

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

**Crowne Plaza Old Town
Alexandria, Virginia
May 4, 2010**

Approved November 10, 2010

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INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of February 2, 2009 by consent** (Page 1).
3. **Move to amend the commission's recreational black sea bass season to be open from May 22nd to October 11th and November 1st to December 31st (a 26 percent reduction)** (Page 5). Motion by Jack Travelstead; second by pat Augustine. Motion carried (Page 9).
4. **Move that the board request the Mid-Atlantic Council provide flow charts for scup, black sea bass and fluke using actual date, the different council risk policy alternatives and likely assessment levels for the ABC Control Rule Framework** (Page 13). Motion by David Pierce; second by David Simpson. Motion defeated (Page 15).
5. **Motion to adjourn by consent** (Page 16).

ATTENDANCE

Board Members

David Pierce, MA proxy for P. Diodati (AA)	Craig Shirey, DE, proxy for P. Emory (AA)
William Adler, MA (GA)	Roy Miller, DE (GA)
Rep.Sarah Peake, MA (LA)	Bernie Pankowski, DE, proxy for Sen.Venables (LA)
William McElroy, RI (GA)	Tom O'Connell, MD (AA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Bill Goldsborough, MD (GA)
Seth Macinko, RI, proxy for Sen. Sosnowski (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
David Simpson, CT (AA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Lance Stewart, CT (GA)	Kyle Schick, VA, proxy for C. Davenport (GA)
James Gilmore, NY (AA)	Louis Daniel, NC (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
Gil Ewing, NJ, proxy for Asm. D. Fisher (LA)	Jaime Geiger, USFWS

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

Ex-Officio Members

Staff

Robert Beal	Toni Kerns
Vince O'Shea	Kate Taylor

Guests

Bob Ross, NMFS	Arnold Leo, East Hampton, NY
Skip Feller, Virginia Beach, VA	Rick Robins, MAFMC
Adam Nowalsky, RFA-NJ	Wilson Laney, USFWS
Tony Bogan, United Boatmen	Dan McKiernan, MA
Ben Martens, CCCHFA	Peter Himchak, NJ
Raymond Kane, Chatham, MA	Frank Kearney, CCA-VA
Jeff Gutman, Middletown, NJ	Peter Burns, NMFS
Dennis Fleming, PRFC	

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, May 4, 2010, and was called to order at 8:05 o'clock a.m. by Chairman A.C. Carpenter.

CALL TO ORDER

CHAIRMAN A.C. CARPENTER: Good morning, ladies and gentlemen. The appointed hour has arrived and passed, as a matter of fact, so we're going to get started with the Summer Flounder, Scup and Black Sea Bass Management Board. Looking around the room, it is easy to tell that we do have a quorum. There will be a roster going around; so if you'll sign in as it goes around, we would appreciate that.

APPROVAL OF AGENDA

The first item on the agenda is consent of the agenda. You have an agenda that was distributed with your packet. Are there any additions or changes to that? Seeing none, we will consider the agenda approved as presented.

APPROVAL OF PROCEEDINGS

You have the approval of the proceedings from the February 2010 meeting. You have had an opportunity to look over those. Are there any corrections, additions or deletions on the proceedings? Seeing none, they will stand approved.

PUBLIC COMMENT

Public comment; this is the opportunity for the public to comment on issues that are not on the agenda. It is our normal practice before an action is taken by the board we will invite public comment at that point in time, but is there any public comment to cover items not on the agenda? Seeing none, we are going to move right along to the review of the state recreational measures, and I'm going to ask Toni to present the information on this particular one.

REVIEW OF THE STATE RECREATIONAL MEASURES

MS. TONI KERNS: I'm going to quickly go through the scup and summer flounder measures. All states have adopted the scup measures that were agreed to by the board; as well as summer flounder, all states have implemented measures that were approved by the board at the February meeting. For black sea bass, the 2010 coast-wide regulations was at 12-1/2

inches not including the tendril; a possession limit of 25 fish; and an open season of May 22nd to September 12th.

As many of you recall, the black sea bass quota was increased since the setting of the quota in August. That led to a slightly different regulation-setting process. That quota was increased in the beginning of March, and so at the February meeting the board had set conditional recreational regulations and recommended the regulations that I just went over to the National Marine Fisheries Service if the quota had increased.

BLACK SEA BASS PROPOSED RULE AND MAFMC RECOMMENDATION

After our February meeting, the Mid-Atlantic Council met and recommended a split season to the National Marine Fisheries Service. Since then the proposed rule has come out and the proposed rule stated that the black sea bass season would start on May 22nd, but it did not give an end date because it was waiting for the final 2009 landings' information. For those of you that have forgotten, there were some problems with the Wave 5 data, and so the National Marine Fisheries Service was working out those problems before they posted the final 2009 landings' information. The proposed rule did not come out before that final information was posted, and so therefore it did not have an end season date for the proposed rule.

Right after the proposed rule was finalized the 2009 landings came out and indicated that 2.3 million pounds were landed. Our 2009 target was 1.14 million pounds. In 2010 we're looking for a target of 1.8 million pounds. If you look at the required reduction that is needed associated with those targets and landings, it is a 21.1 percent reduction.

Prior to this we were looking at a 44 percent reduction. Just to remind the board, there is management uncertainty associated with the harvest estimates with Wave 5 because of the issues that the contractor had obtaining all of the information that they were supposed to acquire for the survey for NMFS.

As of April 14th, with the regulations that we had set up prior to the knowledge of the new 2009 total landings, the state of Delaware had not closed their fishery for 2009, and all states were supposed to have closed their fishery from January to May 22nd. Delaware is in the process of setting the regulations.

I can let Craig speak to his state process and where they are.

The state of Virginia also did not have a consistent season of May 22nd to September 12th. They had adopted the split season that was put forward by the Mid-Atlantic Council. Some board members had called and asked me to put together some options for a black sea bass season that is associated with the new required reductions when they saw that the 2009 landings' information had come out.

If the board were to not account for any management uncertainty that we have associated with the harvest estimates, then a 21 percent reduction would be required. A season of May 22nd through October 31st would give you a 21.4 percent reduction, so that would meet the requirement but would not account for any management uncertainty. May 22nd through October 11th, which is the end of Columbus Day so that would include Columbus Day weekend, we give a 30.5 percent reduction.

I also had some requests for split seasons. There is a request to take August out so May 22nd through July 31st, have a closure for the month of August, and then open back up again on September 6th through December 31st, and that gives a 30.4 percent reduction. There was a request for May 22nd through October 11th – again, that includes Columbus Day – close and then open back up again November 1st through December 31st, and that is a 26 percent reduction; and, finally, a May 22nd through September 30th, close for the entire month of October, open back up again for November and December, and that is a 31 percent reduction.

I just want to remind the board of the technical committee's concerns with mid-season closures; that they usually recommend to the board that those closures be long enough so that you don't see the effects of recoupment especially during peak seasons such as some of these closures are in Wave 5, and Wave 5 is your peak season for black sea bass when you look at the historical landings. You see a lot of heavy fishing right before the closure and then when there is an opening again and sometimes it negates the effects of that closure. Are there any questions with these options that I came up with that were requested by board members?

