

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

May24, 2004
**Radisson Hotel
Alexandria, VA**

ATTENDANCE

Board Members

David Pierce, Massachusetts DMF	Bruce Freeman, Chair , New Jersey DFG&W
William Adler, Gov't Apte. (NY)	Rick Cole (DE)
Vito Calomo, proxy for Rep. Verga (MA)	Howard King, Maryland DNR
Jerry Carvalho, proxy for Rep. Naughton (RI)	Bruno Vasta, proxy for Bill Goldsborough (MD)
Gil Pope, Rhode Island Gov. Apte.	Russell Dize, proxy for Sen. Colburn
David Borden, Vice-Chair , Rhode Island DEM	Jack Travelstead, Virginia MRC
Jerry Carvalho, proxy for Rep. Naughton (RI)	Kelly Place, proxy for Sen J. Chichester (VA)
Eric Smith, Connecticut DMR	Preston Pate, North Carolina, DMF
Fred Frillici, proxy for Sen. Gunther (CT)	Damon Tatem, North Carolina, Gov. Apte.
Gordon Colvin, NYSDEC	Harry Mears, NMFS
Pat Augustine, New York Gov. Apte.	Jamie Geiger, USFWS
Tom Fote, New Jersey Gov. Apte.	

Ex-Officio Members

David Simpson, Tech Chair
Rob Winkel, LEC rep.

ASMFC Staff

Vince O'Shea	Toni Kerns
Bob Beal	Carrie Selberg

Guest

Paul Forsberg, Viking Fishing Fleet (NY)
Dick Brame, CCA (NC)
Anne Lange, NMFS (MD)
John Merriner, NMFS (NC)
Byron Young, NYDEC (NY)
Katherine Heinlein-Risi, NYSF/Captree Boarmen (NY)
Mark Dobelbower, NJFW (NJ)
Kenny Keen, MD DNR, (MD)
Bennie M Williams, USFWS (VA)
Steve Meyers, NOAA Fisheries (MD)
Dan Furlong, MAFMC(DE)
George Lapointe, ME DNR (ME)

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Page 8: Move that the Summer Flounder, Scup, and Black Sea Bass Management Board recommends to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure of the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a seasonal closure that is consistent with the coast-wide requirements as established by the management board in December 2003 for the 2004 fishing year. Motion carried on Page 10.

Page 14: Move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the state of New York be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year. Motion carried on Page 16.

Page 16: Move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the state of Connecticut be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure, date to be determined by the Policy Board, that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year. Motion carried on Page 16.

Page 20: Move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with the Scup FMP in that it has not implemented the required management measures for the recreational fishery.

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP.

In order to come back into compliance, the Commonwealth must implement a recreational

management program that is approved by the management board and has management measures that are consistent for all modes of recreational fishing and meets the technical criteria for review and approval of state plans. Motion carried on Page 24.

Page 32: Move that the Summer Flounder, Scup and Black Sea Bass Management Board recommends to the ISFMP Policy Board that the state of New York be found out of compliance with the Summer Flounder FMP in that it has not implemented a recreational management program for 2004 that is consistent with the annual specifications set by the management board.

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a recreational management program that achieves a 48.5 percent reduction in landings in number relative to the 2003 landings by a date to be determined by the ISFMP Policy Board. Motion carried on Page 44.

Page 49: Move that we prepare this document to go out to the public for review and assessment, Addendum XIII to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. Motion carried on Page 49.

Page 55: Move to take emergency action to transfer 1.5 million pounds of Winter I scup to commercial surplus to the recreational fishery for this year, only. Motion failed on Page 62.

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

Radisson Hotel Old Town

Alexandria, Virginia

May 24, 2004

The meeting of the Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel Old Town Alexandria, Alexandria, Virginia, on Monday, May 24, 2004 and was called to order at 1:00 o'clock, p.m. by Chairman Bruce Freeman.

Welcome/Introductions

Approval of Agenda

CHAIRMAN BRUCE FREEMAN: All right, we'd like to begin the meeting. We have a very full agenda. If we don't start immediately, we're not going to get through. I think all of you have received copies of the agenda, and the more recent copy has time lines.

In order for us to conclude our business at 4:00 o'clock, we need to adhere to the schedule, which I will try to make certain we adhere to. There are several items under new business that will take time, and in order to provide time for these to be discussed, we need to begin right now.

There is a sheet being passed around. I

would ask that everyone sign that. We do have a quorum of states. There is no reason to call the roll. Are there any additions or comments to the agenda by any board member?

Approval of March 2004 Proceedings

All right, seeing none, we have the proceedings of the March 11th meeting. I would accept a motion to approve those. Pat Augustine.

MR. PATRICK AUGUSTINE: So moved, Mr. Chairman.

CHAIRMAN FREEMAN: All right, we have a motion to approve those. Do I have a second?

MR. VITO CALOMO: Second.

CHAIRMAN FREEMAN: Vito Calomo seconds the motion. Any discussion on the motion? Seeing no discussion, the minutes are approved.

All right, we do have a period for public comment. I would ask to see hands raised for those who would like to comment from the public standpoint. All right, I see three hands. Since we don't have a large number, I would simply ask you to bear with us.

I will provide time to receive public comments as the issues are addressed. Is that agreeable? All right, we'll move forward. Okay, we're down to Item Number 4, Review of Draft Addendum XII. This is the black sea bass commercial allocation. Toni.

Review of Draft Addendum XII

MS. TONI KERNS: Okay, on the meeting CD, there should have been a copy of the Draft Addendum Number XII, the black sea bass commercial management. Addendum

XII for the black sea bass commercial management, this is the addendum that was asked to be put together at the March meeting for public comment, and this is what I have put together.

Right now we are in the process for the board to review the draft to make any necessary changes before it goes out to public comment in June and July, and then there would be a review by the board in August. The purpose of this addendum is to develop a black sea bass commercial management strategy for the years 2005 and 2006.

