

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

**Radisson Plaza-Warwick Hotel  
Philadelphia, Pennsylvania  
October 25, 2012**

**Approved February 21, 2013**

## TABLE OF CONTENTS

<b>Call to Order .....</b>	<b>1</b>
<b>Approval of Agenda.....</b>	<b>1</b>
<b>Approval of Proceedings .....</b>	<b>1</b>
<b>Public Comment.....</b>	<b>1</b>
<b>Review of Wave 4 Recreational Data .....</b>	<b>1</b>
<b>Overview of 2013 Recreational Management Process for Black Sea Bass .....</b>	<b>8</b>
<b>Other Business.....</b>	<b>14</b>
<b>Adjournment .....</b>	<b>16</b>

## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of February 8, 2012 by consent** (Page 1).
3. **Move to initiate an addendum to allow for management tools other than coast-wide measures** (Page 9). Motion by Adam Nowalsky; second by Pat Augustine. Motion carried (Page 13).
4. **Move that the Summer Flounder, Scup and Black Sea Bass Board recommend that states initiate any and all applicable regulations to close state recreational fisheries for black sea bass in 2012** (Page 14). Motion by Michael Luisi; second by Rob O'Reilly. Motion defeated (Page 16).
5. **Motion to adjourn by consent** (Page 16).

## **ATTENDANCE**

### **Board Members**

David Pierce, MA, proxy for P. Diodati (AA)  
William Adler, MA (GA)  
Rep. Sarah Peake, MA (LA)  
William McElroy, RI (GA)  
Robert Ballou, RI (AA)  
Rick Bellavance, RI, proxy for Rep. Martin (LA)  
David Simpson, CT (AA)  
Lance Stewart, CT (GA)  
Rep. Craig Miner, CT (LA)  
James Gilmore, NY (AA)

Pat Augustine, NY (GA)  
Peter Himchak, NJ, proxy for D. Chanda (AA)  
Thomas Fote, NJ (GA)  
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)  
Bill Windley, MD, proxy for B. Goldsborough (GA)  
Rob O'Reilly, VA, proxy for J. Travelstead (AA)  
Catherine Davenport, VA (GA)  
Louis Daniel, NC (AA)  
Bill Cole, NC (GA)  
Bob Ross, NMFS

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

### **Ex-Officio Members**

#### **Staff**

Robert Beal  
Toni Kerns

Kate Taylor

#### **Guests**

Victor Bunting, Ocean Princess, Inc  
Eddie Yates, United Boatman NJ  
Monty Hawkins, OCRF  
Michael Luisi, MD DNR

Peter Burns, NMFS  
Ellen Cosby, PRFC  
Jessica Coakley, MAFMC

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza-Warwick Hotel, Philadelphia, Pennsylvania, October 25, 2012, and was called to order at 1:00 o'clock p.m. by Chairman David Simpson.

### **CALL TO ORDER**

CHAIRMAN DAVID SIMPSON: Okay, I would like to call the Summer Flounder, Scup and Black Sea Bass Meeting to order.

### **APPROVAL OF AGENDA**

CHAIRMAN DAVID SIMPSON: We need to approve the agenda. Is there any objection or changes to the agenda? Seeing none, we will consider the agenda approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DAVID SIMPSON: We need to approve the proceedings of our February 2012 meeting.

Are there any issues with the proceedings? Seeing no objection, we will consider those approved.

### **PUBLIC COMMENT**

CHAIRMAN DAVID SIMPSON: Is there any public comment on issues not on the agenda? I don't see any. Our next item is to review the Wave 4 recreational data for fluke, scup and sea bass, which Toni is going to help us with.

### **REVIEW OF WAVE 4 RECREATIONAL DATA**

MS. TONI KERNS: We have the recreational harvest for summer flounder, scup and black sea bass for Waves 1 through 4. They were released last Tuesday or Wednesday, I believe, on the website for the National Marine Fisheries Service. They post the MRIP harvest estimates. Because the board said that we would be using the MRFSS harvest estimates to do the comparison to the targets for all three species, I made a special request to the National Marine Fisheries Service to have the MRFSS harvest estimates to me, and those were given to me on Thursday.

I am going to be presenting MRFSS harvest estimates today and not MRIP harvest estimates; just so we're all clear on that. First I'm going to go through the two easy species and then we will get to the harder

one. For scup harvest estimates, if you recall we divide the targets and 90 percent of the harvest target goes to the northern region. That region's harvest target is roughly 8.2 million pounds for approximately 2.4 million pounds in harvest, and we are fine for the southern states' harvest.

For summer flounder all states are currently under their estimated 2012 target. The target is in numbers of fish, but I did present both pounds and number. I also included New Hampshire just to sort of show folks that some of these species are starting trend a little bit further northward, and we're starting to get harvest from those northern states.

We're going to move into black sea bass. These are our harvest estimates and I hope everyone can see these numbers. I'll try to go through them just in case you can't. I tried to make it as big as possible. Your first column is going to be your number of fish harvested – or actually your second column. Your third column is the pounds of fish harvested. The total discards are in the fourth column, and that is in numbers of fish. Discards are not estimated in pounds through the MRFSS Website. At the end of the year we take – through the assessment process we do a length/weight estimate to then determine what the poundage of the discards are.

The dead discards are a 15 percent mortality rate, so it is 15 percent of the total discards, and those are also in number of fish. Then I take the number of fish harvested plus the dead discards to get the total catch in numbers of fish. If everyone recalls from the addenda that we did last year, we have rough agreement between the two regions, the northern region and the southern region, where we end up getting an informal target for the two groups.

They're not specific targets that are outlined in the plan, but that is what we estimate the northern target to be 868,000 fish, and the southern target to be almost 85,000 fish. If you look at the northern region, we are at 1.2 million fish and that is 2.4 million pounds of fish. For the southern region we are at 65,000 fish or 92,788 pounds of harvested fish.

You can see that New Hampshire actually does have some landings this year; so when we look at total number of fish harvested in pounds or numbers of fish, we do have to include those fish in our totals when we are looking at the total catch, and that is roughly 3,000 fish or 4,500 pounds, approximately. No questions about this table so far?

Just to remind everybody what their seasons are, the states that are still currently open are Rhode Island, Connecticut, New York. New Jersey will open back up. Delaware, Maryland, Potomac River Fisheries Commission, Virginia and North Carolina will also open back on November 1<sup>st</sup>. Then to remind folks about how we set our measures; if you recall this is the first year through the omnibus that the Mid-Atlantic Council did in response to Magnuson; that they are looking at accountability measures.

A reminder to folks that the commission did not adopt those accountability measures, so they do not apply to states but it is being done through the federal plan. In 2012 the annual catch limit was 2.52; our ACT was 1.86; and our RHL was 1.32. For 2013 our ACL is just a little bit lower a 2.41; our ACT is 2.17; and our RHL is 1.69.

If you're wondering why the RHLs are different it is because this current we added an additional buffer for dead discards. In previous years when projecting those dead discards, they always came out lower – that projection was always lower than what the actual numbers was and so we adjusted to try to buffer for that.

For 2012 our estimated MRFSS harvest is 2.55. That is above the ACL of 2.52; so because of that, that triggers for the National Marine Fisheries Service to shut down the recreational fishery. If you look at the MRIP numbers, they are a little bit lower. For each state it varies if it is going to be lower or higher than the MRFSS; but in total coastwide it is a little bit lower, 2.2.

