. Then we will go into management options and finish up with the technical committee recommendations and rationale for those recommendations.

The 2010 target for recreational scup is about 2.73 million fish. The 2009 estimated landings were approximately 3.75 million fish. That results in an estimated harvest reduction of 27 percent. The 2009 Wave 5 harvest estimates are not yet available. The way the technical committee have handled this was Wave 5 was projected by adding 10 percent to the 2008 Wave 5 harvest estimates by state wave.

A couple of other options were also explored. One was to look at the harvest ratio of what was landed in Wave 5 in 2008 and apply it to the Wave 1 through 4 estimates and kind of project out. That resulted in a higher harvest estimate and the method we chose. We also looked at the – just looking at the average harvest ratios to Wave 5 from 2005 to 2008, and actually that came out to a pretty similar estimate to what we decided to go with.

The chosen method for projecting out Wave 5 harvest accounts for the unfavorable weather that was seen up in the northeast last fall. In addition, the corrected Wave 5 harvest estimates for the for-hire mode in Massachusetts were also used for this 2009 harvest estimate. The technical committee worked with MRIP staff on finding the best method to resolve this anomalous estimate, and we were able to incorporate it.

Okay, this graph shows the trend in the overall recreational scup harvest compared to the harvest limits since 2005. The harvest limit is in blue; what was actually harvested is in pink. Since 2007 the harvest has exceeded the limits. The next two graphs will show scup harvest trends by mode. This is for the private rental mode and for the for-hire bonus mode.

This graph starts by showing the private rental mode. As you can see, the harvest estimates were relatively steady or slightly increased for Massachusetts in 2007 to 2009 while harvest estimates in New York, Rhode Island and Connecticut declined in this mode. This graph shows the scup harvest for the for-hire bonus seasons in the northern region, and it shows the opposite trend of what we saw in the private rental mode.

The harvest increased in all the states since 2007 with Massachusetts having the highest harvest increase. The technical committee analyzed the catch sample sizes for creel and size limit analysis for the modes as well as during the bonus and non-bonus seasons. Multiple length samples of Type A harvest are taken per angler intercept, but intercepts with multiple contributors are less of this analysis for looking at the creel limit analysis.

While the overall numbers of fish measured are very good in some years' state waves as well as the modes, the effective sample size for creel limit analysis can be quite low to the fewer number of single-angler intercepts. For example, as you see on this table, no samples were available for the non-bonus season in Connecticut, and those samples were available for any of the private modes for any of the states in 2009.

All right, this table shows the level of harvest precision for the different waves and modes for the northern region. The overall state levels of the proportional standard error were less than 30 percent. However, when you start looking at state and wave level estimates and state wave and mode estimates, for some of them they're generally greater than 30 percent and some much higher, which means the harvest estimates are much less precise.

These imprecise estimates severely limit the confidence and analysis of management options below the state annual level or at most of the state wave level. Basically, the existing data quality does not support favorable analysis of distinct options for different modes. This table shows the list of management options.

The first option up there is the regulations that were in place in 2009. Options that are projected to exceed the 2010 target are identified in the percent over target column. These options show that there is a tradeoff between the creel limit and the season lengths. In general the creel limit must be reduced to extend the season and vice versa.

To accommodate a bonus season, the season and/or creel limit from the non-bonus season must be reduced. It is important for me to mention that the start and end dates for the options can be modified for the states. They will keep the same number of days open for each state but also yield the same harvest reduction to meet the target.

Okay, a little bit more about the management options; all the explored options assumed a limited increase in harvest within the existing for-hire modes by dropping the size limit down to 10-1/2 inches. This assumption is supported to some degree by the measured low levels of compliance with the existing 11-inch size limit within the for-hire fleet. Basically, there is quite a few 10-1/2 inch fish already being harvested.

Another point to make is none of the options account for future year class strength, so a strong incoming year class could result in an increased harvest. Increased effort and recoupment in the form of decreased compliance, more boats and more trips are likely causes for the increase in harvest during the for-hire bonus seasons, but it is also important to point out that the options that eliminate the bonus season likely underestimate the actual savings gained.

It is expected that the elimination of this bonus season will result in unquantifiable yet substantial reduction in effort in the for-hire industry, particularly since some of the proposed seasons do not extend into the previous bonus season's high-catch period. The technical committee recommendations; the technical committee does not recommend options with the bonus seasons or options where the expected harvest exceeds the target.

The reasoning behind these recommendations is there is no clear method to evaluate these mode splits, and the data is insufficient to evaluate mode and area splits. The mode splits that were done in previous years resulted in harvest overages. Sufficient catch, effort and length frequency data is needed for all the scup fishery modes. Finally, the technical committee believes that Wave 5 2009 data should be used for this analysis once it becomes available. Thank you.

MS. KERN: I have an update from the National Marine Fisheries Service on the Wave 5 data. It is still not available. They had a new company that was doing the sum portion of the survey, and that company came in I think about 40 percent under their required or recommended number of calls.

They're still working through that data and hopefully will make it available within the next two weeks, so we're waiting on that information; especially for the state of New Jersey, which if we projected out their landings for 2009 using 2008 data, they could be subjected up to a 78 percent reduction in their scup landings.

New Jersey's harvest varies from year to year without much trend with high numbers in Wave 4 and Wave 5. In 2008 they had very high Wave 5 estimates, which is what causes this high necessary reduction because of the projection that we did for 2009 using the 2008 data. The technical committee wanted to see the Wave 5 data before we made any recommendation for New Jersey's 2010 scup measures. They also wanted to see that information for the four northern states as well.

MR. THOMAS McCLOY: I guess my question is where does that leave New Jersey in particular right now as of this meeting? If I may add, we need to go home and we need to put things in place for 2010, so direction would be appreciated.

MS. KERNS: I'm really hoping that we can get some Wave 5 numbers next week is what I was told to hope for when I spoke with the National Marine Fisheries Service. If we go forward today, then the technical committee would have to tell you to take a 78 percent reduction. Because that is based on the information that we have available today, that is what we would have to tell the state to do.

The technical committee members from New Jersey brought forward some possible ways to reduce the catch, which the technical committee looked at and was fine with how they moved forward with that, but I didn't want to present that information because realistically speaking the technical committee didn't think that a 78 percent reduction would be necessary and wanted to see those Wave 5 estimates. At the time of the meeting we were under the impression that we would likely get those Wave 5 numbers before today's meeting and so that is what we were really hoping for. Yesterday afternoon I was informed that hope was not going to happen.

MR. McCLOY: So just from a process standpoint, then, theoretically we'll get the Wave 5 data next week. The technical committee will do their thing with that, and then we go from there to where; the board is going to have a conference call to discuss this, fax poll, another meeting, we're just going to approve it day, whatever the technical committee

says, we're going to go and do that. That's a question.

MS. KERNS: In the past the board has done fax polls to approve states' proposals when we don't have the information available at the meeting. The technical committee did approve the method that New Jersey used to evaluate their reductions necessary, so that portion has been set and done, so as long as you follow that same methodology I think that will be fine with the technical committee, and then we would just need the board to approve any options that you put forward in a fax poll.

MR. SIMPSON: Chris, so a quick recap of our recreational statistics for 2009, Wave 3 we had a significant issue with estimation of the party/charter mode in Massachusetts; an initial number that came out around 900 and some thousand fish, later revised to 600 and some thousand fish. Wave 5 estimates, which are critical to the scup fishery, we don't have any estimate on February 2<sup>nd</sup> to base 2010 management actions on.

It sounds like the problem is we have 40 percent fewer phone calls to base any decisions on. There is nothing that can fix the missing data, so the folks at MRFSS – and I appreciate their effort, they're trying to do the best they can, but I think it raises serious issues about how much we can trust the eventual number, notwithstanding the PSEs that get calculated.

I know there are a number of lengths in the party/charter mode, but could you recap what we have to work with in terms of bag and size limit analysis, alternatives that states really need to look at in the private rental and shore modes; how many interviewed fishermen had their fish measured, how many fish were measured? How many of those interviews do we have to base a bag limit analysis on because my understanding is that was extremely limiting to the analysis this year.

MR. BATSAVAGE: To do the creel limit analysis for the private modes, we had no intercepts. We needed a single trip intercept to do that and we had none. We only had them for the party/charter.

MR. SIMPSON: So basically we're sailing blind on recreational measures this year for anything outside of the party/charter mode and we're sailing blind without Wave 5, which is not the largest mode but certainly a significant mode, and we had issues with Wave 3; just so everyone understands what we're dealing with with scup in particular this year.