Option Number 1 is status quo, to have the annual coast-wide quota managed by the Commission and to have state-by-state allocations. Those allocations would remain the same as that on the board.

Option 2A would be to have state-by-state allocations using alternate-based years. Those based years would be from 1988 to 1997 with the following shares, and the quota would read as seen.

Option 2B would be also having state-by-state allocations but using the best five years for each state with the following shares and quota.

Option 2C would be having state-by-state allocations using the years 1999 to 2002 as the base years with the following shares and quota.

The last option would be Option 3, using state-by-state allocations system to reflect differing management. You could alter these shares to reflect different regulations during the base years. Further analysis from the Technical Committee would be needed to provide tables and shares for this option.

It was expressed from the group from the last meeting that you would like to put out feelers for what the public would like to see in the upcoming years if we actually did an amendment to the black sea bass commercial plan. I went ahead and put out some options that would be kind of an open-ended question for the public to see how they felt about these options.

The first one would be quarterly quotas, divide the quota into a quarterly system from January to March, April to June, July to September and October to December. Then another option could be to have quarterly quotas with a provision to have rollovers between each quota.

Another option would be quota allocation by separate permit categories. We would use a control date to classify participants into categories, and the quota would then be divided into those categories.

Next would be using a hybrid quota system. You could have a coast-wide quota from January through April and then a state-by-state quota from May to December or a coast-wide quota from January through April and a sub-regional quota from May to December.

Next would be a gear allocation system based on historic landings data. The quota would be allocated based on gear type and the shares could be determined by base years.

The next would be implement a fishing mortality-based management system. We are ready to have the management measures designed to achieve target fishing mortality rates, and this would be something similar to what the striped bass has in place.

You could also implement individual

allocations of effort or quota, two options. Under this we could have a days-at-sea option based on separate permit categories and defined trip limits, and we could also have individual quotas based on historic performance.

Lastly or second-to-last would be a sub-regional quota system. You could have two regions, the north and the south. We could also have a quota system based on three regions, the north, the mid- and the south. The quota would be divided amongst the regions based on historic landings for the regions.

And that's it. Again, those last options were just a feeler to see what the public would like to see if a future amendment would be put out there. What we're really deciding on for this addendum are the first three options within the document.

CHAIRMAN FREEMAN: All right, any questions of staff relative to the proposals? Dave Pierce and then Rick Cole.

DR. DAVID PIERCE: Yes, Toni, clearly, we haven't given you much guidance as to what to put into this document. You've done a fine job. However, going through the document, it strikes me that there is a lot in it that is repetitive of that which we brought out to a previous public hearing or set of public hearings.

I forget when it was now, but, anyways, black sea bass management, what to do with black sea bass management. I know I chaired a public hearing in Massachusetts -- it may have been in New Bedford -- where there was good attendance -- it was in Borne, I think -- good attendance.

The fishermen had a lot to say. We went around and around and around, so I

wouldn't want to bring anything back to public hearing that is going to be a repeat or close to a repeat of what we've already brought to public hearing, because it will do one of two things.

It will either bore them to death, because they've heard it all before, or they will be enraged because they're going to hear options that they might not necessarily like, and actually they might violently oppose, and I've been there before on black sea bass management measures, at least in Massachusetts.

So, what in this particular document is new relative to ideas for improved management or different management of black sea bass?

MS. KERNS: What is new in there is the base years which the landings could be based on. The 1999 to 2002 years have not been brought to the public because those years would not have been available until just this year. The rest of the measures are things that have been brought to the public before, but this is what was expressed to be put into the document by the board.

DR. PIERCE: If I may, Mr. Chairman, my preference is for us to make this document as short as we can possibly make it, because, after all, we all know what we want to do, and I think we all know what the vote will be after public hearings, and that is to extend the current system for two years.

That was a clear indication, I believe, from the vast majority of the board members when we discussed it, so I wouldn't want to bog down too much on bringing new information before fishermen in our different states because, as I said, they're not going to appreciate it.

We're going to extend this for two years for

very good reasons, so let's very clearly describe what those reasons are and not give fishermen perhaps some false hope that we might be going in a different direction, because we're not.

Putting out feelers as to how black sea bass management should change once we get two years down the road, I think it's a bit premature to get into that yet. I really think that the board needs to have a lot more discussion with staff and the industry, of course, as to what we should bring to public hearing.

I don't want to have another go-around, another set of scoping hearing on this issue. I just don't want to chair another public hearing like that. It's a waste of my time. It's a waste of the valuable Commission staff time. Those are my initial thoughts on the document.

CHAIRMAN FREEMAN: Okay, Rick.

MR. RICK COLE: My comments are along the same line as David's. It concerns me a little bit that if we included the management options that need an amendment in this document, I'm afraid it's going to confuse the commercial fishing public.

I would prefer to see the options that you have listed here, 1 through 3, as the options to go out to public hearing so that the fishermen understand what we're dealing with at this point in time.

These other options, I think, could be put out in some kind of public venue at a later date, and they'll probably require quite a bit of analysis in order for anybody to really understand the impacts of them. I favor simplicity in this current public hearing document.

CHAIRMAN FREEMAN: All right, thanks, Rick. Gordon.

MR. GORDON C. COLVIN: I had kind of a similar comment to David's as well. I sort of was expecting that what we were really looking at with this addendum was something very simple that was really only looking at extending the current management regime for a period of time until we could go through a bigger process of looking at an FMP amendment.

I was a little surprised to see Options 2 and 3 even that suggest the possibility of changes in the current allocation during this extension period, and, frankly, would suggest that we'd all be best off to simply identify an option that extends the current system, and the alternatives would address for how long, rather than any changes to be made to the current management.

David is correct when he says that any of these options are very controversial, and there will be blood-letting over them if we open those issues up. Better we should do that in the amendment process, frankly, and not this way.