If you're wondering if that would still have triggered to shut down since it doesn't hit the ACL, my understanding of how the omnibus works it still would have triggered it because our discards were so high you would have then gone into the discards to account for those and then we would have triggered the overage for the ACL.

I looked at the mean weight to just let you guys have an idea of what size fish we have been catching. For the 2009 to 2011, that is the mean weight of catch so that it does include the discards. For 2012 I just took the numbers of fish divided by the pounds of fish that were landed, and you can see that we have a larger fish.

I went back and calculated the mean weight for landed fish for those other years, and they're pretty similar to what they were for the total catch as well, so I think it is safe to say that we are catching a larger

fish in 2012. The National Marine Fisheries Service closed on October 23<sup>rd</sup> for federal waters. This is effective on November 1<sup>st</sup>.

The season is currently closed right now and so it just will not reopen again for the rest of the year. Our total overage as of Wave 4, to figure that out you take your harvest minus your RHL, and so currently we're at 1.23 million pounds. Remember this does not include Wave 5. Most states were open if not all of or part of Wave 5, so we will have harvest from Wave 5.

Wave 5 harvest really fluctuates from year to year. Last year it was 1.2 million pounds; in 2009 it was around 400,000 pounds; so I can't give you guys a good estimate of what I think Wave 5 harvest will be, but it will count. For federal waters remember that for accountability measures, overages come out of the following fishing year's quota.

In the plan you can average those overages over a three-year period, but because we were in the first year of accountability measures we only have one year of overages to average, so there won't be any averaging. Next year we will be in Year 2 so we will have two years and we can average those; and then the following year we will be at three years.

The plan specifically states that for the first year we have that one year, so we won't be averaging those overages. Lastly, in my rough calculation, because we don't have Wave 5 or 6 harvest yet, but if I look at what overages need to be paid back from that 1.23 million pounds, there is approximately 500,000 pounds of fish left on the table for next year's fishing year. That does not include any removals for dead discards. I can't estimate how much will come out for dead discards because I cannot translate numbers of fish to pounds of fish right now. There will be an accountability measure for the dead discards, though.

CHAIRMAN SIMPSON: Are there any question for Toni? Tom.

MR. THOMAS FOTE: Toni, can you send those tables out because I can't write as fast as you went through them. Could we all have a copy of those tables?

MS. KERNS: I have been putting together a memo for everyone and I will have those tables.

MR. ROB O'REILLY: Toni, I guess I would ask – that seems like a huge increase in mean weight – is there information that is known about any year

classes that is corresponding to is one question. And then I'll just ask you also – it sounds like you took the weight from MRFSS and the numbers of fish to get that mean weight. My question would be does MRIP have the same sort of cautions about using weight data that MRFSS has?

CHAIRMAN SIMPSON: I'm not sure and the one thing I'll say at this point is this is just a report out of recent information. The actual weights that will be used in calculations I think we're still a few months off on, so it may in fact show that we have a higher mean weight but it may not be as high as it appears now. I think it is too early worry about it too much, frankly, the mean weight. Clearly, the landings I think everyone agrees were pretty robust this year.

I think it is interesting that we seem to be quite a bit under on fluke and scup and we're over on sea bass and at least – and I remember scup better – dramatically under and probably are going to be dramatically over on black sea bass, and it is going to be very symptomatic of our troubles managing under Magnuson in AMs, managing the recreational fishery when it is so difficult to predict what the recreational fishery will produce from one year to the next. David.

DR. DAVID PIERCE: Toni, the Wave 5 and Wave 6 harvest, we don't have that yet, you have given us the 2011 harvest. The information you before you that you just presented, does that indicate – strongly suggest that we will have no recreational fishery in 2013 because of an overage in 2012, so we will start off January 1 with no federal waters fishery; is that what the numbers indicate?

MS. KERNS: The numbers that I have right now, there is approximately 500,000 pounds on the table plus something for discards. I just can't estimate how much is going to come off for discards right now. There are a million fish in dead discards. I just don't know what that weight exchange will be.

This is the first year of accountability measures, so we will be reading the rules from the omnibus very carefully and making sure we're applying everything correctly. I don't want to make that statement for sure because I don't have that. That won't be the commission's decision.

It will be a federal decision, because again the commission did not adopt those measures under the federal rule. For our quotas technically none of this comes off the top, but it is what will be in federal waters. As everybody knows, some states, the

majority of their catch does come from federal waters and other states the majority of their catch comes from state waters.

CHAIRMAN SIMPSON: Thanks, Tom. I have Adam but Rick Robins is here and I know the Mid-Atlantic Council sent out a press release earlier in the day, and Rick may want to just give us his perspective.

MR. RICK ROBINS: Mr. Chairman, I appreciate that invitation. I will be brief, but we had a brief discussion on this at the council meeting last week in Long Branch, New Jersey. The catch estimate was revealed to us during that week, so we had some discussion under new business on Thursday, on the last day of the council meeting.

It is still preliminary information but obviously we're confronted with potentially a very large overage, and we're coming into the first year under which we're operating under the formal annual catch limits and accountability measures that have been put into place now in regulation.

Frankly, given the fact that this is the first time around, there are still some questions that need to be resolved about exactly how this would be accounted for, what the timing of those AMs would be. Our staff has been in discussions with the regional office to try to clarify that. I know there has been discussion here among commission members about whether MRFSS or MRIP data would be used. You have indicated a preference to use I believe the MRFSS data going forward at least for this year.

With respect to the timing of the payback of the average, we've had questions at the council level about that because the way the omnibus was written it said as soon as possible, I believe. If you think about the process by which catch is estimated, catch estimates are finalized, discards are finally calculated, there are time lags involved in that, and those final numbers may not be available obviously at the beginning of the 2013 fishing season.

I think those are some of the questions we still need to resolve; in other words whether or not the payback, if it were implemented as per the regulations, would occur in 2013 or 2014. Again, I know our staff has been talking closely with regional office to try to coordinate that. If you just step back and think about where we are right now on sea bass in our recent history, we have a major problem, and I think at the core of it is the scientific issue.

We have a situation where based on the apparent performance of the fishery the health of the stock and the availability of the fish appear to be very good. The assessment indicates that the stock is very close to the rebuilding target and yet the actual management and the way the quota is set is at a lower level.

We have some disconnects between the quota, the assessment and I think frankly between the assessment and the actual condition and health of the stock. I think the performance of the fishery as we see now in the recreational catch data suggests that disconnect is probably significant and needs to be addressed.

I think in terms of moving forward I think we're going to work very closely with the science center and work urgently with the science center to address this issue. I don't see how we can get out of this simply in a regulatory sense. I think the solution has to be broader than that, but I would submit that we have to review every component of it. We have to look at the assessment and how that is being done.

We have to look at how the quotas are being set and that is going to require a collaborative approach between the council, the commission, the science center, the SSC, and we're going to have to resolve some of these questions. We just recently hosted a workshop on protogynous hermaphroditic species in order to try to make some progress on some of these scientific uncertainties that relate directly back to the management of black sea bass.

The SSC deliberations have focused on a couple of areas of uncertainty; that being one of them. We're trying to move forward with resolving some of those questions, but I think at this point given the consequences that we may all be facing we have to do this with a renewed sense of urgency. We're going to have to work closely with the center and the regional office and the commission to get that done.

Now, where that leaves us from a regulatory perspective for Fishing Year 2013, I can't say, but we have to work on this immediately. I recognize the difficulty of the timing and the regulatory cycle, but I think we're going to have to take a hard look at all these issues as we go forward.