MR. FOTE: When I looked at the intercepts for New Jersey, even using the party and charterboats, we only had 19 scup measured in the whole state in 2009. My concern here is that we wind up – we don't wind up where we wound up in 2002 where we based numbers on 2002 figures and didn't find out until 2004 that all the numbers – because we had switched contractors again – that they were extrapolated and caused all kinds of problems for a bunch of states because we made decisions based on those numbers.

It seems we have to deal with the mistakes; and when we basically base our judgment on those mistakes, we get penalized for doing it and there is no penalty for making the mistakes. It is very concerning to us as fisheries managers but also to the fishermen because their livelihoods depend on it. This is not what I want to go back to the public and basically say.

I would like to ask the National Marine Fisheries Service if the confidence level of the data they do get is going to be better than it was in 2002 or are they going wind up extrapolating numbers like they did in 2002. This time at least we'll know that we're working with extrapolated numbers or numbers there is very little confidence in, which we didn't know in 2002.

CHAIRMAN CARPENTER: Any other comments?

MR. FOTE: A.C., I asked a question on that. I'm just wondering what the numbers are and what NMFS feels is the confidence level in those numbers. Can I please get that answered?

CHAIRMAN CARPENTER: Pat, would you like to respond to that?

MS. PATRICIA KURKUL: I'm sorry, I'm not part of the MRFSS Program and I can't answer that kind of a question.

CHAIRMAN CARPENTER: Tom, they have discovered a problem with the data, they're working on it, so I guess we're in a position that we know that the data did have problems and they will come out with a number here next week that we all know has been worked on to the best of their ability. Tom.

MR. FOTE: I understand that and I feel very sympathetic. We know how contracts work. It goes to the lowest bidders and that's sometimes why it winds up with this problem. To do this by a fax poll in two weeks without sitting here and deliberating

and maybe answering those questions on NMFS and the back and flow of data going on between the board members looking at this and making some interpretation of what is going on, I find that difficult because it is going to be very cut and dried if we do a fax poll to basically approve this.

I might feel more comfortable if we did a conference call if that was possible. I know that is very trying on everybody involved. I'm just trying to look at a solution to this problem. To basically send out a fax and say, well, we've come up with these numbers. These are late numbers, and we've done it on a small number and without any discussion on what we're going to do between ourselves I think is problematic.

CHAIRMAN CARPENTER: I think the board needs to give some consideration to the methodology of how we're going to calculate these seasons and whether we want to allow the bonus season to be part of it or whether we want to approve any calculation that goes over the target. I think these are the three items that we're going to need to try to decide today. Once we get those answers, I think we can do it by a fax poll shortly thereafter.

MR. SIMPSON: So just to set the stage for further discussion of what we are to do this year, I've sent some information around earlier to Vince, to Pat Kurkul and to others summarizing the issues that the MRFSS folks are facing and working very hard to address through the whole MRIP Program. I'm confident that they're going to come out with some very significant and very much needed improvements.

However, what we're working with today, the National Academy of Science's Review, we have to remember – and this is pulled from a summary from Patrick Sullivan who is the committee chair, quoting a presentation gave, Recreational fishing surveys do not provide adequate data for management and policy decisions. Unknown biases, unverified assumptions, statistical properties associated with the data through different surveys, survey techniques differ and are often unknown."

There are a lot details that are pointed out that I won't bore you with, but that main point is they're stating it is not adequate for management and policy decision-making. Unlike summer flounder, which we have not quite reached the rebuilt status on, scup are not overfished, overfishing is not occurring.

From the 2009 stock assessment that Dr. Terceiro put together, SSB is currently at 188,000 metric tons. That is 208 percent of the target. The 2008 fishing

mortality rate was 0.05. Compare that to an Fmsy proxy of 0.177, which itself is a very conservative proxy for MSY – it is less than natural mortality – so the current fishing mortality rate is about 28 percent of Fmsy.

The overfishing level is 27,382 metric tons. The 2010 total allowable landings are 5,578 metric tons, about 3 percent of SSSB. If you consider that just yesterday we were talking about Atlantic herring that has significant assessment challenges, including very severe retrospective biases, we still had an SSB that apparently allocated or allowed 106,000 metric tons to be harvested out of a 570,000 ton stock, or about 20 percent of the stock.

The SSB for scup suggested that we should go no higher than 3 percent of SSB, so this is a very significant challenge that we're facing here. The recreational TAL is just 1,300 metric tons, about 3 million fish, which is 0.7 percent of the SSB available for the recreational harvest. Now, given these circumstances, I would find it very hard to tell New Jersey, for example, that they need to cut their harvest 78 percent based on what we know and what we don't know from the recreational survey this past year.

The other states for which scup is an important fishery, I would have an equally hard time telling anglers in those states, including my own where we just instituted a marine recreational fishing license, that their opportunity needs to be reduced even further than it has in the past. I will leave it with that and we will take it from there. Thank you.

MR. GIBSON: I endorse all of David's comments, and I will go one step further. That is what the NRC Review told us back then. That is even if we had complete data in hand. We didn't even have that, so we don't even have a complete handful of bad data that we're using inappropriately.

The description of the stock status I think of scup was very accurate, and it puts us in an impossible situation of trying to cut back recreational opportunities based on what we know is flawed data and suspect it is even flawed more than we first heard the NRC Review. We see the holes in it. We have external information developing. It is not peer reviewed. It will have to be careful to suggest an ongoing bias and overestimation of recreational catches in fishing effort.

MRIP is going to take a long time to straighten this out. I have no doubt that they're going to come to

some significant conclusions and modifications and improvements. Those will need to be peer reviewed. When those are implemented and new recreational catch time series are developed, including retrospective adjustments for the problem, those will have to go into individual species assessments. Those will have to be peer reviewed.

It is going to be some years before this management board gets updated scientific advice on these stocks that allow us to make reactionary adjustments to recreational catch performance. We don't have that right now, so I can't support any approaches in this year which draw upon flawed MRFSS data and projections, flawed targets, projections of flawed total catches to impact the recreational fishery.

We have to decouple recreational management in scup and maybe other species from the MRFSS data for the time being. I'm supportive of some sort of status quo approach across the board in all the fisheries that have significant recreational catch components where we put in some reasonable measures, allow them to stand until MRIP comes forward with some corrections that we can buy into and start doing our reactionary management and actually instituting accountability measures and enforcing them. We don't have that ability now and we need to get out of it. Thank you.

CHAIRMAN CARPENTER: I've got a number of people on the list here, but I'm going to ask Toni to remind everybody what is in the federal specifications package that has been submitted.

MS. KERNS: As everyone knows, the Atlantic States Marine Fisheries Commission has conservation equivalency for scup, but that is only in our FMP. It is not in the federal FMP. The National Marine Fisheries Service will promulgate coast-wide regulations for scup for those federal permit holders.

The specifications package was submitted a couple of weeks ago, and in that package the recommendation is for scup to be 10-1/2 inches, 10 fish, and a season of June 6<sup>th</sup> through September 25<sup>th</sup>. The board does have that information in front of them as well while they're contemplating their decision.

CHAIRMAN CARPENTER: Thank you, Toni. I have a number of people on the list, but I think what we really need to concentrate on is what we're going to do. We all know that we've got a problem but how are going to solve that problem this morning? I have Pat Augustine.

MR. AUGUSTINE: We do have a dilemma. The real question that I would have is what is the likelihood that we will have any better information through MRFSS next week? Will there be any further information or clarification of Wave 5? Is the data that we're going to get then going to be any better than what we have now in view of the fact that Mr. Gibson and Mr. Simpson and others around the table have questioned the MRFSS Report? If you could answer those three questions, then I have one follow-on, Mr. Chairman.

CHAIRMAN CARPENTER: Well, let me try. We're going to definitely get something from NMFS, so it has got to be better than nothing to start with. Whether it is going to have anymore reliability than any of the rest of the program, my gut feeling is, yes, it will because they have recognized that they had problem with it, and they're trying to figure it out and fix that problem. To the third point, which was –

MR. AUGUSTINE: I don't need the third point. You did okay with those two, but a follow-on question would be if we asked the SSC – we did for black sea bass – to go back and take another look at all the data that they had collected and realized that – they may have had it available to them but did not take an action that everybody felt was comfortable, particularly the public.

What they did was they met with the monitoring committee staff and went back and reviewed the quota that was selected for 2010. Interestingly enough, as you all know, black sea bass is not overfished and overfishing was not occurring. To respond to a motion that we made at the Mid-Atlantic Council, those two groups did get together, and, yes, indeed, they came back and said, "Gee whiz, maybe we do something more."