CHAIRMAN FREEMAN: All right, Tom.

MR. THOMAS FOTE: Yes, it sounds like we're all in agreement here, which is unusual, so I won't repeat what Gordon said, what Dave said or Rick, but I agree with their comments.

CHAIRMAN FREEMAN: Well, staff had conversations with various members of the board, some of which had suggested this, and I would ask at this point, is this -- we've heard four people speak to greatly simplify this. Is this the feeling of the board? All right, no comments to the contrary, that will make staff work much easier.

Let me just indicate at the bottom of Page 4 where we talk about those various options, it's more or less looked upon as scoping for the next amendment, realizing that the board had requested at some time to have some different system in place, and at our last meeting it was determined we'll continue what we have for two more years.

It was an effort by staff to try to seek out those options and start working, because they needed to do this during the interim period. But, if it is the feeling of the board to simply have the option of extending it two years and then the only other options would be time periods, that's the way we will move.

MS. KERNS: I'll strike the management options regarding an amendment, and would you like to strike all the options except for Option 1?

CHAIRMAN FREEMAN: Pat and then David.

MR. AUGUSTINE: Thank you, Mr. Chairman. I wanted to commend the staff on behalf of what they put together, the management options requiring an amendment as a follow-on. It's obvious they proceeded on the right course of action that they thought we would be looking at.

I hope we don't strike that, and we put all of that in abeyance and keep that on file for a follow-on for an amendment. Having said that, I would like to go ahead and have this clearly state that this preferred option of status quo is extended for a three-year period of time unless any of the other board members have a problem with that, because it will take that long to flesh out these other options as we go forward with an amendment later on. I'd like to have that change.

CHAIRMAN FREEMAN: All right, Pat would you make that as a motion so that we get it on the record.

MR. AUGUSTINE: I move this amendment to be moved forward --

CHAIRMAN FREEMAN: Addendum.

MR. AUGUSTINE: Addendum, I'm sorry, using Option 1, status quo, for a period of January 1, 2005, through -- bear with me one second, please -- in consulting with my partner from New York, we would like to extend that for two years to expire December 30th, I believe, it would be 2007.

CHAIRMAN FREEMAN: Vince, you need clarification?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Yes, thank you, Mr. Chairman. Terminology may be helpful here. I think what you all are getting ready to decide is that the proposed action is going to be to maintain the status quo, and there was some discussion about options, of whether that was going to be for two years or three years.

Now you are proposing three years right now, so rather than cast this as to take "Option 1", as Gordon said, I think what you want to do is that the proposed action would be to maintain the status quo for a period of three years. Then if there is interest in another option of two years, you would put that in the public hearing document to get comment.

MR. AUGUSTINE: Thank you. That's clearly stated and if the record would show that, I would appreciate it.

CHAIRMAN FREEMAN: All right, David Pierce.

DR. PIERCE: Yes, I think I missed something here. We are not going to go with Option 2 and Option 3. There is no need to do Option 2 and Option 3, but my understanding would be that the sensible way to go would be Option 1, two-year preferred alternative, preferred option, with another alternative being for three years.

Is that fine, because that would seem to be sensible, very simplistic. Frankly, I'd like to go out with just one option which is the two years and let it fly at that, but if we need more than one option I suppose two or three with the preferred being two years.

CHAIRMAN FREEMAN: All right, then, that's my understanding of Pat's motion, so if there is any confusion, I think we'll have those two options. Any further comment? Oh, you're right, we do need a second.

MR. GERALD M. CARVALHO: Second.

CHAIRMAN FREEMAN: Gerry Carvalho seconds. All right, is there any further discussion on this point? Any further discussion? Dave Pierce.

DR. PIERCE: Yes, just to make sure that the motion is correct, there is no reference to preferred alternative there, so Pat would have to modify the language to make sure it's clear.

CHAIRMAN FREEMAN: Yes, I think that motion should capture your thoughts, should it not, Pat?

MR. AUGUSTINE: Yes, but there's a word in there -- oh, there it is -- move to approve the addendum for public comment to maintain status quo for a period of two or -- do you want it as two separate? Do you want to separate it as two, Option 1, Option

2?

CHAIRMAN FREEMAN: No, it's clear in my mind if the rest of the board approves.

MR. AUGUSTINE: That's fine.

CHAIRMAN FREEMAN: So it will be essentially status quo. It will be an issue of whether it's two years or three years.

MS. KERNS: There will be two options. One option will be to extend for two years, and the other option will be to extend for three years.

MR. AUGUSTINE: Thank you for that clarification, yes.

CHAIRMAN FREEMAN: David.

MS. KERNS: And the preferred option would be --

MR. AUGUSTINE: Two years.

MS. KERNS: Two years.

MR. AUGUSTINE: Exactly, thank you.

CHAIRMAN FREEMAN: All right, do you want clarification, Pat, of indicating that the preferred will be the two year?

MR. AUGUSTINE: Exactly, that's fine.

CHAIRMAN FREEMAN: Oh, okay, it's up there. All right, good. Any further comments on the motion? Harry.

MR. HARRY MEARS: Mr. Chairman, just a clarification. In reading the proposed background for this addendum, it references various amendments and addenda. My question is, this is proposed Addendum XII. Just to kind of put it in perspective, what did Addendum XI do?

MS. KERNS: With the addendums to the Summer Flounder, Black Sea Bass and Scup Plans, we number them in order for all the species, so Addendum XI may not necessarily deal with black sea bass. It actually deals with scup, so in the background it has all the addendum and amendments that deal with black sea bass.

CHAIRMAN FREEMAN: Other comments. Tom.

MR. FOTE: Are you going to the public?

CHAIRMAN FREEMAN: Okay, any other comments from the board? All right, seeing none, are there comments from the public? All right, seeing no interest from the public at this point, back to the board.