CHAIRMAN SIMPSON: Thanks, Rick, I appreciate that. Adam.

MR. ADAM NOWALSKY: I appreciate Chairman Robins being here. I think he actually answered the

question I was going to bring up for Toni. I had heard the statement that overages had to be taken out of the subsequent fishing year, and I just heard Chairman Robins reference – and what I had looked up – the Federal Register Notice of the final rule stated that pound-for-pound repayment for a future fishing year. It didn't specifically stipulate the subsequent year.

Moreover, if we go back to the meeting materials that this board worked with developed by council staff in December of last year, there was the note that the deduction would occur as soon as possible from a subsequent fishing year. That was going to be the question that I had for Toni.

I had her say "the subsequent", but I just heard Chairman Robins specify that there was a question about it, so I will leave it with it sounds like there are questions remaining about where this repayment would occur. If Toni has got something more specific she would like to touch on, I would be happy to hear that.

CHAIRMAN SIMPSON: Okay, and I have the regulations in front of me, and the last sentence of overpayment says, "Landings overage in pounds will be deducted as soon as possible from a subsequent single fishing year recreational sector ACT." They have left themselves a little bit of wiggle room to determine – because it can take time to figure out what the overage is. After I get to Louis, I'm going to ask Bob if he can help with – just looking ahead, NOAA has already taken action to close the fishery effective November 1 and then, of course, we're all interested in what may or may not take place early in the new year. Louis.

DR. LOUIS DANIEL: I haven't kept up the Mid-Atlantic black sea bass like I have South Atlantic sea bass. It is amazing that you're seeing exactly the same thing in the Mid-Atlantic that we're seeing in the South Atlantic. We're seeing extraordinary catch rates of really big fish. We're closing that fishery down in unprecedented time.

The South Atlantic quotas are like 10 percent of the Mid-Atlantic quota, but we're catching it in a month and a half to two months in the recreational fishery and the commercial fishery. One of the concerns that I have is about some of the reporting, and I think that is something that really needs to be looked at and looked into.

We just discovered that if a northeast dealer, even though they're south of Hatteras, reports black sea

bass, they're reported as Mid-Atlantic fish even though they were caught in the South Atlantic.

We have discovered about 20 or 25,000 pounds of fish that were actually being counted on the Mid-Atlantic landings, so they're basically being double-counted. That is a concern and an issue that we have being down right on the borderline.

I'm just wondering if a similar circumstance is not happening with the recreational fishery, you know, having folks fishing south of Hatteras but if they land north of Hatteras they would be counted as Mid-Atlantic fish. With the catches that we have been having, that could have a significant impact on the Mid-Atlantic catches. Those are some issues that I think need to be examined.

CHAIRMAN SIMPSON: Yes, our issue here is recreational and I don't know exactly how the MRIP Program splits North Carolina north and south, whether it is by port of landing or what, but it is a different process, at any rate. Jim.

MR. JAMES GILMORE: Mr. Chairman, I thank Rick for coming to this because he pretty much summarized I think the way most of us feel. I think that we have to sit down and figure this out is obviously what we should be doing. I said in an earlier meeting today that calm minds have to figure this out instead of just following some process.

We've pretty much figured that something like this was going to happen especially with black sea bass. We have a Tier 4 fishery and we're essentially trying to manage that as if we had good data, which we don't, and we superimpose. Now we've got the transition from MRFSS to MRIP, so all of these unknown factors that came out of Magnuson now are coming back to haunt us.

We really do need to take a pause and figure out what makes sense for the fishery and not just follow, well, we have set up some rules and let's cut things back now, because that makes no sense at all to anybody. Again, he pretty much summarized the way New York feels and hopefully we can work through this and manage the fishery properly.

CHAIRMAN SIMPSON: I'm going to ask Bob Ross to answer a question, and that is really what do you envision the Service doing in the next couple of months? I think beyond that we're all going to need to figure out, but you've already taken one action. What may take place in the next couple of months?

MR. BOB ROSS: I guess I can only reiterate, which I think Toni and Mr. Robins have already indicated, that this is new information. It is preliminary information. We are in discussions with the Mid-Atlantic Council on this. I think the issues here are timing. Again, this is a council plan. We're going back to the plan and evaluating the intent of the payback measures as well as the timing.

Again, I am just repeating what has already been said here, but these overages are significant. We do not yet have any information on Wave 5. We know that Wave 5 will most likely surface around the time of the December council meeting. Given the information we had on hand, which is what the plan indicated, we did move forward to prevent the federal waters fishery from reopening November 1<sup>st</sup>. It will be closed through the end of the calendar year. In the meantime we are in extensive discussions both internally and with our partners as to where we will be going especially after the beginning of the next calendar year. At this time that is the best available information I can provide.

MR. PATRICK AUGUSTINE: Mr. Chairman, a quick question; state waters are still open as far as I can see, right? We haven't officially closed them so should there not be a brief discussion on that, Mr. Chairman, as to what we intend to do or are we just going to let it run out? As you know and I know and we all know, it is a cumulative impact that we're going to have.

We do know in our waters there are a tremendous number of black sea bass. We have guys going out there fishing every day they can. Looking at that, would it not be appropriate for us to talk about some possible action we could take or be aware of what is going to happen.

CHAIRMAN SIMPSON: I think Toni went through what states are expected to remain open, what states already in their schedule would be closed. There is an issue of how much of each state's landings would come from federal waters, which are closed come November 1, anyway; how much of the state water fishery remains for the year given the onset of fall, and there is a storm rolling up the coast that will probably hurry things along, but you're right – and then, frankly, I'll speak for Connecticut, there is the practical matter of giving notice to 150,000 people that the rules changed. But it is a valid question that should be discussed. Pete.

MR. PETER HIMCHAK: Mr. Chairman, on Pat's comment, our Marine Fisheries Council meets

November 1<sup>st</sup>, and the earlier that we could do a notice of administrative change and close the fishery would be in probably early December, and by then it would be over. I had a question for Bob – and again this is something I find troubling – with the January/February season for 2013, the Mid-Atlantic Council is responsible for management uncertainty on catch estimates.

Boy, it is perplexing to me how you would come up with a harvest estimate for Wave 1 when most of us don't have field intercepts. I'd like to get some direction from the Service as soon as possible on the January/February issue as well.

MR. ROSS: Again, this is under discussion. We're very much aware that I believe this would be the first year that we would open January and February. The timing is obviously problematic because we will be receiving Wave 5 data basically in mid to late December. Again, given the numbers we have on hand, acknowledging that those numbers are preliminary, that is one of the issues we will be continuing to discuss with our partners.

It is an evolving discussion at this time, as is again the timing issue for payback, as is the use of MRFSS versus MRIP data. These are all on the table for discussion. We're getting this information as you are and we are in discussion at this time. That is really the best I can give you at this time.

CHAIRMAN SIMPSON: Are there any other comments or questions on this topic? Mike.

MR. MICHAEL P. LUISI: Mr. Chairman, I feel it is important to mention on Mr. Augustine's comment about state waters. Even though Maryland, Delaware and other states on the board here are able to open in November, essentially Maryland's fishery is closed for the remainder of this year. We do not have a state waters fishery.

I can probably speak for midway through New Jersey down through North Carolina, there is very little opportunity for any state waters fishery. Given that, any additional harvest, as I understand it, will add to this overwhelming overage that we already have. I would urge states that do have that access in state waters to consider the impacts of that additional overage on the states to the south. We're already going to be closed. Thank you.