In view the points that Mr. Simpson made and Mr. Gibson made, it just seems to me here is an issue where not only is the spawning stock biomass for scup at an extremely high level, with overfishing not occurring and overfishing is what it is, why at this particular juncture, because – well, first off, if we go forward with what we've got now, we're going to put more people out of business. We all know the number of porgies that out there. We looked at the scientific review.

Wouldn't it be more appropriate to ask the SSC to take one more look? Now, my understanding was – and I was at the meeting – there was an arbitrary number of a recommendation of a 10 percent increase in quota, and that decision was made, as I understand

it, before – maybe it wasn't, but I thought it was at the same time or before the monitoring committee and the staff had that with them.

It seems to me to address the issue, at least to get us started and moving in the right direction, if the SSB is that high, why are we squeezing, squeezing, squeezing and trying to make this cut when in fact it will be a matter of either a conference call or get together with the monitoring committee and the SSC. It just seems to me we're going about this the wrong way.

As usual, we, the board, are trying to squeeze a decision forced upon our constituents with information that is either flawed or lacking or not complete. In my mind it doesn't make sense. We cannot be judge and referee without adequate data, without visually seeing what is going on. We don't have it, so my recommendation, Mr. Chairman, is that we ask the SSC and NMFS to participate like they did with the black sea bass meeting and the monitoring committee and the staff of both the technical committee – that would Toni and Jessica – to go back and look at the recommendation of a 10 percent increase for scup for 2010.

I think that may be the most direct approach to do it. They may not want to do it, but under the circumstances, for the number of folks that are going to be affected, based on this flawed information and continue down that road and/or us making the wrong decision that we in our hearts and in our minds and what we see we know is wrong, I can't do that and I won't do that. Mr. Chairman, would you suggest that we do something?

CHAIRMAN CARPENTER: Thank you, Pat. This board cannot direct the SSC to do anything. I think that is something that the council will have to consider, and my gut feeling is that this board would not object if the council did choose to go that route, but I think that needs to be taken up at the council meeting.

I think one of the options that nobody really likes but is the coast-wide option that is out there now. We could approve that and be done for the day. I don't think that is going to solve any particular state's desires or wishes in this matter, but in the face of not having the information available today I'm at a loss as to what else you're going to do. That is certainly an option that we could postpone this to some future meeting, but our future meeting is going to be in June, and I don't know that many states can wait that late. Pat, one more time.

MR. AUGUSTINE: Yes, to follow on, Mr. Chairman, and thank you for the opportunity to come back at this. We do have Mr. Robins here on the Mid-Atlantic. I know he is not authorized to out of hand request, without talking to the council members, that we do this. I'm just wondering if it would be a viable approach to us moving forward.

If it is possible to do that, that maybe the board could then go back on a webinar conference like we did a few months ago – that seemed to be very successful – and attack the problem from that point of view. I think we have to go methodically. I agree with you, Mr. Chairman, if we have to go with a coastwide, fine, but it is not going to solve the problem. We still haven't addressed the major issues, flawed data, not enough data and moving forward and making decisions that are going to have an impact on a lot of people's lives. Thank you, Mr. Chairman.

MR. GILMORE: I'll cut out some of these comments to shorten this, but just to add my voice to the rest of the northern states in terms of where are, we need more fish and we have more fish, but we're stuck in this process right now. The thing that I think is the biggest problem I have and I hope other people have is that we have two sets of data.

We have the MRFSS data, which Dave Simpson pretty well clearly read why it is flawed, but for whatever reason we follow that blindly. We have to. That is part of the process that we accept those numbers and we have to manage by them. Meanwhile, we have a stock assessment, but because there was some uncertainty in that, we put a lot of qualifiers on that. You can't have it both ways.

We can't sit and say we completely accept one set of data, which we know is flawed, and then discount another set of data because there is some uncertainty, so something has to give. It seems Pat's suggestion is probably the best one to pursue right now. The bottom line is forgetting all the process. We have got fishermen out there, there is plenty of fish. We also have a license in New York as many of the other states do.

We have a situation where if weren't looking at any of the numbers, we'd all agree around the table that we should be expanding this fishery, but because we've got a bunch of numbers that are suspect, we're faced with no options. There is no confidence any of us have in this process. I don't know what the solution is and I don't think we're going to get at it today other than voting for some of the numbers that are on those sheets is not to the solution to this

because we're just going to put people out of business.

My last point is we were all successful in keeping – or most of us were successful in keeping under summer flounder this year. Now we're going to run around and shift a reduction in scup and guess where they're going to go? They're going to go right back to summer flounder and we're going to go over on that again. If we ever needed to look at this as a multispecies approach, now is the time because we're just going to keep chasing our tails on three species until hopefully we rebuild them all to some magnificent levels where we can have enough fish for everybody. Thank you.

CHAIRMAN CARPENTER: All right, before we go much further, why don't we take about a five- or eight-minute break so that we can try to get some ideas together and decide where we're going to move from here because it is obvious we're not getting real far right now. We will be back in eight minutes.

(Whereupon, a recess was taken.)

CHAIRMAN CARPENTER: We are back in session here. Dave Simpson.

**MR. SIMPSON: I would like to move that for the states of Massachusetts through New York that we adopt an open season of May 24 to September 26 with a 10-1/2 inch minimum size and a ten-fish limit; and for the party and charter vessels during Wave 3 through 5 allow a reduced 30-fish, 30-day bonus season.**

CHAIRMAN CARPENTER: All right, while we're waiting to get that up on the board, is there a second to the motion? Seconded by Jim Gilmore. Dave, would you like to speak to the motion?

MR. SIMPSON: I will acknowledge that we do expect that could result in landing estimates from MRFSS exceeding the harvest target, but we do believe it is a significant step to addressing a shift in effort and the attraction of additional effort that occurred this year in the bonus season and led to some unanticipated large catches in that mode. And to be clear, the party and charter vessels retain the 11-inch minimum size throughout the year, whether they're in or outside the bonus season.

CHAIRMAN CARPENTER: Dave, is that your motion on the board now? Mr. Gilmore, is that your motion that you seconded?

MR. SIMPSON: That looks right, yes.

CHAIRMAN SIMPSON: Thank you. Now for discussion, I have Dave Pierce.

DR. DAVID PIERCE: Yes, the issue, of course, what do we do with the bonus season and to what extent should the bonus season be changed, if not done away with entirely? I call the board's attention to a letter that has been made available to all of us from the Massachusetts Party/Charterboat Operators Recreational Scup Fishing Industry, a letter signed by two notable representative of the partyboat fleet in Massachusetts, Gerald Poyant and Joseph Huckemeyer.

I believe Joe is a member of our advisory panel. This is a letter representing approximately 40 partyboat/charterboat vessels from Massachusetts. They make the point in their letter – and this is relative to our motion – they make the point in the letter that basically they understand where we're coming from and they understand the dilemma that we face; however, they have suggested that the days be reduced in the bonus season that would apply to the Massachusetts area, the spring bonus season for the party and charterboat fleet, reduce the days from 45 to 35.

They thought that 35 would be a number of reduced days that they could still work with; reduce the bag from 45 to 40, so cut it by 5 fish, 45 to 40. This motion obviously will have an impact on the spring bonus season in Massachusetts, and I suspect it will have a very dramatic impact on them since we're talking about the reduction from 45 days to 30 days, which is a 15-day reduction in the amount of time available for the partyboat fleet to operate in the springtime.

Also, we're looking now with this motion with a reduction of the bag from 45 in the bonus down to 30, so it is a 15-fish reduction. How much of a reduction is it in terms of the expected harvest we would have in 2010 through this particular fishery? I don't know; can anybody quantify it? Sure, numbers can be cranked out on a piece of paper, but will they actually reflect the nature of the cut? I suspect not.

I do feel, however, that it is very likely, in light of the significance of this motion relative to what the industry says they can live with that this will have a dramatic effect on the take on Wave 3 catch. I say that to make everyone understand that this is not insignificant motion. This is not something that will have little to no impact. It will have a dramatic

impact on the party and charterboat operators in Wave 3.

I'm, of course, like all of us around the table quite concerned that we have this motion. We have to take specific action relative to a dramatic cut in recreational take even though – and I'm not going to highlight everything because Mark and David made the point very clearly. We are not overfished, we haven't been overfished since 2000. The revised assessment indicates we're not overfished going back to 2000, and we haven't been overfishing since 2003.

We thought we were over the last five, six years, seven years. We thought we were and we acted accordingly. Well, now we find ourselves in this interesting situation where we have to cut back in a relatively significant way. A signal also has to be sent to the industry, to the party and charterboat fleet that indeed there is a need for us to cut back to be faithful to the extent that we can with the process and the need to better control recreational take. It is a significant cut, it is dramatic, it cannot be quantified, of course, and it will basically be a wait and see to see indeed what the take will eventually be in 2010.