Are you ready for a vote? Do you need to caucus? I see no indication of caucus. **The motion is move to approve addendum for public comment to maintain status quo for a period of two or three years (preferred option for two years).**

All right, no need for a caucus. **All those who favor the motion, signify by raising your right hand; those opposed, same sign. The motion passes.**

Review of Recreational Measures Black Sea Bass

The Commonwealth of Massachusetts

MS. KERNS: The next item on the agenda is the review of the state recreational measures. You should have received in the mail a memorandum from May 14th, 2004, in regards to the 2004 summer flounder, scup and black sea bass recreational compliance review.

If you do not have one of these, please raise your hand and staff will give one to you

right now. Okay, I'm going to go ahead and get started. There were two states and four species that had regulations that were not consistent with those that were approved by the board at the March meeting.

We're going to start off with black sea bass and the Commonwealth of Massachusetts. The coast-wide measures that have been put in place for black sea bass are a 12-inch fish with a 25 possession limit and an open season from January 1st through September 7th, and then it opens again in September on the 22nd and closes November 30th.

The Commonwealth of Massachusetts' regulations read as follows: "A 12-inch fish with a 20-fish possession size limit and an open season from May 10th through December 31st".

To note, a 20-fish possession limit is actually more restrictive than the coast-wide measure and is permitted by the FMP, but their closure of their seasons is not consistent. They do not have the two-week closure in September, and they do not have a closure in December.

CHAIRMAN FREEMAN: David.

DR. PIERCE: I was all geared up for scup. I forgot you were going to start with black sea bass so you caught me off guard. Let's see, we did not change our regulations yet for this year.

Frankly, I've been focusing more on scup than I have on black sea bass. I will return to Massachusetts with the intent for my staff to take a further look at this to see what, indeed, we need to do.

I will take this back to Massachusetts, and we will review our own record relative to this particular required measure, and then

move forward with, I suspect, an intent to closure during that two-week period.

Black sea bass, after November 30th, we don't have black sea bass in our waters after November 30th so that's really not an issue; however, if there is a concern by the Commission, then we should have it at least on paper closed in December. I assume we can do that as well.

I would suggest you just rule us out of compliance, and we'll move forward with the necessary steps to get ourselves into compliance.

CHAIRMAN FREEMAN: All right, I had Jack Travelstead.

MR. JACK TRAVELSTEAD: David just asked us to declare him out of compliance. **With that in mind, I move that the Summer Flounder, Scup, and Black Sea Bass Management Board recommends to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure of the recreational fishery.**

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a seasonal closure that is consistent with the coast-wide requirements as established by the management board in December 2003 for the 2004 fishing year.

CHAIRMAN FREEMAN: Second to that motion? Rick Cole. Discussion on the motion? Seeing none from the board, any comments from the public? All right, back

to the board. Gil.

MR. GIL POPE: I was just curious, David, as to why you picked the dates and why it was five fish less? Do you feel this is conservationally equivalent at all? I mean, it just seems like you just didn't do enough explaining. Thank you.

DR. PIERCE: Well, maybe I'm still confused on this. We didn't pick the dates. I'm assuming that's a particular requirement from ASMFC, from the board, that we have that particular season in place, right? That's what we're supposed to adhere to. Am I incorrect?

I am incorrect. All right, then I'll admit that I am not on top of this one. Are you saying that this particular strategy was one that we submitted as opposed to one that we are obliged to live with? Could Toni help me out on this one?

MS. KERNS: Your strategy is what you submitted, yes.

DR. PIERCE: All right, this strategy is what we submitted?

MS. KERNS: Wait, no.

DR. PIERCE: All right, I'm confusing everyone, including myself, because I don't recall submitting this particular measure. If it was submitted by my staff, and I assume it would achieve the necessary percent reductions so, again, Toni, would you clarify this?

CHAIRMAN FREEMAN: Okay, let me get clarification, David. Bob Beal.

MR. ROBERT E. BEAL: Okay, hopefully to clarify. The option or the program that Massachusetts currently has implemented

was not submitted by Massachusetts. None of the states submit recreational management programs for black sea bass. There is no conservation equivalency.

It is simply the board sets the season bag limit and minimum size limit at the December meeting, and all the states are obligated to go home and implement those combination of measures.

So, again, kind of to Gil's question, there is no conservation equivalency in black sea bass. Even if what Massachusetts had implemented is consistent or conservationally equivalent to the standard that is implemented or established in December, the states don't have the flexibility to go home and implement equivalent measures. Everyone has to implement identical management measures for recreational black sea bass.

DR. PIERCE: All right, so I'm not confused, then; everybody else is confused. This is actually a particular region-wide requirement for black sea bass?

MR. BEAL: Coastwide.

DR. PIERCE: That's what I thought, and then judging by the comments around the table, I thought I was incorrect and that this was something we submitted. We didn't submit this. This is something we're supposed to adhere to, and we haven't.

We'll have a two-week opening, so we'll go home and address it as best we can. If we have a problem with it, we'll come back and indicate what the nature of that problem is. I suspect we will still be voted out of compliance, and that's fine. I mean, obviously, we don't have it in place for this year so it's sort of a moot point here. All right, I don't feel as bad as I thought I was

going to feel. Thank you.

CHAIRMAN FREEMAN: David, just to clarify issues, the Mid-Atlantic Council had put in the same provision so these size, season and bag limits were coastwide, both state and federal waters. As indicated, because when we get into summer flounder where there is conservation equivalency, we think about that for the other two species; and relative to sea bass, that's not true, so there is confusion.

We deal with so many species. I can understand your situation. You have groundfish, which even complicates it more. I can't understand that at all. But these regulations, again, season, size and bag limits will be the same coastwide. And until the plan is amended to allow for conservation equivalency, there is none. Harry.