CHAIRMAN CARPENTER: I think we'll call on Craig to give us an update on Delaware's situation, please.

MR. CRAIG SHIREY: Perhaps I interpreted some of the things that were said at one of the previous board meetings wrong. I thought we had adopted some tentative regulations and we were to wait for acceptance or approval by NMFS before we went through the regulatory procedures to adopt those regulations.

Delaware has a process which is rather slow, but it is very methodical; and once you get it started, it is difficult to stop in midstream, so we were waiting for assurance that these regulations were going to be acceptable in NMFS before we went and started. All of Delaware's landings come from federal waters; so as long as the federal waters were closed, we didn't see that to be a problem.

We are going to public hearing. We have our public hearing for the 21st of May, and it was our intentions to propose whatever final regulations were adopted at this or prior meetings. That is where we stand. If everything goes as planned, we would hope that by July those regulations would be official.

CHAIRMAN CARPENTER: So, Craig, with all of your fishery occurring in the EEZ and since that is currently closed, you're essentially closed, anyhow?

MR. SHIREY: That is correct.

CHAIRMAN CARPENTER: All right, so this sounds like it is a catch-up game with the regulations is what it really amounts to?

MR. SHIREY: Yes.

CHAIRMAN CARPENTER: Thank you. Jack, on Virginia, do you have anything you would like to add to the conversation?

MR. JACK TRAVELSTEAD: Not really; once everybody makes up their mind as to what season we need, that is what we will adopt probably at our June meeting and it will be in effect July 1st, whatever it ends up being.

CHAIRMAN CARPENTER: Thank you. I would like to ask Pat Kurkul if you can tell us where the Service is in regards to making a decision now.

MS. PATRICIA KURKUL: The proposed rule was just published at the end of April, and so the comment period on the proposed rule doesn't close until I think May 27th, I want to say. Of course, we wouldn't be making a final decision until after the end of the comment period.

CHAIRMAN CARPENTER: Pat, given the fact that we doubled the target last year from 1.1 to 2.3, can you address the subject of management uncertainty and how the Service might be inclined to deal with that.

MS. KURKUL: Well, of course, the Wave 5 information just became available. I just saw it yesterday myself, and so we're all just trying to figure out where we are and what the meaning of that information is. As Toni pointed out certainly the concerns about the Wave 5 information in particular, both Wave 5 and Wave 6, I think we need to have some consideration for management uncertainty in all of this.

Targeting the 21 percent I think would not be prudent. We need to look at – we want to avoid having a situation next year where we're reacting to making some bad decisions now. I think we need to build a little bit of a buffer in and make sure that – you know, it took this long to get the Wave 5 information because of the difficulty they would have in providing any kind of projections, any kind of estimates, so the uncertainty around those is much, much higher than typical, so I would be very uncomfortable with targeting the 21 percent. As I said, I think we need to allow for a consideration of some level of management uncertainty and provide something of a cushion given the uncertainty in the information.

CHAIRMAN CARPENTER: Thank you, Pat. Yes, I personally think that is a reasonable approach given the fact that we doubled what we had last year. I'm going to take a few comments, but I think what we really need to do here pretty quickly is get a motion on the floor to deal with this situation. Roy Miller.

MR. ROY MILLER: Mr. Chairman, I was wondering before we move towards motions if I could get some clarification from you or Toni. This suite of options that is before us, process-wise are we talking about something that could be enacted as soon as this fishing season or are we talking next year's fishing season? Aren't we kind of locked into the May 22nd to September 12th at this point in time?

CHAIRMAN CARPENTER: No, I don't think so. I think we're all locked into the May 22nd opening date, but if you look at the second option there you can go from May 22nd to October 11th, so you could extend the season a month, from September 11th to October 11th. I think that everybody has regulatory authority on these issues and can go through the

process in order to get that accomplished. Toni has got an additional comment.

MS. KERNS: Roy, because the board has already set a season, though, it will require a two-thirds majority vote to make a change to the regulations.

MR. THOMAS FOTE: I just wanted to ask the regional director through the chair is Wave 5 – is it more extrapolated figures than it was so we shouldn't hold the confidence level in Wave 5 the same as we held for the other five waves?

MS. KURKUL: Yes, I actually think one of the technical people can answer this better than I can. It is not an extrapolation though it is an estimate based on the information they have and using previous Wave 5 information.

MR. FOTE: What I'm trying to figure out – I know there were some problems with Wave 5 and I'm trying to figure out what the problems and how they were rectified? That is all I'm asking.

CHAIRMAN CARPENTER: All right, Jessica, do you have some insight into this?

MS. JESSICA COAKLEY: The issue with the Wave 5 information was that the contractor, which was a new contractor for Wave 5, was supposed to provide the Service with a certain number of phone call samples and they failed to do that. In fact, they produced far fewer phone call samples to use on the effort part of the estimate.

For Wave 5, they did have the – it is a different contractor used to do the intercept information, which is where we get the catch per angler trip information, so we had that component. We had some samples for the phone survey. However, there were some areas where sample size was very low, so they looked at information from prior year from surrounding waves to address what those effort estimates might have been. That's why there is a little bit more uncertainty because there was a little bit of modeling that had to go into addressing that effort component of the Wave 5 estimates; whereas, that wasn't an issue for Waves 1 through 4.

MR. FOTE: Then we really did enough intercepts, because that is what I'm concerned about. The intercept numbers were fine; it was just the phone call numbers that was not?

MS. COAKLEY: That is correct.

MR. GIL EWING: We went over a lot of these options and most of them had a little bit of uncertainty built into them when the numbers were given for the accountability of uncertainty, but the number of 21.4 are pretty close to the cuff. I think myself that we need to go with something of a split season that is going to give us at least the 26 percent reduction so that we have some nice buffer built in there and hope that will help with an agreement from NMFS and give the fishermen the most bang for their buck.

Personally I would like to see the reduction of May 22nd to July 31st, close until September 6th and then open to the end of the year. It gives 30 percent. However, if that doesn't set well with everybody, then I think that the best other option is May 22nd through October 11th, open again November 1st through December 31st. That would give us a 26 percent reduction, which gives us, what, a 4.6 buffer there. I'm open to listening to some of the other states as to their suggestions. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: It looks like we're going to try to narrow the discussion down here. Would you go over those dates one more time on the two that you were talking about?

MR. EWING: Yes, Mr. Chairman; a 26 percent reduction would be a May 22nd start date to October 11th, close on October 12th through October 31st, reopen November 1st, close December 31st. That would give us a 26 percent reduction. The other one was again the start date of May 22nd, close date of July 31st, open September 6th through December 31st, which would give us a 30 percent reduction.

MR. JAMES GILMORE: Toni, I know you went over this, but could you just go over, so I've got it clear in my head, the reasons the technical committee had reservations about the split season and what the impact of that is.