MR. ROY MILLER: The only thing I wondered about is the motion says nothing about New Jersey and south. Is it implied that the regulations in those states would remain status quo if this motion passes?

CHAIRMAN CARPENTER: We will be looking for a separate motion as soon as we deal with this one. In the interest of time, Bill Adler, can you be very brief?

MR. WILLIAM A. ADLER: Given the federal rule of what they want, how does this impact the party-charterboats? If this passes, will the federal thing that was read change or will they be under that rule; who is under what rule?

CHAIRMAN CARPENTER: I would like Pat Kurkul to reply to that.

MS. KURKUL: I had my hand up to do just that. The specifications that the council approved in December and that will be included in the proposed regulations that we will be issuing for federal permit holders in federal waters actually have a size limit of 11 inches, a ten-fish bag limit and two open seasons, January and February and then June 6<sup>th</sup> to September 26<sup>th</sup>.

It is I think likely if the board approves this motion, which you acknowledge doesn't meet the mortality of

reductions, that we would need to put those measures in place for charter/party vessels with federal permits and for federal waters, so there would be a disconnect there.

CHAIRMAN CARPENTER: Thank you, Pat. Any comments from the audience? Go ahead, sir.

MR. JOSEPH HUCKEMEYER: Joseph Huckemeyer; I wrote the letter along with 40 other boats and businesses in Massachusetts. First, I cannot say strongly enough do not approve this plan here at 30 fish. Thirty fish might as well be zero; just go to zero, close the fishery down for the party/charterboats, we're done. We are absolutely done at 30.

We came and did some real soul searching trying to come up with a plan that would keep us going, cutting days, cutting bag limits, cutting every way we could trim it out and still stay going, and that is how we came up with the plan that is in that letter. A couple of other things; we're basing this on a rebuilt stock with data that is missing, poor at best, and then you're talking about livelihoods of hundreds and hundreds and hundreds of people.

The other thing is I wish everybody would stop calling it a bonus season because there is no bonus. This is what is left of the whole season. We started at a six-month season, then went down and whacked away at the bag limits, the size limits, all told for the last decade that we've got to do our part to rebuild this stock to get it to a sustainable level.

Now we have a rebuilt stock; where is the payback? There is no payback? We're rebuilt and what we're talking about is just absolutely crushing the party and charterboats. A couple of other things; the scup fishery in the party/charterboats from Eastern Connecticut and Eastern Long Island to the south side of Cape Cod, the scup fishery which everybody is calling the bonus season, which we call the spring or the fall run, is about 50 percent of our income. Something we're going to talk about in a little while, another 25 percent is sea bass, so we're going to get it at both ends today.

All I can say is that the bag limit is so important to us to keep our people coming. Everytime we take a cut, we work around the plans – that we come up with a plan everytime to try and get what is required of us. Now we're in a situation here where we need a little help here to just hang in there until we have some decent data to work with.

The 30 or 40 other boats that I'm representing depend on this at least 50 percent of their business and a few of them are a portion of their business. I didn't write the letter representing anybody from Connecticut, Rhode Island and New York but a number of those gentlemen are here as well, and I'm sure they're going to tell you the same thing that I'm telling you.

MR. TONY BOGAN: Mr. Chairman, Tony Bogan from United Boatmen. First and foremost, I want to echo everything that Joe Huck just said. My family's business has been in a similar situation with sea bass this year. Any of those of you who happen to look at Bosun Harbors, you will see there is now two of our largest boats that are for sale.

One has been going out of business; the other one is out of business; I mean, done, gone. My brother is looking for another job. I appreciate that there was a lot of work done in that very brief respite here during the meeting to try and come up with something. I understand from my time on the Mid-Atlantic Council and coming to meetings over the years the federal government just doesn't get it.

The regional administrator and the people that work in the National Marine Fisheries Service, they just don't get it. They have no grasp of the scup fishery in the for-hire sector. They never have and they have shown time and again they're unwilling to even consider it. They know better than we do.

This body here, the commission, I know you folks know because there is enough representation from enough different states and such a diverse group of people, which is the reason why there was so much work going on here, because you folks do get, and you have an opportunity here. Originally I was going to reserve this for just the New Jersey portion, but after seeing this and listening to Joe and talking with Paul Forsberg, you have an opportunity here that the federal government doesn't have to say you know what, enough is enough, we're not going to sit here.

If after listening to Mr. Simpson's comments earlier, that doesn't make everybody in this room go – status quo; you've got to stay status for now. You can't do this, you just can't. The commission can do that. As Ms. Kurkul had mentioned, federal permit holders, in my state I've got it a little easier because when the federal regulations are different I have to abide by them whether in state or federal waters, but I can drop my endorsement on a given fishery.

At least at this point in time we have that luxury. That might change one day in the future. Most of my

scup fishing that we do in the fall in New Jersey in state waters; I mean, the vast majority of it. Most of it is done in less than 50 foot of water. Some of these guys might not have that luxury, so I don't know what they're going to do because I'm not familiar what they fish, but I am familiar with the business.

I'm fourth generation here. My great grandfather started this business in the twenties in New Jersey and we had a scup fishery that rivaled New England back in that day. As far as I'm concerned – and this is for Joe and this is for Paul and this is for all the rest of the guys – is the motion should be status quo until such time as we can get this data in hand and get it in line. I'll leave it at that. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: One more public comment and then we're going to take a vote.

MR. PAUL FORSBERG: Paul Forsberg, Viking Fishing Fleet. I employ 60-odd people. I think our last count was 63 people for the year in my company. The scup fishery amounts to about 60 percent of my business. If we lose the spring and fall run known as the bonus season or get it cut down too much, we will be out of business.

I know you've heard that over and over and over again in other fisheries. There is one point that I want to make. No one has mentioned anything about this fish being used as a food fish by people with a very limited income. Our passengers on these trips are people with a limited income. These people pool their money together. They send grandpa and they send their dad fishing.

When they come back home, they share all the fish up amongst them and then the next week they come back fishing again. At ten fish they can't afford to go fishing. I can show you the records. My boats sit at the dock with ten fish; we might as well have none at that time of the year. They wait for the spring and the fall run, the spring run in Massachusetts, the fall run in New York.

Now that's the only time these people can go fishing. We've got them down to 45 days a year. Everybody else can fish all year long. These people can't afford to fish unless they can take enough fish home to feed their families. This is a food for them, and it is a very important food. It is not luxury; it is a good.

We've cut them down to 45 days from a whole year. They had a whole season, six months of fishing, we're down to 45 days. Now we're going to chop

them down more. I think a lot of consideration ought to be for those people. Thank you.

CHAIRMAN CARPENTER: Thank you. Mr. Arnold, you will have the last word.

MR. LEO ARNOLD: Arnold Leo; I am a consultant for commercial fisheries, Town of Hampden. I'm going to be very brief. I think Paul and Tony have amply expressed the problem confronting particularly the partyboat industry. What I want to point out is there is growing concern that here we have data that shows a rebuilt fishery, the goal has been reached, and yet the fishermen are not benefiting from this goal having been reached.

They're continually being asked to take further cuts. I think that the problem is in the beginning we'd say to the fishermen, "Okay, look, we have to sacrifice because it will be for our benefit down the road," but that is not proving to be the case. The credibility of the management process is being questioned further and further by the fishermen.

We see it at home by an increased willingness to engage in illegal activity, poaching. I'm beginning to reach a point where I haven't got an argument to counter these guys who have families, mortgages, a way of life that is increasingly threatened. I just want to point out that the issue of credibility has become really critical. If we go on having rebuilt fisheries where the fishermen don't benefit, I think all credibility will be lost. Thanks.

CHAIRMAN CARPENTER: Thank you. Is there a need for a caucus? Yes, ma'am.

REPRESENTATIVE SARAH PEAKE: Mr. Chairman, **I would like to make a motion to amend the motion before us to change it so that it reads "reduce the number of fish changed from 30 to 40", move that number up, and the "30 days" to "35 days.**

CHAIRMAN CARPENTER: While we're getting that on the board, that would be increase the number of fish from 30 to 35 and the number of days from 30 to 35; is that correct?

REPRESENTATIVE PEAKE: No, Mr. Chairman, sorry for the confusion, my motion is to increase the fish from 30 to 40 and days from 30 to 35.

CHAIRMAN CARPENTER: Thank you; is there a second for the motion? Seconded by Pat Augustine. Discussion by board members? Tom.