MR. O'REILLY: I support that premise and also I would think that maybe this year there would be fish in some of those locations where typically Wave 6 is

rather modest. There certainly should be encouragement for states that can't close. I know it can be complicated, and I did hear you, Mr. Chairman, about the notification process, but I think that every state has sort of very active advocacy groups and they would want to know what further penalties would incur by not closing.

CHAIRMAN SIMPSON: Okay, are there comments or thoughts on this subject? Toni.

MS. KERNS: One more thing for clarification purposes, and it may sort lead us into the discussion for the next agenda item. The commission's plan for the recreational measures are for the current fishing year. We have the addendum and it expires at the end of the year. Depending on how the board moves forward for the 2013 fishing year, right now the commission is not open during January and February.

Some states will need I think some guidance on whether or not they're going to have to close that fishery for their state waters or allow it to be open. I know that there are some states that have gone ahead and opened their fishery for January and February. The reason why they started that process is because their administrative process does take a significant period of time, and they wanted to be able to respond to that opening if it was available to them.

I know Delaware is one of those states that need the longer timeframe to administratively open their fishery. I have been informed by those states that are in the process of doing that, but they can close very quickly if need be.

MR. JOHN CLARK: Mr. Chairman, I would just like to clarify what Toni said. Our process took so long that we used an emergency regulation to open on May 19<sup>th</sup>. Our process to get a real regulation in place we wanted to match the federal rules so we included the January and February season. We just got it published I think just in time to stay open for the additional few days in October. Now it is kind of tough if we're going to be closing again on November 1<sup>st</sup>.

MR. NOWALSKY: Mr. Chairman, I heard the comment earlier that obviously the science is an issue here specifically with the black sea bass. As was indicated and as Chairman Robins said, every component needs to be looked at. Our process for managing all of these recreational fisheries, summer flounder, sea bass and scup, needs to be looked at.

If we're going to open the box here, we might as well open it and make sure we've got all the right parts in and that they're all in there in the correct manner. When you look at a fishery where on the scup we're 75 percent underharvesting and sea bass we're 100 percent overharvesting, that to me represents a real issue with how we're managing things.

I think to sit here and say that science is going to fix this or the Service is going to come up with some solution, I think we're really burying our heads in the sand on that issue and we've really got to look at how we're managing these fisheries using the data we have. The presentation we got yesterday indicates that we're still a couple of years away from having precise data.

When we go back and look at some of the comparisons, black sea bass in particular shows confidence intervals of swings of a half a million pounds of fish, meaning the estimate that what we landed recreationally, using the tools we have, is within 500,000 fish, and that is substantial when we're talking about landings in the million to a million and half fish range.

The tools we have simply don't support the mechanisms we're currently using, and we all have to find a way, working together, to do a better job with the management tools that we have and finding better ways to use the data we have.

MR. FOTE: And when we look at the cut off of days and closing of seasons, we understand what it is when you basically reduce the commercial quota; but to get the real facts of when you start reducing the season and when the tackle stores, the partyboats and charterboats and the private boats don't go out to fish, the economic impact of those is in tens of millions of dollars.

One time we figured out I think it was a couple hundred million dollars when we did a fluke closure the way we did it a couple of years ago. We're supposed to put the economics together and we really have it. You cut down the EEZ right now; some states spread out their season to fill in gaps, so we did the sea bass to cover when the summer flounder season is closed.

Now they're going to be both closed at the same time, so what are boats supposed to do? I know a few captains are here and they're going to discuss that a little later. As somebody pointed out to me, the Philadelphia newspaper, the big headlines was black

sea bass opens November 1<sup>st</sup>. I mean it is in today's paper.

It is like, okay, now we're going to have to make sure we basically get the word out. It is very difficult for people to plan. The impact is not in just millions of dollars; it is in tens of millions of dollars and probably along the coast hundreds of millions of dollars. We're not spending the necessary funds – I'll get on my soapbox – since '94 when we put this plan in place, and I said when are we going to get some true statistics on scup and black sea bass. I'm always concerned that we're still sitting here 18 years later and we still haven't done it.

And even when we do it, I'm looking at Tier 1 and Tier 2 and Tier 3 and Tier 5; and if summer flounder is our poster child for information and it is still listed as a Tier 3, I don't know what you will ever do to get anything to a Tier 1 when we could actually fully utilize the quota or how do you move from Tier 4 to Tier 3.

It just doesn't give me a lot of hope in the system that we're going forward to unless we make some major corrections and some major funding. And looking at this budget from the federal government, that is not going to happen; and looking at the state budgets, it is not going to happen, so we're just going down a primrose path to I won't say where.

DR. PIERCE: I have got a question for the Service. It is my understanding that party and charterboat fishermen have purchased black sea bass as part of the auction, the research set-aside, the auction; therefore, they're able to fish with certain exemptions because it is fish purchased through the auction, the research set-aside.

The question is – and I don't know how many black sea bass were purchased by how many party and charterboat operators, but, of course, they buy it, so would party and charterboat operators or any individual fisherman who might have bought fish through the auction; will they be allowed to fish in federal waters during this closure because of the manner in which they acquired their black sea bass or are they also prohibited from fishing in those waters?

CHAIRMAN SIMPSON: Okay, thanks, and by extension a federal permit holder, could they even fish in state waters? Bob.

MR. ROSS: That is a good question. To be honest, at this time I don't have an answer for you. The only

thing I can do is get back to you as soon as I get that information from my office.

DR. PIERCE: Thank you, Bob, that needs to be addressed since obviously as we move forward into the next few years with low quotas, assuming they don't change, the demand for black sea bass on the auction would be rather high, I think.

Most people I think know my position regarding the use of the research set-aside, the auction specifically by recreational fishermen. That was never the intent of the research set-aside, but that is the way it is being used. We need to know because of its implications for 2013 and beyond.

CHAIRMAN SIMPSON: Okay, thanks, David. Yes, logically – and that's all I'm applying to it – is doesn't – RSA is separate from the RHL so presumably it shouldn't count toward it, but I think they are going to have to think about that issue. This is the first year that we're dealing with the ACLs, AMs and all of that. Louis.

DR. DANIEL: Just a comment, really, that we knew this was coming. The commercial guys have been dealing with this forever in the closures that they've had. They have been telling us for the couple of years that these ACLs and AMs are going to result in closures of the recreational fishery.

I can't imagine anybody is that surprised about it, and it is just going to get worse. Particularly what we're seeing in the South Atlantic; it is devastating the headboat industry in the South Atlantic, and there is nothing we can do about it. I think this is just the beginning of these issues as we move forward.

CHAIRMAN SIMPSON: Yes, I'm afraid of that, too. Adam.

MR. NOWALSKY: Mr. Chairman, I certainly agree with Louis' viewpoint that it is happening all over. All you have to do is search for accountability measures in the Federal Register and it seems like every week there is another instance of them being utilized. With regards to the comment of their being nothing we can do, I wouldn't agree with that.

Specifically what I wouldn't agree with is that we can't get rid of accountability measures ourselves, but what we can do is find proper ways to work with the council and the Service that they be utilized. I think the greatest example of that is that we already – I have argued for a long time since this issue came about is that by changing our size, season and bag

limit every year, the recreational fisheries are already subject to accountability measures.