MS. KERNS: It is a general comment that the technical committee always gives to the board about split seasons and that they have concerns about recoupment, strong fishing right before it closes and strong fishing when it opens back up again and that you see that happen especially in the times where it is a peak season. Wave 5 is one of your peak seasons for black sea bass fishing. They also have strong reservations about short closures as well.

MR. THOMAS O'CONNELL: I'm struggling a little bit, if we're looking to make a decision today, what

my preference would be. I'm not sure if I missed something, but this is the first time that I've seen these options come before the board. If I missed something I apologize, but I would have really liked the opportunity to go back to my fishermen and find out what their preference would be. It seems like it is really a fisherman's preference of these options with a little bit of management decision on how much uncertainty we want to account for. I guess my first question is have these options been made available for board review?

CHAIRMAN CARPENTER: No, given the fact that Wave 5 data has just become available, there was not time to get these out to the board any sooner than today. No, you didn't miss anything; this is the first time we're looking at them. The way that I'm looking at this pretty much is the fact that we settled on a May 22nd to September 12th date season the last time.

Given that we had a much larger percentage that we had to accommodate, the simplest and most straightforward option to me is October 11th, which gives us a reasonable amount of uncertainty that we can add to the 21 percent. I'm like Gil that 21 percent, shooting for that is asking for trouble, it is asking for too much trouble. If you're going to liberalize, to me it makes more sense to simply extend the season by an extra month and let's move on.

I understand that the public would like the opportunity, but everybody I think is in the position that Delaware is in, that we're going to have to go back and change regulations, and it is a process that we don't need to go through and we can't really delay past this meeting if we're going to do anything for this season. Not everybody meets on a monthly basis and can react as quickly as maybe Virginia can or Maryland in the case of regulatory options. I am seeing some questions from the audience. As soon as we get a motion on the floor, we will be glad to take the audience. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Toni, do we know what the reduction is for the current season that the board has adopted?

MS. KERNS: 44 percent.

EXECUTIVE DIRECTOR O'SHEA: 44 percent; thank you.

MR. TRAVELSTEAD: Of course, the 44 percent was what we thought was needed before we had

Wave 5 data and now we have Wave 5 data and we know that we don't need to go quite that strict, and so we can back off a little bit. The question is how much do we back off? Right now most of the states end their season on September 12th.

It seems that could get at a minimum an additional month of fishing that would be to their benefit; and if they don't like the split season, they could end it there. There are some states like Virginia who would like to have that fishery in the November/December timeframe. That accommodates our charter fishery quite well. **I would like to make a motion and least get something up on the screen to debate that would be in favor of the May 22nd to October 11th and November 1st to December 31st season; noting that gives a calculated reduction of 26 percent, so it does add or account for some management uncertainty beyond the 21.4 percent reduction of the other season.**

CHAIRMAN CARPENTER: While they're getting that up on the board, Jack, is there a second? Pat Augustine seconds. Now, to the board, is there any discussion from the board? Tom.

MR. FOTE: When I'm looking over this, I was just wondering – can you put those seasons back up again? I was wondering why we didn't look at a two-week closure and go from instead of July 31st until the middle of August, because that would give us a three-week closure, which I know the technical committee always wants longer than two weeks, so this would give us a three-week closure. I was wondering if anybody here looked at those figures to see what reduction that would basically have given us.

CHAIRMAN CARPENTER: Toni only looked at the seasons that people had given her. She is in a position where we can do that if someone really wants to see that number. It will take a few minutes for her to do it. Tom, that was a three-week closure that you wanted there?

MR. FOTE: Yes, it would close like the second week in August, after the second week in August and close until September 6th so we're basically looking at – because I know you don't want to do a two-week closure and this gives you a three-week closure. I wanted to just see if that was about the 26 percent of somewhere around there would be available.

CHAIRMAN CARPENTER: Okay, while she is working on that, other comments to the motion that is on the board? Tom.

MR. THOMAS McCLOY: Actually it is not to the motion on the board, but I wanted to respond to Mr. Fote's comment before Toni goes to too much hurt. I hate to kind of disagree with him, but we do that all the time, anyway. I would have concerns about changing the regulations at this point in time when we've already set a season for the most part.

I don't know about the rest of the states but we've already printed our Marine Digest and it is coming out in two weeks. That information is in there. If we have to go back and change the regulations to essentially close a season which we have already opened, it is going to be kind of problematic getting that information out to the public.

Unlike all the other states on the east coast, New Jersey doesn't have a license so we can't do a mailing to everybody. I don't necessarily have a problem liberalizing the season beyond the close date because we're not putting somebody in a situation where they're going to get caught essentially when they thought the season was open. I just would like the other board members to keep that in mind as we have this discussion.

MR. EWING: Mr. Chairman, the extension of the season I think would prevent us from going over the 26 percent reduction as opposed to opening it and closing in mid-season when the regulations are already out there. I think that it would be easier for us and more likely not to have a lot of illegal fishing during the closure by the closure at the – during the extension as opposed to the mid-season where it is already published. I think that in trying to stay with the 26 percent reduction, I think that the extension closure would be better than the mid-season as published. Thank you.

DR. DAVID PIERCE: If, indeed, we do go in a different direction, for example, the motion that is on the board, Massachusetts could accommodate that change. There would be no problem with us responding to the desire to have some increased fishing opportunities because the numbers have changed.

MR. SHIREY: Yesterday, before I left for Virginia, I had calls from three head and charterboat fishermen that sort of knew about these options before I did. They urged me to vote for anything that would allow them to fish after our summer flounder season closes in October; whereas, the original option that we had chosen they said that basically it put them out of business; whereas if we were to split some time have and something later, as Jack has offered here, at least

they could stay in business late in the fall. This is a good option.

CHAIRMAN CARPENTER: Pat, if this board were to adopt the motion that is on the floor – and I hate to put you on the spot here, but that is why you get to come to these – do you have any kind of feel about the possibility that we will have a single coast-wide EEZ and state regulations in place for this year?

MS. KURKUL: No, especially given that we're in the middle of the comment period, I couldn't really say. I think that is what we would all like to see and that is what we should all be working towards. I think part of the issue will be hearing some rationale from the commission on why they think the 26 percent is sufficient and why the split season makes sense.

I was just thinking about that. I think if the commission passes this or any other motion, then I would also hope that they would submit that in the form of a comment on the proposed rule and provide their rationale as well in that comment letter.

MR. GILMORE: When I walked in the room and first heard the options, pretty much what I had heard from our fishermen was that they just wanted to get an extension to the season and anything would be fine. Based upon that, the second option to October 11th made sense, so I agree with you, A.C. However, I'm in the same position that Tom is in.

I haven't heard from the fishermen and some of these options give a pretty reduction. There may be other options in here that would make everybody happy, but I just don't know right now. Through the modern wonders of the internet, I'm reaching out to everybody I can get, but unfortunately the only fishermen talking to me are the ones – well, I won't repeat their comments. I mean, it is a bit of dilemma right now. It is like if I have to go blind, Option 2 is my favorite, but I could support this one if I could understand a little bit better from the fishermen which ones they actually like. As long as it is a good reduction, then I could support several of these.