MR. MEARS: Thank you, Mr. Chairman. Because such a motion sets a series of events in their own motion -- I'm sure this will be discussed at the Policy Board meeting, but do we want to include a date certain in terms of the state of Massachusetts implementing the necessary regulations to allow that sort of flexibility they may need to put those in place? So, again, my question is should the motion be amended to include a date by which the state must come into compliance?

CHAIRMAN FREEMAN: Staff? I don't know the answer to that, Harry.

MR. BEAL: Yes, I think between now and the Policy Board meeting, we could probably discuss that off line with Massachusetts and decide what date would work for them and see how the other board members felt about it and discuss it at the Policy Board level.

CHAIRMAN FREEMAN: All right, so that's an issue, Harry, we will take action at the Policy Board. All right, other comments? Gil.

MR. POPE: I agree with Harry, I think it should go with this motion. Thank you.

CHAIRMAN FREEMAN: David.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. **I suggest to the maker of the motion that they perfect the motion and put in basically a statement that the effective date of the regulation is, and leave it blank and then the Policy Board will put in the appropriate date.**

CHAIRMAN FREEMAN: Jack says he'll accept that, and Rick, our seconder, will accept that, so we will put in a statement of a date when it will be needed to be complied with, but that date will be left blank.

All right, any other comments on this motion? Do we need to caucus? No caucus necessary, anyone? Is there a need for a roll call on this? Is there any request for a roll call? All right, no request, then we'll do it by a show of hands.

All those in favor of the motion, raise your right hand; all right, all those opposed, same sign; abstentions; null votes. All right, the motion carries.

The State of New York

MS. KERNS: Okay, again, for black sea bass, the state of New York's regulations are inconsistent with the coast-wide regulations. Again, it's with the season.

The state of New York season is open from January 1st through September 22nd and then open again on October 8th through

December 31st. Their two-week closure period is a little later in September, and they do not have any closure in December.

CHAIRMAN FREEMAN: Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman. We're going to change our regulations, but I have a question for the board before we come to the final decision on this. We actually proposed to go to a later season closure period, a different two-week period in Wave V than was originally suggested, for two reasons.

One is that we knew we were going to close fluke after Labor Day, and we were trying to avoid the impact of having two major bottom fish fisheries close on the same date. We thought maybe by sliding it back a little, that might help.

We've actually heard from our fishermen that's not the case. If worse came to worse, they'd rather just stick with the two weeks that was in the original proposal, and, if necessary, that's what we'll do.

But the second reason was that I had at the time given Chris Moore a call and asked him if, based on the way the Monitoring Committee computed these things, could he see any difference in what two-week period we might pick during Wave V, and he said he didn't think so.

The next question I asked him was did he think it would be possible to similarly construct, using a different percentage per day that would be appropriate to the time, a closure period that would be equivalent in a different Wave, and he said yes, and in fact, has shared with me the table that the Monitoring Committee used for that purpose.

So my question to the board is this, is it the board's position that every state must close exactly the same two weeks, in which case, if that's the board's position, that's what we'll do; or, is it the board's position that every state must close a sufficient period to cover an equivalent percentage that occurs during the two weeks that the board has suggested for all the states?

As to the December thing, as David indicated, we don't catch many sea bass in December, but, frankly, that was just a slipup on our part, and we will restore the December closure. That's a given.

So my question, Mr. Chairman, maybe the staff could help, is whether it really makes any difference what exact time period we close as long as we've covered the same percent reduction.

The reason I'm asking this is that while most of our fishermen in New York we've talked to would prefer the original two-week period, there are some who would prefer a period of time in August that would enable them to have only one fishery closed at a time rather than two.

CHAIRMAN FREEMAN: All right, I'll ask staff, Toni, if you would respond, please.

MS. KERNS: Because they are coast-wide measures, there are no options to choose which two weeks you want to open or close for the two weeks. It's specific to the ones that the board chooses as their coast-wide quota or measures.

CHAIRMAN FREEMAN: Gil and then Tom.

MR. POPE: Thank you. I tend to agree with Gordon, and it goes along with what we just did here. To me, conservation equivalence is something that we should

encourage, especially in situations where if every state has to adhere to something, especially as far as dates, where the fish may not be there for those dates, and it may be totally wrong weather-wise or temperature-wise.

It's something that maybe we can't do anything at this meeting, but we really need to explore that. There needs to be a little bit more flexibility in what we do with this. I don't think we can do it now, but it just seems a little silly to have this coastwide. I'd like to see if there's some way that we can do this, maybe not at this meeting but do it very soon. Thank you.

CHAIRMAN FREEMAN: Let me just indicate, Gil, from my perspective, keep in mind now that the federal waters are also closed during this period, so it could get complicated if a state had a different period.

People from that state could not fish in federal waters for that time. It does get somewhat confusing. It is certainly the prerogative of the board to make changes, but I think the reasoning, as I recall when this issue was raised, is that do it for everybody at the same time, make it consistent enforcement-wise, and that was the reason. I had Tom Fote, and then I had Jack Travelstead and then Gordon.

MR. FOTE: To close everybody for the same period of time is not being consistent, because some areas do have fish and some areas don't have fish, so some states are basically taking an unfair hit by having that two-month closure.

It should be based on what you're catching, not just a two-month or a month closure and a two-week closure. It makes more sense -- I understand the problem with the federal rules, but let's be realistic.

It was the old story of the striped bass. There were states years ago that closed down for a month and took the conservation equivalency for that region, even though they had no fish in that period of time and got credit for it.

I mean, if we're closing, it should be fair and equitable to all the states, and this is really not. You also should be allowed the flexibility. I mean, we are basically running into difficult situations because of other species.

What are we going to do with fishermen, and what are we going to do with the industry when we start doing closures? At least, we could open some seasons where if you can't fish for fluke, you've got sea bass open.

If you can't fish for scup, you've got this open. It's like the commercial fishermen asked that they can basically go out and stretch out their season or have gaps where they can bring in the fish. That's why they have trip limits in.