In fact, in the northeast, when they implemented Amendment 16 for groundfish, that is the accountability measure that has been accepted by the Service; modify size, season and bag limit. I have to ask if we already have the accountability measures implemented as changing size, season and bag limit, which has been accepted by the Service and New England Fisheries, why do we need recreational pound-for-pound repayment as an accountability measure?

I would submit that we as a commission work to find ways to implore the council and the Service to revisit that topic. It is simply something that is unnecessary to achieve the mandates of Magnuson for incorporating accountability measures. That would be my suggestion as something that we do; find a way as a commission, work with council and Service to revisit this pound-for-pound repayment provision.

CHAIRMAN SIMPSON: Thanks, Adam. I think we have had a pretty good discussion of all the implications of this and we heard early on from both Rick and Bob that they are working on it. It is a new and very large-scale problem for everyone involved. I think we do have to give them a little bit of time to be able to clarify the answers and the path forward.

I think we have had a very useful discussion of, but clearly we can't resolve anything here on this today. It is a Mid-Atlantic Council/Northeast Region problem particularly now to work out. I think I'd ask if we could move to the agenda item, which is quite related, and that is to consider initiating an addendum to allow for management tools other than coast-wide measures for black sea bass. We have done this each of the last two years with one-year addendums. We certainly need to consider whether we want to do that again this coming year. Toni, do you want to discuss this?

### **OVERVIEW OF 2013 RECREATIONAL MANAGEMENT PROCESS FOR BLACK SEA BASS**

MS. KERNS: One of the reasons why this is coming forward – we didn't extend the addendum last year for more than one year – is we anticipated that the amendment for the Mid-Atlantic Council would have captured measures for 2013. The board and council asked the FMAT to go back and so some more work on that amendment and so therefore it will not capture measures for 2013.

The plan development team thought it would be prudent to bring this up to the board so that we're not scrambling at the December meeting and having to have conference calls at the beginning of the year to work on measures. I realize that with uncertainty for next year, there may still be a little bit of adjusting numbers and such; but if the board does wish to move forward with this similar type addendum for 2013, the plan development team can at least start to work on that for you with direction of how you would want to utilize the tools in the toolbox under conservation equivalency for 2013.

**MR. NOWALSKY: Mr. Chairman, I will get the ball rolling by making that motion that we initiate an addendum to allow for management tools other than coast-wide measures.**

CHAIRMAN SIMPSON: Pat, is that a second? Is there discussion on the motion? Adam, go ahead.

MR. NOWALSKY: One of the items I would specifically request the PDT take a look at is the use of multi-year averaging of recreational landings data. We've heard already that the council, through the omnibus amendment, and accepted by the Service to go ahead and average multiple years of data for calculating overages.

I think that when we look at the precision that MRFSS/MRIP currently offers us to continue to use on a single-year basis is just purely an example of a way that we can do something better with the data, and I would like staff to evaluate a multi-year averaging of data for at least that we could we take a look at and make a decision if this may be a better way to use for all of our fisheries that manage recreationally.

CHAIRMAN SIMPSON: Okay, thanks, Adam; I am sure they can do that. I am not sure of the implications under federal rules and the very rigid process that we have now for setting limits, but I think all these things need to be thought about and revisited. Toni.

MS. KERNS: Clarification; so then this addendum does not just address black sea bass; the board wishes for it to address summer flounder and scup as well?

MR. NOWALSKY: Well, I believe the initial discussion was with regards to black sea bass. Since we already have conservation equivalency in summer flounder and since we already have mechanisms for dealing with scup on a state-wide basis, so I don't believe this specific motion did. The request I was

making, though, for that evaluation to be brought forward for all of the species. When you're doing the evaluation for this addendum, if it could be applied to other species, I think that would be useful to us as a board.

CHAIRMAN SIMPSON: Yes, and I think that is a good idea because done for the three species and a little bit retrospectively it might tell us about what might have been decided had we used this averaging tool versus the single year. Pat.

MR. AUGUSTINE: To that point, the reason I seconded it is because I wanted to get further clarification. If we go down that road where we consider other species and other management tools, it just better be for black sea bass.

CHAIRMAN SIMPSON: This would just be for the technical committee to do some work on. It is not part of the motion to initiate an addendum.

MR. AUGUSTINE: Because I could see this thing going down a part of 28 addendums and amendments and options and falling flat on its face. The real question is how successful does the board believes that the state-by-state effort has been. The second question would be did the technical committee think that the reports are any more accurate?

The concern always was that the data we had, as it were, was not really adequate to give us a good picture as to what our state-by-state quotas should be, and then all of a sudden we said, well, it would be better, so we do it, and we did the state by state. The committee was only talking then about best for regional management. We went from coastwide to regional; regional we went to state. Unless the state by state is working, I would prefer to really look at only limiting the motion to say regional, so can I get an answer to that, please.

CHAIRMAN SIMPSON: I think that is your purview here; you're initiating an addendum to consider something other than coastwide and so you can provide a list of alternatives that we'd like to see or conversely alternatives we do not want to consider.

MR. AUGUSTINE: But, coastwide may be one that I would not want have in that – I'm sorry, state by state may be one I may not want in that, so that is why I seconded it for discussion purposes to see how the discussion evolves through the board members.

CHAIRMAN SIMPSON: Right; so I think we would do well to kind of flesh out some of the options that

we would like to see included and not included in the next couple of minutes here.

MR. GILMORE: Mr. Chairman, I won't go into any discussion on my great love for state-by-state measures because it has been so great for New York particularly on summer flounder, but from a more practical standpoint; you know, black sea bass, we just in the previous discussion discussed how complicated and how much work we needed to do figuring out how we're going to manage it. Right now in terms of what we need to do for next year, I'm interested in being more simple about this and also taking some workload of staff for putting another addendum together.

I'm going to vote against this motion simply for that. I think we don't really need to consider an addendum for anything but coastwide right now because we've got enough to figure out and again staff could use the time to maybe spend their effort working the issue of the ACLs, the AMs and all that other stuff we need to do. Thank you.

CHAIRMAN SIMPSON: Okay, that is good point, Jim, thanks. Tom.

MR. FOTE: I'm trying to get my head around this. The problem is the way we have the regulations now, we can basically do seasons differently than other states. So states that basically said, well, we will save our black sea bass for November and December and all of a sudden getting shut out of the fishery before the fishery even opens in federal waters, where states that took advantage in August and kind of pushed over, it basically puts us up the same way Louis was talking about spiny dogfish or large coastal sharks earlier today.

I think we're going to have to look at how we do closures and how we do openings. If we're going to do coastwide, then maybe we need to have the same kind of seasons in this mix if you don't want to go the other way, Jim. I mean, that is my concern here is you're trying to fix your season so you have things open at the same time and other states are working it differently, and all of a sudden you pay the consequences of waiting to have it in the last part of the season and all of a sudden get shut out. Especially like New Jersey, a lot of our fishery is in federal waters; so how do we handle that problem if we don't go state by state. I know there has got to be a solution somehow but that is what I'm looking at.

CHAIRMAN SIMPSON: Okay, to make sure I understand the question and the implications here,

I'm asking Toni and maybe others could help; you know, before you can divide up something you have to have something, and I'm just trying to remind myself how the commission determines in this case the 2013 recreational harvest limit; so what is the number next year?

Is it the number we already decided on in August, I guess, or is it – pending any change, I guess it is what we decided in August, so I think I'm answering my own question. We would have to make a change to move from the 1.2 million pounds or whatever it is.