CHAIRMAN CARPENTER: Well, I'm in the fortunate position that black sea bass is a relatively minor fishery to us, so any season that we end up with is a welcome season. Listening to the conversation around the table, we all wish we had the ability to go back to our public and talk, but given the circumstances that brought us to this point I just don't see that as an option.

We need to move forward, we need to be able to make a recommendation to the National Marine Fisheries Service. I think if we do go with the split season and a 27 percent, I think we need some conversation on the record as to why we think that this split season will be enforceable and why we think the 27 percent is a reasonable management uncertainty number; why not 30 percent or why not some higher number?

With that, I think I'm going to see if we are ready to call the question; and then depending on the outcome of that, we will then decide to provide additional rationale. Is there a need for a caucus? Well, we've got a couple of people that haven't spoken yet. Dr. Daniel.

DR. DANIEL: Mr. Chairman, as you know, Red usually sits in on these meetings for me, but I do have a question. Why can't we select our season based on conservation equivalency; if some of us want a split season and you can get the same conservation by having an extended season?

CHAIRMAN CARPENTER: The plan does not allow – it is a single coast-wide number for black sea bass. Tom, to your question a little bit earlier, it would be 27.5 percent.

MR. FOTE: Are you going to the audience?

CHAIRMAN CARPENTER: We will go to the audience. Mr. Leo.

MR. ARNOLD LEO: Arnold Leo, consultant for commercial fisheries, Town of East Hampton. First, I wanted to cross-talk here and assure Jim that any extension of the season into October is favored in New York. At least on the east end the for-hire business very much needs black sea bass as much into October as possible, which leads to a question to Toni. Couldn't we get 26-27 percent reduction with a single season that is simply extended later into October than the 11th?

CHAIRMAN CARPENTER: The answer to that is, yes, we could and we could tinker with that, but –

MR. LEO: Yes. Well, I don't want to detail this because the fact that there is proposed in this amendment one more month in the fall, taking us nearly to the middle of October, would certainly be preferred by that for-hire contingent at the east end of Long Island. Thank you.

MR. TONY BOGAN: Tony Bogan from United Boatmen; a couple of points to this motion in favor of the split season of May 22nd to October 11th and November 1st to December 31st. First of all, to the regional administrator's comments earlier about the uncertainty around the Wave 5 numbers, if you look at the percent standard error for the MRFSS data for Wave 5, Wave 3, Wave 2, Wave 6, it is not the first, second or third time in the last four years that a wave had had an 18 percent PSE, which is what the PSE for Wave 5 for 2009 is, is 18 percent.

It is also right within 2 percent of the next highest time for Wave 5, so the idea that there is a high level of uncertainty is not reflected in the actual numbers that MRFSS generated because their own standard error shows a standard error that has been repeated in every single year in at least one if not two waves; plus the overall PSE for the entire year. That concern is answered.

More justification for doing it is Toni Kerns brought up something about the technical committee dislikes the idea or is not comfortable with the idea of closing during high volume and reopening again. I think "recoupment" was the word that you used. Well, this option would not open again until Wave 6, which next to Wave 1 when there are zero landings of sea bass, is the lowest landings time of year for black sea bass.

Black sea bass only accounts – Wave 6 only accounts for roughly 4 to 5 percent of the total landings of sea bass for the year, so you're going from Wave 5, where you would be closed for the last – what is it worked out to be, 20 days in Wave 5, which is the second highest wave, by the way, it is not the highest.

Then you wouldn't opening again until the lowest time of year, so you wouldn't be looking at a significant increase because there is a good reason why Wave 6 is a very low wave, because it is the end of the season for the bulk of the country, for the bulk of the coast. Another justification for it would be that if it is a 21 percent reduction that we're required or 21 point – I forget the number that we're required, 21.4.

With this reduction of 26 percent, you're talking being almost 20 percent more restrictive than required. Just how restrictive – what is the point of having a 21.4 percent number if it's not the number? Is it 26? You actually said, A.C., you know, maybe 30, maybe – why not a hundred percent, why not just close it?

I mean, there has got to be a point where is the number the number or isn't it the number? I mean, the numbers have been thrown in our faces for years, well, that is what the number says. You know, the precautionary rule has always been applied. If the numbers are good we have to be more and more and more precautionary. If the numbers are bad we take them right to the percentage point, right to the fifteenth decimal point.

If the Service is looking for justification for this split season, all of the concerns I heard brought up have just been answered. Uncertainty, not true, the PSE is right in line with the PSE for black sea bass in many waves for many years. Opening in a high wave and closing it and opening it; no, we're going to be opening it back it up in the lowest wave of the entire fishery.

Also, number of days, we spoke to fishermen – I say "we", talking to people from United Boatmen, from New York, the whole west end, the Highlands, all of New Jersey – you've got somebody here from Rudy Inlet – there is broad-based support for this option; not everybody. Obviously, some people don't like it; some guys don't fish inshore in the winter; some guys don't fish offshore in the winter, but this had the most broad-based support.

We didn't know what the numbers were going to be but we knew there would be an option for two or three weeks was the way we put out it out people, sometime in October, so it does have broad-based support from a number of states. But you also have a situation where instead of closing – if you went with the October 31st option, which would only get you the percent required reduction, which has pretty much been said it is not the favored idea; if you closed on October 11th and didn't open it again, you've just closed, what, 80 days as opposed to closing 20 and achieving more of a reduction.

I mean, right there, to me, that is a no-brainer and it gives all the justification that we could possibly think of; more conservative than necessary; answering the technical committee concerns, et cetera. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you, Tony. Before we vote on this, I'm going to ask Jack, as the maker of the motion, to specify or to speak to the idea of the management uncertainty and why you feel that the motion that you put forward accounts for enough management uncertainty that we can forward that information to the National Marine Fisheries Service when this meeting is over. Thank you.

MR. TRAVELSTEAD: Well, quite frankly, I think Mr. Bogan just laid it out pretty well. The required reduction is 21.4 percent. There is no guidance anywhere that specifies what percentage management uncertainty must equal, so it is a judgment call by the board or by the service. The October 11th date takes you through, what is it, that Columbus Day period. I think that is what industry wanted.

Then the November/December time period is a very minimal amount of fishing going on, anyway. The percentage worked out to be 26 percent and I think that is what people can live with. It does add some additional reduction. But, is 26 percent the right number versus 28 or 30 or 45, I don't know. It is a judgment call.

MR. DAVID SIMPSON: To that, I think there has been some concern voiced over a split season and if this were occurring during the summer I would be very concerned about that, but I think this time of year, October 11th to November 1st, I don't have nearly the concern that I would when in the summertime you have the full range of anglers fishing.

In the fall, anyone who is out there fishing in federal waters is going to know the rules. They're not going to be fishing outside the season. Weather will be a factor every single day, so I don't see a big opportunity for recoupment or a big concern for non-compliance. I think that would argue toward a 5 percent buffer is adequate in this case.