Well, this is similar to that, so you don't basically just tie up your party boat or your charter boat because you've got nothing to fish for because everything is closed that period of time, no options available. That's what I don't want to do. I think we need a certain amount of flexibility here.

Plus, it should really reflect what is happening. I mean, I agree with David, his closing for the month of December doesn't mean anything to him; whereas, in New Jersey if you close for the month of December, it means a lot to us.

CHAIRMAN FREEMAN: Okay, I had Jack Travelstead.

MR. TRAVELSTEAD: I have argued for the last two or three years in favor of conservation equivalency in the sea bass fishery, but the board has never agreed to do that, so it is interesting now to hear Gil and Tom support that.

I think that's something we need to look at in the future, but currently, the management plan simply doesn't allow for it. It dictates very specific dates for closures.

In spite of common sense might dictate that what Gordon is proposing makes sense, it is, unfortunately, I don't think allowed under the management plan. Gordon, do you need a motion out of compliance, or are you telling us that you are going to comply?

MR. COLVIN: We're definitely going to change our regulations to address the December closure and to move the current September closure.

As I said, if the board's position, and it seems like it is, is that the current management doesn't allow an alternative, we will close the two-week period that's in the -- I mean, that's a given.

When we adopt our final rule, which will be before Labor Day, the closure that will be in place will be the one that is in place coastwide.

MR. TRAVELSTEAD: Mr. Chairman, I have a motion for non-compliance if you think it is necessary. Based on what Gordon is telling us, I don't think it is, but if the staff feels otherwise, or you, I'll be glad to make the motion.

CHAIRMAN FREEMAN: Let's hold that a minute, Jack, just hold that motion. Gordon, you are next, and I do have some other speakers.

MR. COLVIN: Yes, I just wanted to mention kind of -- and I think Tom alluded to this -- that the difficulty we get into is that we're sitting there in December making a motion on what period of time sea bass should be closed, none of us knowing what we're going to end up with with fluke and scup and any one of the other fisheries that we're managing.

It's a perfect example this year in New York, in order to get done what we did, we ended up having to close fluke on Labor Day, and we had to do a two-week porgy closure in October. It's bad enough, it's tough enough on everybody without having sea bass and fluke closed together.

If we had only known, we might have tried to do something different with sea bass way back when, but if we can't do it this year, I sure hope we can address that situation next year, because we really don't know where we're going to land.

CHAIRMAN FREEMAN: Gordon, okay, I understand the point you're making. Just remember, when we did this back in December, there were concerns expressed by the industry that were there that if we kept the same dates of closure we had last year, it would include Labor Day this year, so we moved it so that wouldn't be the case.

MR. COLVIN: Oh, I'm well aware of that. You know, that's clear. The problem was that while we knew that, we couldn't possibly know at that time what we'd have to do with fluke and scup, and now we do. Unfortunately, it kind of conflicts.

The other thing is that -- you know, one of the main reasons I think we're going to go back to reverse the period that we picked is that some of the boats actually made plans and booked trips consistent with that two-

week period, and they're now saying, thanks for trying, but we'd rather you went back the way it was originally because of the plans we made.

CHAIRMAN FREEMAN: The only comment then I would make, Gordon, is I do have down that the board needs to look at conservation equivalency in the Sea Bass Plan. I think Dan Furlong is somewhere in the audience, and I'm sure that issue will come up at the Council. We need to do that in coordination, but we will move forward on that front at least in the future. Eric, you had a comment.

MR. ERIC SMITH: Thank you, I have two concerns. One will be absolutely wild, and I will save that to the end. The first one, though, is I'm a little concerned about inconsistencies, because of the very same reason we're talking about, we just voted Massachusetts out of compliance, even though we know that New York is ready to go just like Massachusetts has said they are going to go for it and change their regulation.

Right now they're out of compliance with the plan, and I think it would be cleaner, frankly, if we had the motion, dispensed with it. If we do that, then the wild one is to note, unfortunately, there is an error in the document and Connecticut is out of compliance.

I would urge you to do the same thing to us, because we'll have it in place by the time September 22nd comes around, but we have not done that yet, and I noted that in the document as I read it.

We need to protect the interests of the group and what the plan requires, so I would say New York and Connecticut both need to have the same mark on the record that we

can then go and change our rules. Thank you.

CHAIRMAN FREEMAN: All right, I think Eric makes a good point, and I would ask if there is any dissention from that point. We do need to be consistent to make sure we do establish a record. Is there anybody who disagrees? Tom.

MR. FOTE: Well, Dave asked us to vote him out of compliance; otherwise, I would have gave him the same leeway. But, I mean, Dave said, vote me out of compliance so that's why we did it. That's why I did it.

CHAIRMAN FREEMAN: Well, I'm not sure that Dave made that motion. No other comments, then I would ask for that motion to be offered, Jack.

MR. TRAVELSTEAD: For consistency purposes then, **I move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the state of New York be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.**

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year.

Then I suspect, Mr. Chairman, we should add that additional statement that we added to the last motion that makes this effective, and then leave it blank and to be filled in by the ISFMP Policy Board.

CHAIRMAN FREEMAN: All right, you heard the motion. Is there a second to that motion? Rick Cole. Tom, then I have Pat.

MR. FOTE: I wasn't being flippant. I remember a lot of times when a state would come in and say they were going to get in compliance, they were going to get in compliance. I also remember times a state said vote me out of compliance so I can get some pressure to get me into compliance. That's why I said the comment I said.

I mean, we have done that over the years, so we're being different from now than we were before, but sometimes a state would ask that and sometimes a state would say you don't need to because I'm going to get my regulations in place, and we didn't, so I was trying to be consistent.

CHAIRMAN FREEMAN: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. It's obvious we have to go along this road to be consistent. I just wanted to get on the record with this double or triple whammy before the day is over, New York economically is going to be really in dire straits.