MS. KERNS: The RHL for 2013 is 1.69 million pounds.

MR. LUISI: Mr. Chairman, with respect to Mr. Gilmore's concern about staff time and other issues and maybe getting to the point where we get back to the basics here with coast-wide measures, I do feel that having more tools in the toolbox is something that we can't afford to lose. It is important that we have options and we have different ways to look at our regional or state-specific fisheries.

There are differences between the different states. There are access differences and the available fish. The access to those fish, the effort rates, there are differences that we need to address. I think by moving to initiate this addendum, we're adding more tools to that toolbox for consideration in the future, so I would support the motion. Thank you.

MR. O'REILLY: Yes, I support that information Mike just gave you, and I would also say that I think this event would have occurred regardless of the management frame, and at the same time it is really new on the AMs for this process. We haven't seen how that is settled out yet, but guaranteed it is going to settle out in a penalty somewhere.

The other part is we know with the addendum that is about to sunset, that it had one year where it did very nicely, too nicely in fact, it did too well because the states then had to come back and do the great liberalization process and that didn't work. I wouldn't judge the performance of the addendum over two years as an indication that we should abandon the state-by-state or the state process, but what I would think is we do have to open up the toolbox.

The technical committee may not have need to do more work, but the process at that end certainly needs to look at things such as year class strength, which we went through with summer flounder, regional

versus area – you know, narrow areas. Anything that can be looked at from the combination of the assessment that gives some information on a coast-wide basis versus surveys that give a more local basis; that should be taken into account.

I think a lot of that was part of the summer flounder process, but at the endpoint no matter what happens there is still going to be this situation of using recreational data and trying to figure out with a limited number of parameters how you get the best fit for the upcoming season. That won't change no matter what we do. I do support the motion.

CHAIRMAN SIMPSON: And just to make sure we provide useful guidance to the folks who are going to work on this, it occurs to me that the tools that we have used recently and go to historically are some form of regional management, state by state; or as we've done the last two years, characterized it as sort of an ad hoc or a negotiated approach where the states, after the end of the year, look at the landings, put their heads together on the fairest way to manage what is available might be.

I would offer those as suggestions for things to provide guidance to the technical committee should this motion pass. If there are different thoughts about that, I would like to hear to them. If there is something you would like to add or take away, we would want to do that now so the technical committee knows what to work on for us. Tom.

MR. FOTE: I don't think it was negotiated. It was basically voted on. How that happened; there was a lot of dissension on what happened in 2010 as far as New Jersey was concerned when we looked at how we divided up black sea bass. You remember it came down to a vote and a lot of states abstained and it was the north against New Jersey. I'm just refreshing your memory on that was not really negotiated.

CHAIRMAN SIMPSON: Yes, you could see I was searching for the right word to describe it, but it was not formulaic. It wasn't New Jersey gets 22.5 percent and Connecticut gets some other percent, but the effort was to try to be as far as we could to all the parties involved. It is never perfect. You see the dilemma we're in going ahead because we already discussed this in August.

One scenario using history gives, was it, Virginia about a third or half of the quota. Another one gives Massachusetts about two-thirds of the quota. It just completely flip-flops and you know what the distribution of the population was this year. That is

what brought us to the decisions we made in the last couple of years. We saw the Mid-Atlantic's two southern states catches fall well behind; a minimum size for coastwide wasn't going to work for everyone; so we worked through a difficult issue; whatever term you want to use for that. Tom.

MR. FOTE: I was just looking at New Jersey's discards for this year and that discard rate, and we went from – we keep increasing the size and we basically throw more fish back; and if we basically hadn't thrown all those fish back, we wouldn't be in some of situations we are because looking at the huge amount of discards you are now getting in New Jersey once we moved to the 13-inch size limit.

So would those boats be quitting and coming back faster if they loaded up on their fish and wouldn't be out there at 12 inches and wouldn't be pounding those fish over and over again until they get a legal fish they can take home. That is another problem that we're dealing with and we deal with that at all fisheries when we start putting the discard rate as high as the catch rate.

CHAIRMAN SIMPSON: A good question Toni raises is the duration we're anticipating for this addendum. Is this for 2013 only again or is it a multi-year – keeping in mind that the Mid-Atlantic Council is working on this same question of the overlapping times. I won't say the same time. My thinking is that it is 2013 only unless I hear differently. That is what we have done the last two years. Adam.

MR. NOWALSKY: Would there be an option to make that option in the addendum so that as we see how things unfold over the next three to six months we would have that ability to decide how best to proceed?

CHAIRMAN SIMPSON: I think that is fine; we can consider it both ways. I am going to try to move this along a little bit. If there is any objection to taking that approach, I would like to hear it. Otherwise, we will consider including it in the development of the addendum. Is that fair to everyone? Are there any other thoughts on this motion? Is there anything else you want to add or clarify before we vote on it?

MR. CLARK: Dave, I know you asked what are these measures other than coast-wide measures. Are we pretty much just talking about state-by-state management if we're not doing the coastwide?

CHAIRMAN SIMPSON: As I've suggested, regional, state by state and what we have done in the last two years, however you want to characterize that. Roy.

MR. ROY MILLER: Mr. Chairman, I kind of object to the wording of this. It says "move to use coast-wide measures". Move to consider use of coast-wide measures; isn't that what we're really doing because the no action alternative would be the status quo.

CHAIRMAN SIMPSON: Right; and it does read other than coast-wide measures so we develop an addendum to consider doing something besides coastwide. Status quo would be coastwide. The full addendum will consider options of coastwide, state by state, regional. Are there any comments or discussion on this before we caucus on it? Is there any comment from the public? Yes, sir.

MR. MONTY HAWKINS: Monty Hawkins, Ocean City, Maryland. I would like to strongly support the motion. The spawning site fidelity in the black sea bass is evidenced by four different tagging programs. I think for fishery management to actually move forward on this species, you have got to recognize the need to manage based on equal regional spawning stocks.

Mr. Chairman, I would also urge you to consider the apparent expansion of the sea bass into more northern waters. If you look at Musick and Mercer's 1977 study, they have sea bass stopping at the northern end of Long Island and Block Island. Now you're even showing catching it in New Hampshire.

As a result of almost 25 years of artificial reef building, I know that when we build an artificial reef we expect an increase in the number of fish. We expect habitat production to occur especially after a three-year period. Now you have the entire Granite Coast in the sea basses habitat range. How could it not produce sea bass? It has to produce sea bass.

Folks, I promise you, I have catches in 1991, two-days catch; there was more than the whole state of Maryland caught in all of 2012. Two-days catch on boat was more than the state of Maryland caught in all of 2012. I promise you that we're not overfishing. It's management. We have got to figure out – we've got to get down to equal regional and we have got to be able to turn these fish loose. When you manage for production, we'll have far greater economic stability. I believe my economic stability is about to go out the crapper here right now. This closure is

going to really hurt me. Fall is my time of the year. Thank you, sir.

CHAIRMAN SIMPSON: Okay, thanks for your comments. Take a moment to caucus and we will vote on this motion. Is there another comment; go ahead, I didn't see your hand.

MR. EDDIE YATES: Mr. Chairman, my name is Eddie Yates. I own a charterboat in Barnegat Light. I also represent United Boatmen in New Jersey, which is a fishing organization of party and charterboats. To go with this gentleman over here, Louis said, I got that letter in the mail about how good your sea bass fishing is because you're closed until next June in the recreational sector. I also got one from the commercial sector.