MR. FOTE: I was really hoping for one of the states to basically come up with a motion for status quo because I would have seconded that motion. I'm truly upset sitting here listening at this. I mean, Jack Travelstead and I sat here I guess in – well, it wasn't here but one of the Mid-Atlantic meetings. I think it was actually in New Jersey and we started putting these plans together in '92 and '94 and started looking at this.

At that time we all admitted that it really wasn't the recreational or the commercial fishery, the directed fishery that was causing the problem, it was the bycatch fishery. We're sitting here 17 years later basically looking at a stock rebuilt. The commercial fishery is pretty self-regulating because when the prices – and from what I understand when the prices do get so low they stop fishing for it but they can use the larger quota at some point.

Here we are putting pain and suffering on the recreational sector. I have strong feeling towards scup. I mean, it was the first fishery that I basically really used to take home fish to eat when I was a kid, climbing out on the girders of the Marine Parkway Bridge, and be able to do that. You have basically forced that 12-year-old kid that wants to go out on the girders of those bridges to basically out of the fishery, for one sense, because once you raise the size limit above nine inches and ten inches – they were all what we called sand porgies, six or seven. So we've done that to most of the fisheries, the inshore fisheries, the private fisheries from docks and piers. We have allowed now for a boat fishery and a small –

CHAIRMAN CARPENTER: Tom, can you address the amended motion and limit your comments to that, please.

MR. FOTE: I will do that and I would make a suggestion that we go for status quo. If somebody will make that motion, I will second it.

CHAIRMAN CARPENTER: Thank you. To the amended motion.

REPRESENTATIVE PEAKE: Mr. Chairman, as the maker of the motion, the reason behind it is we heard data today saying that this fishery is not overfished and overfishing is not occurring. We also heard information that there is shockingly little or no data upon which we're making our decisions today. We heard compelling testimony from members of the public who are here regarding the economic impact that this decision and the original motion would have upon their very existence, much less their livelihood.

I know in Massachusetts we have enacted and the governor has signed into law the saltwater fishing license. The fees that will be charged for that will be directed into fisheries' studies and management to allow for the collection of data from the recreational fishery, so I would respectfully submit that within a year or two years' time we will have hard data and facts to make our decisions upon.

I would hate for us to charge forward today with draconian measures without the scientific evidence before us; and maybe in two years' time when we have that data, we won't have the charterboat fishery here to testify because of decisions we've made today will put them out of business.

CHAIRMAN CARPENTER: Thank you very much. Any other comments?

MR. MIKE JOHNSON: Mr. Chairman, after hearing what I've been hearing today, fish stocks are rebuildable and family businesses are not in this climate. I don't know if I'm in order or not, but Mr. Fote made a good idea. I would offer up a substitute motion of status quo.

CHAIRMAN CARPENTER: I ask for some guidance from our parliamentarian. The chair is going to rule that we're going to deal with this motion before we accept anymore. With that, I will allow a one-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Okay, I'll call the question. All in favor of the amendment please raise your hand; all opposed; any abstentions; null votes. **The motion carries five to four with two abstentions and no nulls. This now becomes the main motion.** If someone wanted to substitute the main motion, then I think we are in a position to take that. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, would you now entertain that motion that my friend from North Carolina –

CHAIRMAN CARPENTER: That's what I just said; I need somebody to make it.

MR. JOHNSON: **I'll make the substitute motion for status quo for all states.**

CHAIRMAN CARPENTER: Okay, I have a substitute motion for status quo for all states; is there a second to that motion? Pat Augustine seconds.

MR. AUGUSTINE: Yes, for discussion purposes, Mr. Chairman.

CHAIRMAN CARPENTER: You now have a substitute motion before. Is there any discussion on the motion? Jack Travelstead.

MR. JACK TRAVELSTEAD: Just a question I assume for Pat Kurkul. Assuming this motion passes, I think it would be fair to assume we would probably go over quota this year; and then assuming that the council's ACL and AM Omnibus Amendment is in place for 2011, what would happen as a result of those two things being in place?

MS. KURKUL: I'm trying to remember the timeline for the ACL/AM, but I don't believe it would be in place in time for consideration of an overage for this year, so I think we'll be still under the existing requirements which would still require the overage deduction next year.

CHAIRMAN CARPENTER: Does everyone understand the answer to that, that if we go over we will be looking at a mandatory reduction in 2011; is that what I just heard, Pat?

MS. KURKUL: Yes.

CHAIRMAN CARPENTER: All right, any further discussion on the motion? Any comment from the public? Yes, sir.

MR. SEAN McKEON: Sean McKeon, North Carolina Fisheries Association. I'm getting up to support the status quo. Listening around the table about the reasons, the lack of data, et cetera, et cetera, I think what is beginning to occur to everyone is if I closed my ears and didn't see who was speaking, I would have sworn you were talking about commercial measures the way they were talking here about lack of data, moving ahead anyway, destroying businesses, destroying families, generations.

This motion I think for status quo is warranted, but what is really occurring – and I think more and more people are understanding it – is that the management of our fisheries in this country is out of control and broken, and we've got to fix this system or we're going to be here on every single fishery. More and more recreational and commercials are beginning to see that our interests lie together and not apart. I think this motion should be supported.

MR. SIMPSON: I most certainly appreciate the sentiment from North Carolina and the comments

that were just made by someone who typically gets to the microphone to talk about the commercial fishing industry. I am concerned that the commission not be perceived as being completely insensitive to our federal partners.

I do wish to curb a little bit the party and charter fishery because I don't think we need that to expand further in terms of the reallocation that could occur as a result of status quo and a bonus season, so reluctantly I'm going to oppose the motion.

MR. GIBSON: I won't reiterate Dave's concerns. We both made strong cases for the lack of data and the existing flaws in the data. However, under that kind of mode we have some obligation for precautionary management. This is a little too rich for my taste, and I will oppose it as well.

MR. GILMORE: This is sort of the discussion we had last year and we decided to go with status quo, and we're here having this problem. My concern is we status quo again it is going to be ten times worse next year, so I am going to have to oppose the motion.

CHAIRMAN CARPENTER: All right, is there a need for a caucus? We will have a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, is everybody ready? All in favor of the motion please raise your right hand; all opposed; any null votes; any abstentions. **The motion fails.** We are now back to the original motion, which is the 30 days, 30 fish – we're back to the amended motion – 40 fish and 35 days with an 11-inch minimum size. Would the maker of the motion like to read the motion for the record?

REPRESENTATIVE PEAKE: Certainly, thank you, Mr. Chairman; a motion to approve for the states of Massachusetts through New York Scup Recreational Fishery an open season of May 24<sup>th</sup> to September 26<sup>th</sup> with a 10-1/2 inch ten-fish limit in Waves 3 to 5; allow a reduced bonus season of 40 fish for 35 days with an 11-inch fish minimum size limit. Motion by Sarah Peake and seconded by Mr. Augustine.

CHAIRMAN CARPENTER: All right, in favor of the motion please raise your hand; all opposed to the motion same sign; any abstentions, two abstentions; any null votes. **The motion carries.** We need a motion for New Jersey south. Tom.

MR. FOTE: **I'll make that for the southern region we stay status quo.**

CHAIRMAN CARPENTER: Is there a second to that motion; seconded by Roy Miller. Is there any discussion on that motion? Any public comment on that motion? Are the commissioners ready to call the question? Is there a need for a caucus? All right, all in favor of the motion please signify by raising your hand; all opposed same sign; any abstentions, two abstentions; any null votes. **The motion carries.** Is there any further business on scup?

MS. KERNS: As the northern states choose their bonus season, please send me their regulations.

### **DISCUSSION OF 2010 BLACK SEA BASS QUOTA**

CHAIRMAN CARPENTER: We're well behind the schedule here, so the item now is black sea bass, and we have a **review of the Monitoring Committee and the Science and Statistical Committee Meeting.** Toni, are you going to give that report?

MS. KERNS: I'm going to fly through a couple of the slides on my presentation. Since the board did have the review from the SSC in the briefing materials, I'm all of you are familiar with the reasons why they made the changes to recommend an increase in the TAL. At the December joint meeting with the Mid-Atlantic Council, the council voted to convene a joint meeting of the SSC and the Monitoring Committee to share available data and relevant information as pertained to the 2010 black sea bass recommendations for the purposes allowing the regional administrator to consider whether it would be appropriate to move forward with an emergency action based on a final recommendation of the SSC review of the data.

These are the slides I'm going to skip, which went through the series of questions that the SSC asked themselves. The final finding of the SSC was to revise their recommendation to increase the ABC for the 2010 black sea bass fishery to 4.5 million pounds. This would equate to total allowable landings of 3.7 million pounds, which is a commercial TAL of 1.9 million pounds and a recreational TAL of 1.8 million pounds.