MR. MARK GIBSON: I agree with Dave Simpson so I think we can support this, but I have to complain about the way of doing business. You know, we've gone to public hearing, published regulations, printed out information documents to the public on the basis of what we thought the board had come to closure on. It's a messy way of doing business for us, but there is more fishing opportunity so I guess we'll support it.

CHAIRMAN CARPENTER: Mark, it has always been a messy business. I think we do owe it to the public when we're presented information that we can extend the fishing opportunity, we have to make sausage out of what we're dealing with here, and that is what this whole process is. I do appreciate the comments that have put on the record. I see one more public comment, Tom, and then I'll be back to you and then we're going to call the question. I've got two public comments.

MR. JEFF GUTMAN: My name is Jeff Gutman. I have a couple of headboats in New Jersey; one in the

northern portion of New Jersey and one in the central portion of New Jersey. I supported this option for a number of reasons. I think that it does extend the season past the original September closure so it gives those people who fish in the early fall time to fish.

It also helps the people like some of the southern states and also some of the folks who fish further offshore for that November and December timeframe, which the anglers that pursue the fish at those times may not pursue them at other times of the year because there are other fishing opportunities, but they like to fish in November and December. Last year we could say unjustly they were shut out of that fishery, so this kind of opens it up to them with this open and it still gives you the seemingly conservative approach of having a cushion.

Another thing, we were saying that a lot of the smaller boats aren't even fishing in that November wave data, at that timeframe in November and December, so there is not a lot of fishing effort, anyway, but for those who do it is open to them and it is not open – you know, it was not open to them last year so this way hopefully you're helping out some folks that got shut out last year. Thank you.

MR. SKIP FELLER: My name is Skip Feller from Virginia Beach. I have the headboats at Rudy Inlet. I just want to say I absolutely support this option. Anything we can get in the wintertime – we were shut out of it last year and it was absolutely devastating to us. Anything we can get, late fall, early winter, would be great and I support this.

MR. FOTE: Just on the justification part of this, I sat here last night as A.C. did until about ten after ten listening to the Omnibus Amendment, and you realize that in the process that we go through before you even get to this point, there are a lot of cushions built in already. I mean, if you think about how we set this quota, because it was data poor the SSC already basically put a big cushion in and gave us a lot smaller quota, that we could if we had basically went to the extent, so I feel very comfortable in supporting this because of the cushions that are all the way along in the process. The quota could have been larger if we basically had went in a different direction. We didn't and the SSC recommended this because they put cushions in already, so that is why I feel comfortable and that is part of the justification.

MR. WILLIAM A. ADLER: I wanted to ask the question is this going to require a two-thirds because we had already made a decision; and, secondly, I want to call the question.

CHAIRMAN CARPENTER: The answer to your first question is yes, and we're now going to have a 45-second caucus. Before we get started, Vince has a comment.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, you did announce the two-thirds vote before. You didn't announce that it would take eight votes for this.

CHAIRMAN CARPENTER: He has done the arithmetic for his so it is going to take eight affirmative votes. Thank you.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Are we ready for the question? The motion is to amend the commission's recreational black sea bass season to be open from May 22nd to October 11th and November 1st to December 31st (a 26 percent reduction). The motion was by Mr. Travelstead; seconded by Mr. Augustine. **All those in favor please raise your right hand, 9 votes in favor; all opposed; any abstentions, 2 abstentions; any null votes. The motion carries.**

Pat, will be submitted this to the Service as a public comment. I think you heard enough of the justification that will accompany it. We hope that it helps you make your decision, and we appreciate your efforts. Moving on to the Omnibus Amendment for the annual catch limits and accountability measures, Toni.

MAFMC'S PROGRESS ON OMNIBUS AMENDMENT

MS. KERNS: I'm going to try to quickly go through the Omnibus Document to give the board an indication of what the Mid-Atlantic Council is moving forward with and how that affects the Summer Flounder, Scup and Black Sea Bass Plan for the commission. I was going to try to get into more detail of the document to try to help the board understand what it is that the council is doing, but we're running out of time. I know that today is a full day so I want to try to keep us on track and help the board understand some of the management decisions that the council is taking that would impact our plans and how that affects this board.

The council's Omnibus Document is currently out for public comment. There are four scheduled public hearings. One was last night and I know some commissioners did attend that meeting. The comments will be summarized and brought back to

the council at their June meeting. The amendment will be prepared for the council to review and submit for the August meeting. This board will be able to see that information because that August meeting is a joint meeting with the commission.

The council document puts forward an ABC framework, a council risk policy, information for each of their species on annual catch limits, accountability measures, and the document itself comes from the new requirements from Magnuson-Stevens. The board has seen this slide several times. Just as a reminder, the overfishing limit corresponds to your maximum sustainable yield, which is going to be greater than or equal to your acceptable biological catch, which is going to be greater than or equal to your acceptable catch limit.

Annual catch targets also can be set, and the annual catch target can be a type of accountability measure, almost like a soft target in the document. For catch, it is important that everyone understand that catch means the total quantity of fish measured in weight taken in both the commercial and the recreational fisheries, subsistence, tribal and other fisheries.

It includes any fish that are retained for any purpose as well as those fish that are counted dead as discards, so it is both the dead discards as well as taken fish. Your ABC, your ACL and your ACT are all expressed in terms of catch. Your annual catch target is a type of proactive accountability measure. It prevents the ACL from being exceeded in that current fishing year.

Your reactive accountability measures are measures that are intended to insure that your catch is not exceeded in the next year when we go through it. The Omnibus Document puts forward ways to set up your acceptable biological catch, and there are sort of two considerations that are going into that.

One is that the council is setting up a risk policy and the other is that they're determining their scientific uncertainty by looking at different assessment levels. The SSC is the lead development on those assessment levels. They've put together a tiered-approach process to describe how the acceptable biological catch is specified.

There is specific criteria established for each of those levels, and the SSC will determine where each stocks falls. Those assessment levels characterize the scientific uncertainty. The risk policy is going to characterize the probability of overfishing. These two policies are affecting your acceptable biological

catch, so that is going to impact what the quota will be set at.

I think that is the most important thing for this commission to understand is that the options that they're looking at will affect how the quota is set. They will sets of rules that they will have to follow when setting their quota; and if we don't have similar rules, then there is the possibility that we will have two different quotas in the end result, and so we want to try to make sure, since this is a joint plan, that we are steering ourselves on the same path instead of steering ourselves on separate paths.

Up here there is a slide listing the summary of the different levels for assessments for each of the species. The first three levels have specific criteria dealing with the types of assessments and the data that is available. The lowest tier, tier number four, is for species that have very little data available, substantial gaps in information about the stock, so those are going to very data-poor stocks.

The council's risk policy is also part, as I said before, of their acceptable biological catch development. It expresses the council's tolerance for overfishing; the overfishing limit distribution and the probability of overfishing combined directly to determine the ABC. For the upper three assessment levels, there is specific criteria that have been set, but for the lowest tier where there is a data-poor stock, that information can be applied differently, and it is more subjective than defined criteria.