The notes that I have been getting, the releases I have been getting from the ASMFC Board shows that we're 111 percent of the biomass, the stock. Now, I'm just dumbfounded why our bar isn't getting raised. We're still stuck at this 2.1 million pounds or 2.3 million pounds to share between two sectors.

We should be working off of three or four million pounds and we wouldn't have this issue. These letters show me that this stock of fish is from Key West to Massachusetts, in state and federal waters. I don't understand why we're still working with this low bar and having all these problems.

I think if we raised the bar some and maybe we can cut down on the discards with the size limits being lower again. I can't tell you how many thousands of fish I've thrown back between our spring season and the season that just closed Sunday, a week ago. Now, I'm the guy that has that paper, front page of the sports section, Philadelphia Daily News today, I'll leave it here for you to look at, "Sea Bass Season Reopens November 1<sup>st</sup>." 200,000 copies of these are on the street. My members' ads are in here, "Sea Bass Opening November 1<sup>st</sup>".

I mean, if Washington wants more people on food stamps, our people are going to be on them soon because we are just about out of business with this. I know you people do the best that you can with the mechanisms that you have. It starts up here in the National Marine Fisheries Service to add more fish to the stock, in my opinion. Now, please correct me if I'm wrong. Thank you very much for giving me the time to speak. I will leave this paper here because there are some interesting fishing reports there.

MR. DICK BUNTING: I'm Dick Bunting. I am a partyboat captain down in Ocean City, Maryland. I just want to make it real quick. Something has got to change here. It is just like what this gentleman up here just said. I was in a position where sea bass was going to open November 1<sup>st</sup> although we had the suspicion that it was going to remain closed.

Fortunately this time we were able to put out advertising that said that, yes, we were going to go – you know, we were planning on fishing, but we didn't take any deposits. Thank God, we didn't because, you know, even when we take deposits on trips, to give that money back it still costs money. The credit companies, they're not letting you use that machine for free.

The other thing is in Maryland we have pretty limited species what we can bottom fish for. We primarily fish for sea bass. That is what we have. We do have flounders are mostly caught in the coastal bays. We do catch some in the ocean. The other species that we have is tautog, and that is what I'm going to be forced to fish for in the month of November, and Monty is going to be doing the same thing, and we're going to be putting a lot of pressure on a species that we have a lot of questions about.

We have already had to see an increase in size limits for that. Next year with the sea bass season, with the overages that they're saying that we have, how much more pressure are we going to put on tautog? It is just bad management. I mean you multiple species that seem to be doing well and yet we're not allowed access to them, so they put more effort on species like tautog and which we know that there are issues there on stock and how many there are and how long they live.

We're going to put more pressure on them and wipe them out. The point I guess I'm trying to make is where does this cycle end? When are we going to start giving back some of the fish that we paid the price for? It is something that we've heard for years; pay the price now and it is going to pay off in the future. Well, I'm still waiting for it to pay off. That's it.

CHAIRMAN SIMPSON: Thanks very much. Not seeing any other hands, if you can take a moment to caucus and then we will vote on this motion. Okay, do we need anymore time to caucus or are we all set? Okay, I'm going to call the question.

All those in favor please raise your hand, 10 in favor; any opposed, none; any abstentions, none; any null

votes, 1 null vote from my neighbor. **The motion passes ten, zero, zero, one.** Toni, will go over the timing of the addendum and then we will see if there is any other business.

MS. KERNS: The plan development team will draft an addendum to present to the board and I will make the request to the Mid-Atlantic Council if we could present this during our joint meeting with the council. Assuming that if the board wants to move forward with this, then we would vote for conservation equivalency at the council meeting for black sea bass.

We would do hearings through the wintertime and bring forward a final addendum at the February commission meeting. When the plan development team first drafts this document, it will likely not have the percentages that would need to be reduced, et cetera, because I'm not sure we will have those final Wave 5 estimates. In the past we have put the Wave 5 estimates in and those estimates likely will not come until right about when the council occurs. If I can get them in prior to the council meeting, I will; but if not, it will be added in prior to release for public comment.

MR. NOWALSKY: One other comment, Mr. Chairman, if I may ask that when we go through this, if we could include – you know, I'm assuming that there is going to be a press release on this from the commission – if we could include the stock status to make sure that people who look at this understand that this fishery is not overfished and overfishing is not occurring.

If I recall, the information we had back in August, the overfishing level on this stock, even though the council's SSC chose not to use it, was in the 7 million pound range, which we are nowhere near. Even with the removals that we're at, we're nowhere near that level. I think that is something important and I want to make sure it is in the record here. Anybody from the public looking at where this commission is acting, we're taking action that is responsible in the realm of conservation.

CHAIRMAN SIMPSON: That is a great point, Adam, and we will make sure it is included in the press release. David.

DR. PIERCE: Getting back to the earlier presentation given by Toni, Toni indicated that you're putting together a memo for the board regarding all of the data you gave us at the beginning of the presentation. When might we have that memo?

MS. KERNS: I will get it out to the board next week.

CHAIRMAN SIMPSON: Okay, is there anything else before the board today? Pat, can you give us a motion to adjourn, then?

MR. AUGUSTINE: So move.

CHAIRMAN SIMPSON: Mike, is there something else?

### OTHER BUSINESS

MR. LUISI: Mr. Chairman, in all due respect to your previous decision to move on from the discussion we were having about state waters and what actions might be taken in state waters, I was still chewing on Mr. Fote's comments and didn't get my hand out just like I almost did a second ago. Would you entertain going back to that for just a quick second?

The points I made earlier regarding how some of the southern states are going to have to deal with our state waters staying opened; however, the fisheries will be closed. I think the point has been made very clearly around the table here today that we're looking down the barrel of a gun and this is a very serious problem and a very serious issue that we need to take into consideration.

From what I hear, it is not very clear whether or not the accountability for these overages this year is going to come in 2013 or 2014, but what I do see is that any additional harvest at this point is going to further exacerbate whatever issue that we have to face in those years. I had previously urged the states to consider closing their waters. However, I feel as far as taking this as an action, Mr. Chairman, **I would move that states initiate any and all applicable regulatory actions to close state water fisheries for black sea bass in 2012.**

CHAIRMAN SIMPSON: Okay, is there a second to that; Rob. Let me clear on the nature of this motion. Are you asking for emergency action by the commission or are you asking for something more of a resolution for states to go back and do whatever they can to close their fisheries during 2012 as soon as they're able?

MR. LUISI: I certainly realize the complexities of each state and everybody deals with it differently. In Maryland we can close our fisheries in 48 hours' notice through a public notice. I do also realize communicating to the public is another issue in making sure the message gets out, so I do appreciate

that. What I'm looking for here would be for states, when they leave the meeting here today, to go home and do whatever they can within their regulatory power to close these fisheries down before the end of the year to stop the bleeding, to put it simply.

CHAIRMAN SIMPSON: Okay, is there discussion on the motion? Tom.

MR. FOTE: Since it is really not an action and you're just asking the states, I don't really feel the necessity for a motion. I think we're all going to go back and do what we can, but there are a lot of us that are not going to be able to do the shutdown in a timely manner.

I don't really think a motion, because then you're basically saying, well, you didn't comply or you didn't do something. I think it will be the sense of the commissioners that we basically would do everything we could and just leave it at that. But you put it in a motion, it means like you're supposed to do something, and some the states are not going to be able to do that.