It's a shame we didn't think about this possibly happening when it happened to Virginia last year or the year before in Maryland. It has happened to other states where they have been found literally to be out of compliance or change the regulations to such that I think we're forcing folks that typically want to be legal to do illegal stuff to take home fish for the table. Others do it illegally just to be illegal.

It's just a sad state of affairs when we see the populations of these fish. And I understand the plan; I understand the statistics. We question MRFSS, all the

things that we look at, to come to the conclusion that we have to do what we have to do to stay compliant.

But the bottom line is here is another case, blatant case, of the system failing the state members, blatantly failing us. We've either created this monster ourselves, or we've allowed it to happen because we haven't been paying attention to what possibly could happen.

I just wanted to get on the record that New York, in particular, is taking one tremendous hit from marinas, the bait and tackle folks, party boat, charter boat people. Yes, we've all been there.

But when you go from what's considered to be a 50 percent reduction from 48.5 and we're trying to do a 20 percent, and in reality you go from 7-17 and no season to 3 at 17 with a season that starts May 15th and ends up the first week in September, it sure as heck isn't a 20 percent or 50 percent reduction to take that kind of a cut.

We all knew the porgy situation, and we had an opportunity to look at setting a quota at a reasonable level a couple of years ago. We didn't get there. We ended up taking a safe number from 12 million pounds to 16 million pounds, and I was told we could have gone to 25 or 30 million.

But in the meantime here we are, the porgies are there, and we have another problem so I think -- I agree with Mr. Travelstead when he said -- and Mr. Fote and Mr. Pope -- when we all say we've got to do something aggressively, either this meeting or in the very near future, to make sure this doesn't happen to any other states in the future.

I don't know whether it's going to take an amendment or an addendum, but I suspect

we, as board members, owe it to our constituencies and the folks that we represent in our states to do the best thing by them in view of the fact that stocks are recovering the way we think they should be, and we need the opportunity to catch these fish.

The federal government insists on promoting recreational fishing. And, by God, they're doing a good job, and we're doing a good job. I mean, the result is there are not enough fish there, or the quotas are set in such a way -- and we know the whole game of fish versus pounds and all the rest of that, but I just wanted to get that on record.

I agree, it looks like we have to go down this road in order to be consistent. I would assume Mr. Travelstead will make a motion to find Connecticut out of compliance also. Thank you for this opportunity.

CHAIRMAN FREEMAN: Okay, any other comments? Tom.

MR. FOTE: I'm going to bring this up because when it comes to the Policy Board, and we actually vote on Massachusetts and the Policy Board votes on New York, I'm going to ask to delete the sentence "The season closure is necessary to control fishing mortality and maintain the rebuilding schedule in the FMP".

Since there is no fish there, it is not being done for that reason. It's basically to be in compliance with a season closure even if there are no fish there, or people aren't fishing there. That's my difficulty here.

CHAIRMAN FREEMAN: Other comments? All right, any other comments? Do we need a caucus on this? I see no indication of a need for a caucus. I will do it

by hand vote. **All those supporting this motion, please raise your right hand; all right, those who oppose the motion, same sign; abstentions; null votes. All right, the motion passes.** All right, Toni.

The State of Connecticut

MS. KERNS: Next we're going to deal with scup. As of what you turned in to me, Eric, you are not inconsistent. I just double-checked with my e-mail with the dates you gave me when your closure was, and you gave me the correct dates so unless you have

—

MR. SMITH: I must have given you bad information because I know we haven't gone to rulemaking on that yet, and I had to go up and ask Dave Simpson to remind me of that. I said it would be a wild idea.

You probably accurately reflected what I sent you in error. The point is we don't have that season in place yet. And, again, I'm thinking of the interest of the group and consistency, so I think you need to do it.

CHAIRMAN FREEMAN: A clarification, Eric, then you don't have the seasons as indicated in the present document? All right, then, Jack, do you have a motion that we could offer for Connecticut to be consistent?

MR. TRAVELSTEAD: Can we just fill in the blank on these? **I move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the state of Connecticut be found out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.**

The seasonal closure is necessary to

control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure, date to be determined by the Policy Board, that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year.

CHAIRMAN FREEMAN: Okay, you heard the motion. Is there a second to that motion? David Borden seconds the motion. Discussion on the motion? Any discussion from the public?

All right, seeing none, back to the board. Are you ready to vote, and do you need a caucus? Caucus necessary? Seeing no indication, we'll take a vote on Connecticut. The motion is on the screen.

All those in favor, signify by raising your right hand; all right, same sign for those opposing; abstentions; null votes, one null vote. The motion carries. All right, the motion passes on that. Okay, Toni.

Review State Recreational Measures for Scup

The commonwealth of Massachusetts

MS. KERNS: Okay, now on scup. At the March meeting, the board voted to approve the scup options contingent upon of approval by the technical committee. The Commonwealth of Massachusetts turned in five options.

Out of those options, four were approved. You have the four approved options in front of you on the second page of the document. The regulations that were put in place in the Commonwealth were not consistent with any of those options.

Their regulations read as a 10-inch total

length size, 100 fish for anglers on charter and party boats from May 1st through June 30th and 40 fish for all other anglers from July 1st through October 7th -- I'm sorry, that's not all -- and 40 fish from July 1st through October 7th for the charter and party boats, and then a 40-fish limit for all other boats with an 80-fish limit for boats with two or more anglers; and an open season from January 1st through October 6th.

Addendum XI does not allow for mode-specific management; therefore, having 100 fish for their charter and party boats are not consistent with the addendum.

The management measures that have been put in place have not been reviewed by the Summer Flounder, Scup and Black Sea Bass Technical Committee, and no technical information was submitted to indicate that the percent reduction of 40 percent would be achieved with these regulations.

Also, the TC did not approve dual possession limits for the Commonwealth of Massachusetts because the state could not demonstrate that the effects of a given bag limit were consistent from wave to wave due to sparse data.