For their risk policy there is a range of options that go from a fixed probability through to different levels of probability based on the status of the stock, the assessment levels, the stock history and the life history. Each of those would impact the quota differently. You can just sort of look at – like Alternative 2C, it looks at the stock status, and you can see that the probability of overfishing ramps up over time, and then it will level off at some constant level once the stock reaches a certain level to rebuilding.

Again, when you look at stock status and combined with assessment levels, you see with the different levels of probability a ramping as you rebuild the stock and then it is a constant level once you get to rebuild. Then the last alternative puts you just into different categories where it is specific levels of probability for overfishing depending on which category the stock would fall in.

Sort of the bottom line there is that the council is making a decision on this and it will affect the board on how our quota levels are chosen, so it is something that the board should be very engaged in terms of how the council is looking at their risk policy and how they are determining the assessment levels for scientific uncertainty.

The second portion of the document is looking at summer flounder, scup and black sea bass in terms of how the annual catch limit structure is set up and also how accountability measures are set up. In the document, if you want to follow along, there are the flow charts that show the structure. They're on Page 46, 52 and 58, respectively, for each of the three species. They all follow a similar pattern.

There is some slight difference, but in general for each of the species the sum of the annual catch limit, which is for both the commercial fishery and the recreational fishery, equals your acceptable biological catch. Then we break them down into sectors for the acceptable catch target for both the recreational and the commercial fishery, so that each of the two fisheries can be accountable on their own and don't have account for each other's landings when it comes to accountability measures.

For the annual catch limits, we looked at an evaluation of the single-year only for the commercial fishery since we have a good quota system set up in the commercial fishery and accountability for those landings. We considered a three-year average versus one year for the recreational fishery to see if smoothing would help out.

When you look at the three fisheries, if there is a year where you have a really high landings' number in the recreational fishery, you may want to consider averaging that out so that the year following your high level, that you could smooth that down. As you can see here, in the years following the smoothing actually would give you lower harvest limits than you would have if you just used a one-year average.

As the example Jessica gave last night, if you get a really bad grade at the beginning in the semester, it is a lot harder to bring that grade up to a good grade than it is to have a good grade at the beginning of the semester and keep it high. The dotted gray line shows your one-year adjusted recreational harvest limit, and then your squares with your dotted line show your three-year average adjusted harvest limit. You can see the same example here with scup as well as black sea bass.

For accountability measures, they're already in the FMP for summer flounder, scup and black sea bass. For the commercial landings we take out the overages in the following year for any overage that you had in the current year. We also have commercial fishery closure authority midyear. Proactive use of the annual catch targets would be sector-specific.

We would account for management uncertainty through your annual catch targets. What we would do is we would ask the monitoring committee for methods for adjusting for relevant sources of management uncertainty when considering that for the recreational fishery. For reactive accountability measures in the recreational fishery, if the recreational annual catch limit is exceeded by the recreational fishery and the recreational fishery is responsible, then that amount is deducted from the recreational harvest limit in the following year.

If your soft target, your ACT is exceeded but your annual catch limit is not exceeded, then this doesn't need to occur because your soft target accounts for some of that uncertainty, and so therefore you don't have to make any adjustments. It is only when your catch limit is exceeded. This is different than what we have set up in our plan. We don't have any recreational overage adjustments like we do in the commercial fishery, so this is something that is new.

Our proactive accountability for the recreational fishery is to give a general in-season closure authority. We could have some trigger points that are set up where you would look at current year's wave information when it comes out; and for summer flounder the option is that if 50 percent of the recreational harvest limit has been achieved, then you would shut down the fishery midseason.

For scup if 15 percent had been achieved at Wave 3, then you would shut down the fishery, and in black sea bass it is 40 percent of the fishery. These in-season closures are different than what we have done. Currently if there is an in-season closure, it is usually coming from the National Marine Fisheries Service through an emergency rule, which is different than authority to actually shut it down. Some states have authority to shut down their fisheries, but it is not explicit in our FMP.

Just a look back at historical landings, in cases where we have achieved 50 percent of the summer flounder, where we would have an in-season closure, you would see that in previous years, 2000 and 2001, you would be pretty close in 2003 at 49 percent. 2006,

2007 and 2008, where in those last three years only in 2007 did we exceed 50 percent, but in the end we actually did exceed the recreational harvest limit.

For scup the rule would be 15 percent would shut down the in-season, and you can see that the majority of the years we would have had to have shut down the fishery. Then black sea bass, it is 40 percent and most of the years we have not achieved that. It was only in the early 2000's where that would have occurred.

There are also options for accountability for other catch components within the fisheries, including discards or even the possibility of the research set-aside being exceeded, and we would have accountability for those other catch components that occur at the sector-specific ACL, and then that sector-specific ACL would be reduced in the following year if it were exceeded, just like in the commercial and recreational fishery options.

To review the big differences from the current plan is how the quota is being set up because there is going to be accountability for scientific uncertainty as well as the risk policy that is set. Then in the recreational fishery there is accountability for when the recreational harvest limit is exceeded those number of pounds will be taken out of the following fishing year as well as giving in-season closure authority when a certain percentage is reached for each of the three species. That is where we would see differences between the council plan and the commission plan.

DISCUSSION OF ASMFC MANAGEMENT RESPONSE

EXECUTIVE DIRECTOR O'SHEA: Toni, in that sort of the bottom-line list I didn't hear you mention management uncertainty.

MS. KERNS: Management uncertainty would be accounted for in the annual catch targets.

EXECUTIVE DIRECTOR O'SHEA: Just to follow up, so there are two entry points for uncertainty in this process. One is the scientific uncertainty, there is an adjustment for that; and then following that is an adjustment further in the process for management uncertainty. I wonder since you went through this so quickly could you just briefly explain the difference between the two. Thank you.

MS. KERNS: The scientific uncertainty would be accounted for in the acceptable biological catch; so

when you're setting your beginning quota, you have your acceptable biological catch and then you'll consider your scientific uncertainty through your SSC. Then for your management uncertainty, that is being considered through your soft targets or would be laid out with your soft target of your acceptable catch target.

Scientific uncertainty deals with your level of risk that you're looking at for overfishing as well as the uncertainty that you see in your assessments. Management uncertainty looks at how your fishery performance is in current years and past years. It can include compliance with measures, landings' information and effectiveness of measures and enforcement of measures.

MR. SIMPSON: Just to sort of learn by illustration, if we were to apply this retrospectively back to this current year with scup, the stock assessment indicated that the harvest associated with the reference point would be 25,000 tons; the scientific and statistical committee considered scientific uncertainty and set the ACL at 5,000 tons; the recreational fishery got, round numbers, a thousand tons of that; so if you're monitoring the MRFSS catch estimates, Wave 3, the recreational fishery lands 150 tons, we would close the fishery; is that right?

MS. KERNS: Yes, quick math is 15 percent.

CHAIRMAN CARPENTER: Remember, now, the Wave 3 data is not going to be available until the middle of August; and then by the time that you have another 30 days in order to shut it down kind of thing, you're really closing the tail end. If you waited until Wave 4 data came in, the horse is already out of the barn.