The SSC pointed out that this revised quota would not take into account any management uncertainty for the TAL. The Mid-Atlantic Council has sent a letter to the regional administrator requesting they consider

an emergency rulemaking to increase the 2010 black sea bass quota to reflect that 4.5 million ABC.

The board can consider today whether or not they want to make any recommendations or consider any change in the quota based on a potential change in the black sea bass quota by the regional administrator. If the board does do that, then the board may want to consider changes to the recreational measures.

Currently we have put in place recreational measures for the black sea bass fishery which will be open for a two-month period. Most states have made those changes to the recreational fishery, but the states of New Jersey, Connecticut and Massachusetts have not made those changes to their recreational fishery, so currently those states are open when the regulations say they should be closed right now.

The state of Virginia is still open, but they are in the process of closing the fishery to meet the current recreational measures. If the total allowable landings are increased, the potential recreational harvest limit reduction would change to 44 percent. We could shift to an earlier start in the season, but those must be balanced by either an earlier closure or the reduced bag limit.

The technical committee looked at some possible recreational measures for the board to consider if the TAL does increase. That could be a season of May 22<sup>nd</sup> to September 12<sup>th</sup>; a 12-1/2 inch total length; and a ten-fish limit. That ten-fish bag limit is a reduction from the current 25-fish bag limit.

That change in the bag limit accounts for some of the management uncertainty that may be surrounded in the recreational measures, and this would provide a 45 percent reduction in the black sea bass harvest. The technical committee, when they looked at this information, also considered recommending to the board implementing consistent seasons for the scup and black sea bass fishery to provide flexibility in the angling opportunities.

An example that they had come up with was a June 6<sup>th</sup> to September 26<sup>th</sup> season with a 12-1/2 inch size limit and a 25-fish bag limit, and that would give a 47 percent reduction. It had been consistent with Scup Option 5, which now is not as significant of a detail since we went with status quo measures. Does the board have any questions about what happened through the SSC process and what is being considered?

MR. AUGUSTINE: Just a quick question; Toni, on that last one what if you dropped that June 6<sup>th</sup> to September 25<sup>th</sup>, that is black sea bass or is that scup?

MS. KERNS: The June 6<sup>th</sup> to September 26<sup>th</sup> is for black sea bass.

MR. AUGUSTINE: Okay, what if you dropped that to a 25 bag limit? I mean, you gave us an opportunity to look at the May 22<sup>nd</sup> to September 12<sup>th</sup>; why couldn't we drop the June 6<sup>th</sup> to September 25<sup>th</sup> also to the 25 bag limit? That would probably give us a 65 or 70 percent reduction.

Whether we need it or not is not the issue, but the fishermen that I've been dealing with and talking with felt that a ten-fish bag limit would be adequate as they wouldn't have a problem with your first recommendation. Had they given any thought to dropping the 25 down 10 or 15 or does it make any difference in terms of total numbers?

MS. KERNS: Pat, we had suggested the June 6<sup>th</sup> to September 26<sup>th</sup> to try to mirror one of the scup options. The scup option is no longer in play since you went forward with status quo measures. We do have an option up here that has a ten-fish bag limit that goes from May 22<sup>nd</sup> to September 12<sup>th</sup>, which is a 45 percent reduction, and that drop in the bag limit again is done to try to account for some management uncertainty surrounding those measures.

MR. RED MUNDEN: Before we get into splitting hairs as Mr. Augustine has kind of suggested, **I would like to offer a motion to get us moving in the right direction relative to the annual harvest limit, and I believe the staff already has this motion. The motion would read to amend the 2010 black sea bass specifications by increasing the total allowable catch, TAC, to 4.5 million pounds, allowing a total allowable landing, TAL, level of 3.7 million pounds. This increased TAC/TAL will be approved contingent upon the National Marine Fisheries Service implementing a federal TAC/TAL in these same amounts.** That is my motion, Mr. Chairman.

CHAIRMAN CARPENTER: Seconded by Jack Travelstead. Is there any discussion on that particular motion? Tom Fote.

MR. FOTE: The last sentence of that I wish would have been left out of that. My suggestion is that we move forward with this quota because that is the recommendation of the SSC and not contingent on the National Marine Fisheries Service, but what we

feel is the right to do, looking at the scientific information that we have. We're supposed to make our own decisions on this, so I make a motion that we basically take – amend the motion to basically remove that it was contingent on what the National Marine Fisheries Service does.

CHAIRMAN CARPENTER: I'm going to ask Toni to remind the board what happens if the National Fisheries Service does not increase the quota, what this would put us into.

MS. KERNS: If the National Marine Fisheries Service does not increase the black sea bass TAL, then we will have differing TAL's for state waters and federal waters. There are some states that have about 90 percent of their fishery that occurs in all of state waters versus other states that have 90 percent of their fishery occurring in all federal waters.

Because in the commercial fishery the commission recognizes state shares but the National Marine Fisheries Service does not, there is the potential for states that receive the fish earlier than other states to harvest portions of those other states' quota that has been allocated to them because that state has the majority of their fishery in federal waters, and they won't be able to achieve all of their total quota. That is a possibility.

It also will affect the recreational measures. The state waters would have one set of recreational measures that would match that of the higher TAL in state waters and in federal waters there would probably be different regulations to match that of a lower TAL, and therefore those fishermen fishing in federal waters would not have the same regulations as those in state waters.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I had a follow-up question to that. What was the rationale or reason why the National Marine Fisheries Service did the in-season closure in October on sea bass last year?

CHAIRMAN CARPENTER: I'm going to ask Pat to respond to that, but my recollection was we were over quota.

MS. KURKUL: That's right, because of the projected overages.

MR. TRAVELSTEAD: I see Mr. Fote's motion hasn't been seconded, and I would hope that it isn't seconded. Now, I can't think of a good reason why the service would not approve the quota increase, but

on the chance that they don't and we do I think you're going to create a situation that pretty significantly would affect the southern states through a reallocation of the resource and result in closures of federal waters to our fishermen, which is where we're catching the fish.

I think the second sentence of Mr. Munden's motion is important. I don't it will ultimately have an effect because I think the service will approve an increase in the quota. I can't imagine that they wouldn't, and I think we'll get a unanimous vote for an increase here. I would think the Mid-Atlantic Council has signaled that they would do the same thing.

CHAIRMAN CARPENTER: Well, Tom, you did make a motion so I will ask is there a second? I will call a second time; is there a second to Tom's motion? Seeing no second, Tom, we're back to the original motion. Are we ready to call the question? Is there any comment from the public? Seeing none, is there a need for a caucus? I'll call the question. All in favor of the motion please raise your hand; all opposed same sign; abstentions, null votes: **The motion passes with only abstention.** Mr. Munden.

MR. MUNDEN: I would also offer a motion relative to the size limits, bag limits and seasons. The staff has drafted a strawman which is on the board now, and it will be up to the board to fill in the portion of the motion that is now identified by X's. I would offer a motion that I expect to be fully amended, and that motion is recommend to the National Marine Fisheries Service for the 2010 black sea bass recreational measures be set at XX minimum size limit, XX possession limit, and a season of XX contingent on the National Marine Fisheries Service increasing the TAL for black sea bass. If the recommendation is adopted by the National Marine Fisheries Service, the states would adopt those same measures approved by NMFS for the 2010 fishery. That's my motion, Mr. Chairman; and we get a second, then I will go back and attempt to fill in the XX's, if that is acceptable to you.

CHAIRMAN AUGUSTINE: Seconded by Pat Augustine. Back to you, Red, to fill in the XX's.

MR. MUNDEN: The current minimum size limit is 12.5, the possession limit is 25, and the season is June 1 through June 30, September 1 through September 30. I believe that is what in the specifications at this time.

CHAIRMAN CARPENTER: Can I ask Jessica to comment on that.

MS. JESSICA COAKLEY: This is correct; what the council and board voted on in December was that 12-1/2 inch, 25 fish, June 1 to June 30, September 1 to September 30. Last year's status quo measures, which also appears as an alternative in our specifications package, was 12-1/2 inch, 25 fish and an open season all year, but clearly that won't achieve that 44 percent required reduction.

There were the two options that the technical committee had put forward, one of which also appears in the federal specifications package. That is 12-1/2 inch fish size, 10-fish possession limit and a season from May 22 to September 12. If Toni can read off the other option the technical committee proposed, that one doesn't appear in the specifications package. Through federal specifications we try to put a range of options in there so the regional administrator has the ability to work on options that are between those as well when they go to final rule.

CHAIRMAN CARPENTER: Red, would you give me the dates that you had proposed there for your –

MR. MUNDEN: May 22<sup>nd</sup> to September 12<sup>th</sup>.