MR. MILLER: Quickly to Tom's point; some states like ours in particular would find itself in a difficult position unilaterally closing a fishery when it was not a requirement of an ASMFC plan or addendum or action. We need that ASMFC guidance, if you will, and we would not have the ability to do it strictly on our own. Thank you.

MR. O'REILLY: Yes, that is exactly what I was thinking that the ASMFC has to be behind this regardless of how it turns out on a state level. There has to be support.

CHAIRMAN SIMPSON: I'm sorry, Rob, could you restate that for me?

MR. O'REILLY: Yes, there has to be support from the ASMFC that the states can see regardless of whether some states have an intractable position in terms of closing. I think that will mean a lot around the coast, that the ASMFC recommended this.

CHAIRMAN SIMPSON: Okay, so this would be in the form of a recommendation that the board recommends that states go back and use whatever regulatory tools they have to close their fisheries before the end of the year for the reasons stated; is that fair, Mike?

MR. LUISI: Yes, if I didn't say it that way, that is what I meant when I made the motion.

CHAIRMAN SIMPSON: Yes, that is how I read it. I think it is clear in the record that you're not asking for emergency action, which requires a specific process. Toni is suggesting that maybe the term "recommend" or "recommendation"; but I understand it – the states initiate any all applicable regulations to close state recreational fisheries for black sea bass, and it is understood that this is not a commission mandate but basically the sense of the board that states should take whatever action they can to mitigate our problem for 2013. Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: I think just for clarity you want to slip the word "recommend" in there; just because this is going to be a stand-alone motion that will go in the meeting summary and those sorts of things and people may not know exactly what it means.

CHAIRMAN SIMPSON: Are you okay with adding "recommend", Mike?

MR. LUISI: Mr. Chairman, yes, as long as it is like you just said it; this board is recommending that states go back home and try to do the best they can to close their state waters. That is the intention of this.

CHAIRMAN SIMPSON: Okay, are there comments on this? David.

DR. PIERCE: I understand the motivation behind the motion. It makes a lot of sense; however, it is a bit awkward for those states that are still open, that implemented rules and regulations that they were advised would keep them within the bounds; that is, they get the necessary percent reduction in their catch in 2012.

This particular motion wouldn't affect Massachusetts. We close at the end of October, but I can certainly sympathize with those states that on good faith did implement recreational seasons based on technical advice that it would be okay. And now, of course, that is not the situation. In addition, if any state was to go back home and try to close the recreational fishery, it puts that state in an awkward position since I don't think anybody around the table believes that the numbers are accurate; that indeed they reflect what is actually out there for abundance of black sea bass.

We're all being ruled by an extraordinary, precautionary quota that was set by the – well, the SSC initiated it and then the Mid and then we had to concur. I understand the motivation; it makes sense. If this was a recommendation to me, if I was open I

wouldn't favor it and I wouldn't go with it because of all of the implications of doing so.

Because Massachusetts is not affected by this – well, it depends upon my colleague, but I certainly would want to abstain on this because it would be inappropriate for me to recommend to a state that it take that kind of action when in all good faith they did what they were supposed to do last year for this year.

CHAIRMAN SIMPSON: Yes, because I think the important part is you need to have a sense of what states are able to do, what they're willing to do and so forth. We may need a little bit this that I'll share for Connecticut. The only authority we could use outside of a commission mandate that would be timely would be if we could successfully argue that a stock is threatened with undue depletion, and that is not the case here. I wouldn't forward that argument to my commissioner. We don't have a mechanism to do it.

The other thing that I pointed out a couple of times is that our law enforcement has made it very clear that regulations once published in our anglers' guide are the rules for the year, and they will not enforce anything that is more restrictive than that because they simply can't that case stick. You can expand a season, someone may lose the opportunity they weren't aware of, but you can't make an arrest on something that they have published information that says, no, it is open. We would not be able to do anything in Connecticut. Jim.

MR. GILMORE: Actually a lot of the points I was going to make were kind of covered between Dave and Dave. My plan, Mike, was to go back and essentially assess what the impact is to the fishery and what is going to happen next year. As Rick Robins has discussed, we need to figure this out because this isn't a black and white issue.

That motion concerns me because – even recommendation helps a little bit, but it is still making sort of a decision that we're going to go close our fisheries, and I don't know if that is the best idea right now. If it turns out after we go through this in New York and that makes sense, I've got to do the same thing Dave has.

To do that sooner, I have to go to an emergency and I have to have some really good reasons why I'm going to do an emergency and having a fishery that is in good shape, that this is a management issue, is not

going to fly very well, so I don't even know if I will have that opportunity.

I understand the spirit of what you're trying to do and we're going to close down if we can, but I'm really concerned about this motion because I've already gotten a bunch of press calls on this and now I've got a motion that I'm supposed to closing the fishery down. I want to make sure I don't have something that I'm either ignoring the commission or whatever, so I'm probably going to vote against it, but I understand the theme of it. Thanks.

MR. ROBERT BALLOU: Mr. Chairman, I'll just say that Rhode Island would offer the same sentiments that were just offered from Massachusetts, Connecticut and New York. I appreciate the sentiment of the motion from the southern state perspective. You offered the hope that we could do the best we could.

What I can offer back to you is the best we could do in Rhode Island given our Administrative Procedures Act – and I just thought this through my head – is probably enact against a lot of political – with a lot of heavy lifting involving we could probably get something in place by the end of December, and it just strikes me that would be a foolish thing to undertake, so I just can't see supporting this motion because of the impracticality of being able to implement it. Thank you.

MR. NOWALSKY: Mr. Chairman, I'll just also add that again while I appreciate the intent, I would oppose it on two bases. One is I think it sends the wrong message. I think that we're basically giving recreational anglers tickets for driving 55 in a 55 mile an hour speed limit, and that is what we have to address.

But with regards to what does this actually mean when we're looking at the landings data that we have been using over the last five years in the Mid-Atlantic, Wave 5 and 6 sea bass landings have been at a low of 1,414 fish to a high of around 50,000 fish, and most years seem to be in the 10 or 12,000 fish range for Waves 5 and 6 in the Mid-Atlantic.

MR. ROSS: I would support this motion. I understand the difficulty involved, but I think again the spirit of the board here would send a message that we know that the data is preliminary and yet we see a significant overage even at this stage. We're still waiting for Wave 5 information. I think this would be an appropriate motion to support. Thank you.

MR. FOTE: I could support it if I believed that the quota we set last year or the year before from the SSC was the right quota to be set. Since I have not supported that in a long time and since I basically have complained about us being frozen at an overfished definition with overfishing quota, that is why I can't support the motion. I don't support what is going on with the management of black sea bass. I think it is a shame and it is also criminal. That is why I couldn't support the motion. (Applause)

CHAIRMAN SIMPSON: Okay, I was going to ask for comment from the audience but I think I just got it. I'll give you a moment to caucus and we will vote this up or down. Okay, the motion is move that the Summer Flounder, Scup and Black Sea Bass Board recommend that states initiate any and all applicable regulations to close state recreational fisheries for black sea bass in 2012. The motion is by Mr. Luisi and seconded by Mr. O'Reilly.

All those in favor please raise your hand, five in favor; opposed, six opposed; any abstentions, none; any null votes, none. **The motion fails five to six.**

## ADJOURNMENT

Is there any other issue for the board today? Then I believe we're done. Motion to adjourn. We are adjourned.

(Whereupon, the meeting was adjourned at 2:35 o'clock p.m., October 25, 2012.)