But also remember that these are three options that are being looked at for the various species, and I think our place here is to try to pick one of the options and give some guidance to the council as to how the commission wants to view this stuff. Bill Adler.

MR. ADLER: Well, it seems like this federal thing has just handcuffed, tied and strapped the federal councils to some process here where there is very little flexibility, it seems to me, and this ought to be interesting. My question, as always, goes back to when they go through all these procedures and come up with something, that then they come to us and are we going to be bound by the same straps and

handcuffs or do we have any flexibility left or do we have to with this?

MR. FOTE: I sat here with A.C. last night and listened to the three-hour presentation. I started thinking about it and when I first went to the council meetings, when Jack was a young man, back in '84 and we both had hair on top of our heads, we would basically sit there and I says, you know, I got involved because I thought there was going to be a light at the end of the tunnel.

I thought we could make a difference and bring back stocks and basically see the rewards for both the recreational and the commercial fishing community. I'm now sitting here almost 26 or 27 years later and volunteered a lot of time over the years, and I just look at fluke and what has happened over the years.

In 1996 basically when the fishery was pretty much collapsed and we were rebuilding a stock, the quota was about 22 or 23 million pounds, and we actually were catching 28 million pounds because we were basically going over at that point. We are now sitting in 2010. We are catching in the recreational community a quarter of the fish, taking them home, than we were in 1996 because of regulatory regulations.

That means that we're catching bigger fish but only a quarter of the number of anglers are successfully taking fish home. We are also now, for the first time, on the same road as with striped bass. We are regulatory discarding more fish than we were taking home in '96. Is this the management system we want?

That is what concerns me here. I no longer see a light at the end of the tunnel. I see a train wreck because we are basically putting a lot of restraints. We spend a lot of time on basically reviewing new management measures, how do we basically tighten the reins, how do we deal with the precautionary approach. Most of this done is because we are still in the same place as we were back in almost '84 and '96 when it comes to actual stock assessment work.

We are spending less money now than we were back in '96, doing less work by the states, to find out what we're basically managing. When I studied computers, it was garbage in garbage out, so we're trying to refine the garbage in, and that is what we seem to concentrate all our efforts in instead of getting better stock assessments so we are not basically using these four times in a precautionary approach.

We can go through these 300 pages to look at all the fine points of this, but until we get better stock assessments, until we get better MRFSS figures where we can actually estimate what they're actually catching – you know, I had the rare privilege of listening to Vic Crecco for an hour the way down here basically regaling me on how MRFSS is flawed and how we basically – you know, when I look at North Carolina, you basically have 450,000 licenses, but according to MRFSS you have 2 million anglers and the same is true with every state.

Until we rectify those situations and spend the money where we're supposed to by the federal government, then we're just spinning our wheels in a lot of places here. I'm just sorry to be so forthright on this, but after 26 years of volunteering my time and sitting at these meetings I was hoping we would be in a better place, that we were not discarding more summer flounder regulatory than we were catching in 1994.

CHAIRMAN CARPENTER: Thank you. I will remind the board that we're running very close to end of our time slot here. Dr. Pierce.

DR. PIERCE: Mr. Chairman, I was at the public hearing last night. I heard Jessica's presentation. She did a great job and caught my attention, that's for sure. My agency is going to provide some comments regarding this Omnibus Initiative specifically with regards to, well, scup, sea bass and fluke.

There are flow charts in this document that are instructive, but they're difficult to follow because actual data are not used in the flow charts. Frankly, as the board gets ready to delve deeper into these particular alternatives, these strategies for coming up with the numbers, A, B, C and the like; ACL and the ACT, we're going to need better information and more information to give us the kind of guidance we would need to make some informed decisions when we meet with the council certainly in August; that joint meeting where some important decisions will be made.

To help me get ready for that particular meeting, to help all of us get ready for that particular meeting, I would move that the board request the Mid-Atlantic Council provide flow charts for scup, black sea bass and fluke using actual data, the different council risk policy alternatives and likely assessment levels for the ABC Control Rule Framework. With all that in hand, we will be in a much better position to understand, for example, what would have happened in 2010 with the alternatives –

CHAIRMAN CARPENTER: Wait, let's get your motion up there and then we can talk about the benefit of it before we go into that. Do you have your motion written down that you can provide to the staff so that they type this up? While we're trying to get that, Jim, can I ask you if your comments are a little more general?

MR. GILMORE: Mr. Chairman, actually it is probably a question for Pat Kurkul. Because of the lag in the wave data and if we're going with the example of summer flounder before where if we had 50 percent of Wave 3 that we would shut the fishery down, but we're not going to find that out until August and then we have the potential of going over and we're going to have to do paybacks; so, I guess the question is as we revamp MRFSS into MRIP is there a plan to get more timely reporting on the wave data?

MS. KURKUL: Well, I'm hearing the same presentations that you all are on the MRIP Program, and I think they understand that there is a lot of interest in getting more timely information. It comes at a higher cost, of course, and so I think at least initially, from my understanding, that it may be somewhat more timely but probably not significantly more timely than what we've gotten and what we would like to have. I think the long-term goal is to get it more quickly, but I don't think that is going to be the first iteration of this.

CHAIRMAN CARPENTER: Thank you, Pat. Before I call for a second on this, I do want to ask Jessica that this does involve a considerable of effort on the part of staff, and I would like her to comment about that. Then I've got Rick Robins that I also want to call on.

MS. COAKLEY: Well, we're going to be in the process of preparing the full amendment for the council to look at in August, which will obviously – this is a public hearing document so the next version is going to be substantially larger with a lot more detail in there. You were provided with a hypothetical summer flounder example that uses some general information, but I structured this which basically follows the flow charts in a way that while the starting is sort of a general number that is being used, we know that the stock is rebuilding, which is why the starting point is 34 million pounds.

A lot of the decision steps align with some of the things that have been done in the previous two years. I mean, you recall when we set ABCs, ABCs for summer flounder have been set using an Ftarget. We

haven't been setting them at the Fmsy. We have gotten an ABC recommendation from the SSC that went on to the council and board, and so that first part of this flow chart, that first step to address scientific uncertainty is on par with the level of adjustment that occurred for the prior two years.

These numbers then carry through using discard ratios that we know currently exist in the fishery to get to bottom-line numbers for recreational harvest. That is an example. I know the council is planning – I mean, staff, we're planning on putting more example together to communicate to the council what has been done in the past for setting – how we set our catch levels previously, how we have been setting them the last two years under this new ABC process, and then taking a closer look at what things may look like when these are applied. There is going to be a lot of work involved and we may not have examples for everything. We're going to do our best to pull that together, so that is something we have been talking about.

DR. PIERCE: The motion is not right. It reads, "provide flow charts for scup, summer flounder and black sea bass using actual data, – get the rid of the work "in" – the different council risk policy alternatives, and likely assessment levels for the ABC Control Rule Framework. That is correct. There is no second yet; it is taking an awful long time to get a second, but this is what I think – this is what I know I want as a board member in preparation for these important discussions as we go through the summer and we approach August where this group, this board will be meeting with the council for some fateful decisions.