CHAIRMAN CARPENTER: May 22<sup>nd</sup> to September 12<sup>th</sup>. Thank you. Tom Fote, to the motion.

MR. FOTE: Well, I was going to ask, because I was still waiting for a question on the SSS Report and the technical committee report and we kind of never asked the questions on that, and that is what I wanted to do before we made any motions, because I'm still trying to figure out why we had a 44 percent reduction. It is not perfectly clear.

We sat and discussed this other day in New Jersey, and I still wasn't clear and neither were a few other people sitting at the table around from me, why, with the increase in quota, if we're going for the 3.7, basically do we still need a 44 percent reduction in the season coming up even though – if I remember catch, we're something at 1.9 million pounds, which is now pretty much where we are for 2010.

The conversation before was, well, because we went over in 2009, but I remember the SSC comment saying that the quota in 2009 should have been this quota in 2009 so we wouldn't have been over. I'm trying to get a clarification of where this 44 percent comes up because I'm not sure – I'm not grasping it right now.

MS. KERNS: The 44 percent reduction was calculated by using the Wave 1 through 4 data and then projecting out the Wave 5 and 6 data for the catch that would occur in state waters because the states were still open in the fall of 2009 while the National Marine Fisheries Service had closed their waters. We projected out what the total harvest would be and then looked at what the potential increase in the TAL would be for that 1.8 million pounds and then determined that we would need a 44 percent reduction in landings from there.

MR. FOTE: So these are all made on projections that we don't have the figures for a closed season in federal waters, so we really don't know what the catch was, and we're making projections because we already have a closed season in this part of the year, in January, February and March, so we don't know – we've already taken a hit in this year because there would be boats that would be sailing in January, February and March and others would have been historically in New Jersey, so I'm not sure where these figures – and that is why I'm confused over where we got the figures from.

DR. PIERCE: Clarification, Mr. Chairman; did the maker of the motion indicate 10 fish or 25 fish as a possession limit? I see 25 on the board; I thought it was 10.

CHAIRMAN CARPENTER: My notes were 12-1/2, 25 and May 22<sup>nd</sup> to September 12<sup>th</sup>; is that correct? I'm looking at the maker of the motion.

MR. MUNDEN: That is correct, Mr. Chairman.

DR. PIERCE: Okay, I'm still seeking clarification. The recommendation that we did get from the technical committee was the season of May 22<sup>nd</sup> through September 12<sup>th</sup>; 12-1/2 inch fish, and 10-fish limit. That is to get the necessary percent reduction, so just a clarification as to the maker of motion's intent relative to the anticipated cut in take that he envisions.

CHAIRMAN CARPENTER: Red, would you like to reply?

MR. MUNDEN: The 25-fish possession limit was to general discussion, Dr. Pierce, so if the board feels like that we should lower it to 20 fish, then I would not be opposed to that should someone wish to make a substitute.

MR. THOMAS O'CONNELL: I guess this is a question for the technical committee. Do we know,

given that this motion is kind of a combination of the two options that the technical committee put forth, whether or not we would achieve the desired reduction or not?

MS. KERNS: You would receive the required reduction with either a 10- or a 25-fish bag. The technical committee had recommended the ten-fish bag to account for the management uncertainty surrounding the changes in the bag.

MR. O'CONNELL: Just to follow up and comment to Pat Augustine's comment earlier about the ten-fish creel limit, Maryland's headboat industry is very dependent upon full-day trips and have built their clientele over many years, and we would be very concerned with a creel limit of 10 fish on the economic impact to our headboat industry, so I'm inclined to support this motion.

DR. PIERCE: Well, I'm going to move to amend; the amendment being that the bag limit be reduced to 10 fish.

CHAIRMAN CARPENTER: All right, there is a motion to amend to reduce the bag limit to 10 fish; is there a second to that motion? Is there a second to that motion? The motion fails for lack of a second. Dave Pierce.

DR. PIERCE: I will give it a try again. I would move to amend the bag limit to 20 fish instead of 25.

CHAIRMAN CARPENTER: There has been a motion to amend to 20 fish; is there a second? Is there a second? The motion fails for lack of a second. Dave Simpson.

MR. SIMPSON: Could I ask Toni or Chris again to explain the technical committee comment because earlier on the screen there was basically a tradeoff between 10 and 25 fish and a little bit longer or shorter season. Then you just said something that confused me on that point. It seems pretty clear that the intent of the motion is to do something that would be entirely consistent with what the National Marine Fisheries Service might do through emergency action.

MS. KERNS: In the memo from the SSC it stated that management uncertainty was not accounted for in the recommendation of the TAL; and so when Jessica had put forward some options for the technical committee to look at, we considered management uncertainty with those recommendations.

Because of the uncertainty surrounding the bag tables, we suggested the reduction to ten fish to account for some of that management uncertainty, so that the recommendation going forward to the National Marine Fisheries Service would account for some management uncertainty in anticipation that there might be management uncertainty needed to be accounted for because of that recommendation from the SSC.

CHAIRMAN CARPENTER: Thank you. I will remind the board that we are into the next board's time, so please keep your comments to the point.

MR. SIMPSON: So just to follow up on that, the motion is the season of May 22<sup>nd</sup> to September 12<sup>th</sup> but with a 25-fish bag; do we have a calculation of what the expected percent reduction would be from the motion?

MS. KERNS: It is 44 percent; the bag makes a 1 percent difference. Chris also would like to discuss one other thing.

MR. BATSAVAGE: One other issue with the management uncertainty is what we talked about earlier, too, is just the availability. If year classes, weather and things like that resulted in more fish for a particular area or for the whole coast, a 25-fish creel limit could be a little riskier than the 10, so, again, another reason why the technical committee went with the 10-fish creel.

CHAIRMAN CARPENTER: Thank you; any public comment on this motion? Jack.

MR. TRAVELSTEAD: Mr. Chairman, I was just going to ask if there was any public comment on this and if you could put the two options back up from the technical committee, maybe we could get a sense from the public which they prefer.

CHAIRMAN CARPENTER: All right, from the public, Tony Bogan.

MR. BOGAN: Mr. Chairman, I know you're tight on time here. You're in trouble; I had to take notes. Just a couple of quick things – first and foremost, one of the first slides that you had put up, Toni, showed commercial 1.9 million and recreational 1.8 million. That split is reversed; it is supposed to be 51 recreational and 49 commercial unless I looked at it wrong.

MS. COAKLEY: In terms of the commercial quota and recreational harvest limit, it would be a 1.76

million pounds commercial quota and a 1.83 million pounds recreational harvest limit. That is taking 3.7 and subtracting a potential 3 percent RSA and doing the split, not accounting in case there are any overages or anything like that.

MR. BOGAN: I've got you; is just was confusing to me because I saw the numbers, and I'm not used to seeing them higher on the commercial end for this particular fishery. As to the motion, I was a little confused like a few other people were with the mixing of the dates and the bag limit.

I can certainly echo the sentiments that were from – I'm sorry, I couldn't see who it was from where I was sitting – that made the comment over on the side here from Maryland, and I will respectfully disagree with Mr. Augustine as to the importance of the bag limit. My family owns two of the only 365-day, year-round bottom fishing boats in the state of New Jersey that never target anything else.

I'm here to tell you that a ten-fish limit, much like the conversation with scup was, it might as well be zero, so we can definitely support the 25-fish bag limit. As far as management uncertainty is concerned, I'm a little concerned that there was discussion about how going to the ten-fish limit might help account for availability, weather, things like that, and yet at the same time we were told that the difference in bag limit is 1 percent.

It doesn't really account for a whole heck of a lot of anything when it is only 1 percent. At the same token, looking at the dates and looking at the amount of time, if you added the two weeks on or fifteen days, whatever it is, to go from May 22<sup>nd</sup> to June 6<sup>th</sup> and then started that much later, ended that much later, what you actually do is you have a more conservative option.

You have what is calculated at a 47 percent reduction. It is splitting hairs. I know for me personally I would rather see the June 6<sup>th</sup> to September 25<sup>th</sup>. The guy from the state to the north of this, or, heck, from the port to the north or the port to the south might say, "Oh, I would rather see May 22<sup>nd</sup>", so I can kind of go either way there.

Me personally, if we want to consider management uncertainty, we want to make sure that we're going to be in line with whatever the specifications that might come out of the federal government, assuming that this new quota is implemented, I would say the June 6<sup>th</sup> to September 25<sup>th</sup> because it gives you a 47 percent reduction and 44 was what was required.

My other big concern is that all of these things are based on projected Wave 5 and 6 landings. Normally we have Wave 5 at the Mid-Atlantic Council meeting in December. Once in a while they come literally within days of it. Here we are in February and we still don't have Wave 5, and guess how big Wave 5 is to sea bass landings. It is huge.