CHAIRMAN CARPENTER: All right, I guess we do need a second.

DR. PIERCE: I'm sorry, it is still incorrect, "the different council risk policy". Thank you.

CHAIRMAN CARPENTER: It has been seconded by Dave Simpson. Before we get into too much discussion, there are a couple of things that bother me about this. One is I think you're asking the staff to put together a document and examples that rely on decisions that have not yet been made by either the council or the board in terms of the management levels, the risk levels that they're going to be using.

Jessica has indicated that they are planning to give us more examples than what you had for the public hearing document, so keep that in mind that I think that we may tasking this – it may be asking for an

awful lot. I had called on Rick Robins, who is the chairman of the Mid-Atlantic, and, Rick, welcome to today's meeting and thank you for being here.

MR. RICK ROBINS: Thank you, Mr. Chairman, it is a pleasure to be with you today. I wanted to make a couple of general comments and I'll offer a comment on the motion as well. As we all know, fish have a bad habit of swimming across jurisdictional lines. Consequently, if we're going to be successful between the council and this commission in achieving collaborative and coordinated management, the commission's input on this Omnibus Amendment is really critical.

We've recognized that from Day One. Last July, when we proposed a special one-day workshop, we convened jointly with this board in order to propose structures for the annual catch limits as they related to these different jointly managed fisheries. That input I think was very helpful. We achieved a consensus in terms of how we were going to structure the ACLs. We proposed to use a soft target in terms of an ACT to account for management uncertainty.

I think generally by working together with this commission and its leadership – for example, we had a special meeting in Ocean City to review the process by which scientific uncertainty is considered jointly between the SSC and the Monitoring Committee. I think in the last year from a process standpoint we've made a lot progress that we can specifically point to.

We've added a pre-decisional consultation now between the Monitoring Committee and the SSC to consider the assessment information as it comes in prior to setting the ABC and making that recommendation to the council. I think we've taken significant steps to incorporate a lot of these concerns as they relate to scientific uncertainty.

The Omnibus going forward now contains several key elements, and the input from this commission is really important on those. On the side of management uncertainty, we propose that the Monitoring Committee would characterize management uncertainty and we have described a process in the amendment, and that will continue to be refined as we finalize it.

We would expect the Monitoring Committee to recommend an ACT, an annual catch target, that accounts for management uncertainty to the council. On the scientific uncertainty side of the equation we're proposing to use the ABC Control Rule, and the operational part of that is going to be the risk

policy. The risk policy is nothing more than the council's expression for its tolerance in terms of risk of overfishing, so that is in part a values-based decision, but collectively I would suggest that we need to have the commission's input on that.

When we meet in August to finalize our decision and selection, we would appreciate specific input. I know that we heard last night from some of the commissioners that were in attendance at the hearing that they plan to offer specific written comments, and I would invite those comments focused on the risk policy because the risk policy is effectively the control rule that would be applied by the SSC; so if we say if a stock is at one times biomass would have a 40 percent probability of overfishing, that would then be applied to the probability density function associated with the overfishing limit estimate, and that would be the starting basis for the ABC.

I think if you go through the specific risk options you will find that in fact many of them are not very far off from what we're doing currently at the council in terms of setting ABCs. If a stock, for example, is subject to rebuilding, one of the options would have us set the probability of not exceeding the Frebuild at 50 percent.

That is essentially what we're doing right now with summer flounder; it is not significantly different. I think as you go through the specific details you will find that they may not be significantly different from what we're doing now. In order to aid in that analysis, I have already asked our staff to develop a document that would describe the status quo in terms of the relationship between ABC and OFL so that we can have and communicate a more detailed sense of how scientific uncertainty is currently being incorporated and accounted for in all of our FMPs with some recent examples.

I think we can work together to try to improve that information by the time we make our decision in August. With respect to this specific motion, I would just point out that there may be some limitations here. I think if we were to follow through with this the council would have to task the SSC and specifically the Scientific Uncertainty Subcommittee of the SSC to try to provide their best estimate of where the current assessments would fall in terms of the tiered structure.

Part of the difficulty and limitation I think is that we may not have the probability density functions for all of these stocks available so that we could actually apply a proposed risk policy to them in hindsight. If

we were to try to go back and retroactively do this, there may be some limitations to the information for the analysis.

Certainly, we are committed to trying to develop a document for the June and/or August meeting that would help us to better compare the status quo with the proposed alternatives. I would just point out that I think there may be some limitations to what the staff and SSC can develop so you might temper this expectation at least to the extent practicable and we would try to respond to it.

CHAIRMAN CARPENTER: Thank you. Given the hour, I'm going to ask is there anything specific to this motion? We have been cautioned by the council that what we're asking for may not be possible; and with that, I'm going to call the question. I'm going to allow a very brief caucus and then I want to wrap this up.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: All right, I'll call the question. All in favor raise your right hand; all opposed; any abstentions; any null votes. **The motion fails.**

DR. PIERCE: Excuse me, Mr. Chairman, what was the vote?

CHAIRMAN CARPENTER: The vote was five in favor and six opposed. I want to call on Vince and then I've got a couple of comments.

EXECUTIVE DIRECTOR O'SHEA: First of all, I appreciate Rick Robins from the Mid-Atlantic Council being here and having the chance to address our board about the work that they have been doing. I also want to thank him for the invitations he has made through this process to include the commission.

But also I sense around the table there is some concern and there may be some discomfort by this board, and I just want to note that probably about a year ago we raised the issue of developing at the policy board a risk policy from the commission's perspective as well as looking at different strategies that the commission might consider and adopt to respond to the approaching ACL/AM measures that the different councils would be doing.

The result of that policy board discussion was to sort of leave that in abeyance and not approach it from a policy board perspective but instead leave those individual decisions to the individual boards as they

encountered them with the different species that interacted with the councils. That is probably one of the reasons why this issue is now in the lap of this particular board was because of the decision at the policy board level not to adopt a broader commission approach to the issue of risk policies in response to the alignment with the federal management process.

CHAIRMAN CARPENTER: Thank you, Vince. I want to call your attention to the fact that the council will be holding three additional public hearings during the month; May 10th at VMRC; May 12th in New York; May 18th in New Jersey. I encourage all board members to attend that public hearing. They give a very good overview and a very good presentation on where we are in this process and are inviting comments. I think it is incumbent upon all of us to add our written comments to the public record and go through the document, looking at the options and choosing what we believe to be the best individually.

OTHER BUSINESS

Having no other business to come before the board, I have one item that I would like to address and that is I would like to introduce Mr. Dennis Fleming. He is sitting in my seat over there. Dennis is a governor's appointee to the Potomac River Fisheries Commission. This is his first Atlantic States Marine Fisheries meeting that he has been able to attend. I encourage you all to get to know him, and we appreciate his effort to be here today.

ADJOURNMENT

With that, I will call for a motion to adjourn. So moved by Mr. Augustine and seconded by Mr. Ewing. Any objection? We are adjourned.

(Whereupon, the meeting was adjourned at 9:47 o'clock a.m., May 4, 2010.)