I mean, it is a massive portion of the sea bass landings; and knowing what we know about what did happen and what didn't happen as far as closures and states being open, well, you can say that, yes, state waters were open; but as Toni mentioned earlier, some states catch a lot of their sea bass in state waters, but some of them don't and they catch most of their fish in federal waters, high, you know. I mean, in New Jersey and New York we are a big portion of the sea bass fishery, more than half of it.

Without those Wave 5 numbers, my question was – and I'm sorry to ask a question, I know it is taking time – what do we do when we actually get to Wave 5 landings and we find out that it is not just better, which I hope it is going to be better, less than a 44 percent reduction; or even worse? Either way, how do we deal with that if this commission passes this motion today?

CHAIRMAN CARPENTER: The purpose of this motion is to provide some guidance on what the states would do if the quota is raised by the National Marine Fisheries Service. If the quota is not raised by the National Marine Fisheries Service, then nothing happens. This is a contingent motion just like the first one was. If this motion passes, whatever the dates, whatever the creel limits, whatever the size limit, states would then implement that after we get word from the National Marine Fisheries Service that they have changed the quota.

MR. BOGAN: I just wanted to make sure that it was possible that – again, make up a number, whatever the difference is, it is different than 44 percent, whether it be higher or lower. I just want to make sure that if the commission passed this motion it wouldn't require a whole 'nother meeting, a whole 'nother motion to make those changes. You might not be able to change that. I will leave with that, Mr. Chairman, so you can continue.

CHAIRMAN CARPENTER: Thank you. All right, any other public comment. I see one more hand.

MR. ADAM NOWALSKY: Mr. Chairman, Adam Nowalsky. I have a question first from the technical committee meeting. From the monitoring committee

meeting that I had attended and the documents that have distributed at the December joint council and board meeting, it has stated from the monitoring committee document that the monitoring committee had suggested that a seasonal split between the spring and fall seasons might work best, and that the conclusion that was outlined in that document from the monitoring committee was that the committee recommended maintaining a spring and fall season.

I would like to know what the discussion was because it directly impacts a lot of the individual states who have other fisheries open during the summertime, such as summer flounder, where they depend on the spring and the fall, so what changed from the technical committee, whose members are a lot of the same monitoring committee members, where they went from a strategy of reducing Wave 4 landings, where the majority of the landings had occurred this year, to now focusing landings on Wave 4 and excluding the spring and fall that benefit a lot of states to the south.

CHAIRMAN CARPENTER: Thank you for your question. I'm going to ask Chris to comment on that.

MR. BATSAVAGE: When the monitoring committee discussed back in November, we were looking at a higher reduction, and we didn't have as much leeway as far as setting seasons, so we looked at the spring and fall where some states will end up catching sea bass earlier in the year while other states catch them later in the year.

However, that situation there are a few states, Maryland in particular, where Wave 4, the summertime is when the majority of their sea bass fishing occurs. When the reduction was found to be lower, that gave the technical committee some more options as far as looking at what the seasons can be, and that is why you saw the shift from a split season to what is proposed here.

MR. NOWALSKY: Well, I appreciated that, thank you. I'd like to see consideration here especially from states – I know how many commissioners have gone back and had the opportunity to review these. Something that typically occurs prior to the joint council and board meeting in December is industry advisor input.

I appreciate the opportunity for public comment here for those that are here today. I think there was a focus on a spring and a fall season, and a concern with these or something like these is that it eliminates a majority of a spring and fall season for a lot of

states. Secondly, I'd also like to go back to what just transpired with the scup, specifically with regards to the memorandum that was part of the package here, with regards to missing Wave 5 data.

The technical committee explored wave harvest ratio estimate procedure using only the 2008 ratios, which I believe is what we're looking here, a reduction based on only the 2008 ratios, provided estimates much higher than the previous method while using the 2005 to 2008 period produced estimates similar to the 2008 plus 10 percent.

The second question would be is this reduction that we're looking at based on the 2008 ratios or is it based on the 2008 catch plus a percentage? The reason why I bring this is because you've got a memorandum here that says the technical committee recommended an approach of using the catch plus a percentage as opposed to ratios.

The difference in black sea bass is a staggering number. If you go from the 2008 ratios to the 2008 catch plus a percentage is a reduction in projected landings of almost 750,000 pounds. That would bring the required reduction down significantly to around the 30 percent factor as opposed to the 45 to 50 percent range that we're looking at here.

If we're looking at going ahead and making these projections on the data that we just had a lot of discussion about that went ahead and we got a status quo recommendation for the southern states in scup and additional modifications on the northern range that weren't as drastic as would be expected, I would think the consideration for the missing Wave 5 data should be a very important factor here as it dramatically affects the required reductions.

CHAIRMAN CARPENTER: Thank you. I'm going to ask Jessica if she can explain a little bit of this.

MS. COAKLEY: Back when the monitoring committee talked about the types of projections that would be used back in July for black sea bass landings, the projections were done in two ways. The first was just using the prior year proportion landings by wave, the '08 information to project out Wave 5 and 6.

The other was an attempt to accommodate the closure of the EEZ that occurred partway through Wave 5, and an examination of those landings was taken as well. There was only a few percent difference in the reduction comparing an adjusted projection, which tried to accommodate the EEZ closure, versus a non-

adjusted projection, which is to use the straight-up 2008 prior year proportion to project out Wave 5 and 6 for 2009.

What the monitoring committee decided was because there was some uncertainty in the effect of the closure, the effectiveness of it, and potential non-compliance with the closure and when it had gone into place, that that few percent was negligible and that it was appropriate to us that straight proportion, that 2008 prior year proportion to project out Wave 5 and 6 in '09. Therefore, that was the landings' projection was used to craft management measures to a new proposed potential emergency harvest target of 1.8 million pounds.

MR. NOWALSKI: So, if what I heard correctly – thank you for that explanation – was that you continued to use the 2008 ratios; is that correct?

MS. COAKLEY: Yes, that was what the monitoring committee recommended to the board and the council in August.

MR. NOWALSKI: And, again, I just have to bring to the commission's attention the paragraph here that you have and the approach that was taken for the Wave 5 data, and that it would be a drastic difference in the required reduction in black sea bass. By using the 2008 plus 10 percent method as opposed to the 2008 ratios for projected landings for data that we don't have, we have questions about, anyway, and then also where there was a closure in federal waters, you're looking at a reduction almost three-quarters of a million pounds of fish, which is a drastic difference in the required reduction.

Whatever we proceed with moving forward here, I hope that is taken into account. Also bringing to the commission's attention that by removing the January 1<sup>st</sup> to February 28<sup>th</sup> period provides zero percent reduction – there is no benefit to excluding that period based on the current wave landings data. The final question would be the motion that was made here earlier was with regards to the contingency; and I would like to have an update about where that revision to the quota stood. Thank you.

CHAIRMAN CARPENTER: The revision to the quota stands in the hands of the National Marine Fisheries Service and we have not gotten a reply. The next person that wanted public comment –

MR. NOWALSKI: Could we get a reply here since we have the regional administrator with us?

CHAIRMAN CARPENTER: Pat, would you like to reply to that?

MS. KURKUL: I think you know the answer; it is still under consideration.

CHAIRMAN CARPENTER: I don't have time for anymore public comment. We are already beyond our limit, and we are imposing on the rest of the people. Is there a need for a caucus? **Let me read the motion for the record: move to recommend to the National Marine Fisheries Service the 2010 black sea bass recreational measures be set at 12-1/2 inch minimum size limit, 25 possession limit, and a season of May 22<sup>nd</sup> to September 12<sup>th</sup>, contingent on the National Marine Fisheries Service increasing the TAL for black sea bass. If the recommendation is adopted by the National Marine Fisheries Service, the states would adopt those same measures approved by NMFS for the 2010 fishery. The motion was by Mr. Munden; seconded by Pat Augustine.** I will call the question.

MR. AUGUSTINE: Point of information; what happened to the motion about the ten fish; was that discharged or did we actually –

CHAIRMAN CARPENTER: There was no second to the motion for the ten fish or the twenty fish, so this is the motion. All in favor please raise your hand; all opposed same sign; any abstentions, two abstentions. **The motion carries.** That finishes black sea bass.

### **ADJOURNMENT**

The other item that was on the agenda for today was a review of Omnibus Amendment and Annual Catch Limits and Accountability Measures. That is going to be taken up by the policy board, and we are adjourned.

(Whereupon, the meeting was adjourned at 10:50 o'clock a.m., February 2, 2010.)