CHAIRMAN FREEMAN: All right, David.

DR. PIERCE: All right, thank you, Toni. I appreciate that description of where we are right now in Massachusetts. It has obviously been a contentious issue, not just this year but in previous years, regarding how Massachusetts has dealt with the recreational fishery for scup in our waters.

Now at our last board meeting, we all agreed to support the cause to cut region-wide landings dramatically, and to help, in particular, New York deal with its very large overage.

A difficult situation certainly for New York, 1.9 million scup is the target, and 5.9 million were actually landed, unexpectedly so, but, nevertheless, it caused the need for us to all work together and to come to some understanding as to what sorts of percent cuts we would take in order to ease the burden on New York.

We wholeheartedly agreed to assist in any way that we could, and that translated into our striving for a 40 percent cut instead of the 35 percent cut that we were scheduled to take for 2004. Now we decided to do this, a think all states decided to do this with the knowledge that our tools for achieving the 40 percent cut in our particular case were crude. They're imprecise.

We all know that's the case using MRFSS data. The data don't lend themselves to precise analyses, far from it. We acknowledge and we appreciate the technical committee's difficulty with some of our analyses to achieve the 40 percent reduction.

The technical committee felt uncomfortable recommending approval of some of our options due to data concerns. Well, what's new about that? Again, this is the MRFSS dataset, very difficult to work with.

The technical committee, because of the decisions it made, the recommendations it has provided to you has foreclosed, or at least it foreclosed our preferred option to achieve the 40 percent cut.

That preferred option was known as 3B, the second part of Option 3, which involved our having a 50-fish limit. May 15 when the fish arrive on the scene is when the fishery begins, going to July; and then July through August we'd have it at 40 fish, drop it by

ten; and then bring it back up again in September and then close on October 5th or 6th.

That was the option that we definitely preferred. The technical committee did not feel that they could recommend approval of that, so the long and the short of it is that we decided to rely on our own staff's assessment as to how we can achieve the 40 percent.

Our own staff has put in a considerable amount of time regarding this particular issue. I've met with them, Paul Caruso specifically, a number of times and been confident of his skills. Using the same methodology as other states and certainly the Mid-Atlantic Council, we thought that this was the right way to go.

So, we decided to pick this particular option, knowing it wouldn't fly very well with this particular board, because the technical committee is not recommending it, but we picked it because it was most sensitive -- and this is critical -- it was most sensitive to our fishing industry's concerns, concerns that have been expressed to me time and time again, especially over the last couple of months, as the scup season was on the horizon.

Clearly, our scup season begins in May, the middle of May, specifically. And I, maybe you as well, have received many calls from the industry saying to me when is it going to happen, what are the decisions going to be, what is the season, what's the bag?

We've had to wait for technical committee review and then board decisions and on and on it goes. We all know the problem with the time table that we have to work with. It definitely puts us all in a very difficult position.

In light of the lateness of the decision by the board acting on the technical committee recommendations, the lateness of it all, we had to be as consistent as we could possibly be with the regulations we had in place last year.

Once again, scup are on the scene. They're in Massachusetts waters now, specifically. David Borden can attest to that because his floating traps are doing very well with scup.

Now, regarding the 100-fish limit, the mode splits, this year ASMFC, as we all know, voted not to go with a mode split. Frankly, it was a very strange vote, and we opposed it. We had a mode split last year and the year before, but this year for some reason no mode split.

There was no objection, however, to our maintaining 100 fish for all the modes, in other words, be consistent, don't mode split, keep it at 100 for all the modes; provided our analyses, supported by the technical committee, would indicate that we would likely get a 40 percent cut in our recreational landings for this year versus last year.

Well, our analyses could not be done in a way that would give the technical committee an assurance that this 100-fish limit, applied across all modes, would keep us to the 40 percent cut so this created a dilemma for us.

There was no way to say with any sort of certainty that we would feel comfortable with that the 100 fish with no mode split would get us the necessary 40 percent cut. So, with that dilemma, we tried to address the problem as best we could to the extent that we can.

And we did that by going to the 100-fish limit for party and charter until June 30, but

restricting the private, rental and shore fishermen to 40 fish. That's 80-fish maximum with two or more people on board. So we, in a sense, did split the modes.

But, frankly, we thought why not because by not splitting the modes, we actually are more liberal so why be more liberal. It doesn't make any sense to us, especially since we have to cut by 40 percent.

So, we've attempted to respond as best as we could to party and charter boat concerns. You've heard that diatribe from me many times over, and I'm not going to go over it here again, except to say that although we have satisfied the concerns of some of the party and charter boat fleet -- certainly not all of the fleet because we are, as you might imagine, inundated right now with letters from party and charter boat fishermen who are quite concerned about their fate, their businesses during the summer season when we're not going to allow the 100 fish for party and charter.

We decided not to have the 100 fish limit for the entire fishing season, unlike last year when we had it in place for the entire season. Now, we have made it very clear to our fishing industry, to our recreational fishermen, the scup fishermen, that our biggest concern for this year is that if in Massachusetts we end up being too liberal, then we will not achieve the 40 percent cut, which is significant.

And if we don't achieve the 40 percent cut, then there will be a price to pay for next year, clearly. And we all know that in addition to that possible problem that would develop because of our not keeping the 40 percent, we'll have to deal with that issue as well as the likelihood that the overall TAC for next year is going to be much less than

this year.

So, the commercial quota as well as the recreational target for next year will be reduced, perhaps significantly; and those are real threats for all of us, at least with regard to the overall TAC.

So, we've informed our recreational industry as best we could, certainly the party and charter boat industry, that this is a very important year and that these measures, even though all the analyses that our staff has done indicates that we'll get to the 40 percent, there is no assurance there.

As a consequence of that, we're going to monitor as best we can, try to get a feel for what is going on with the fishery in the spring and early summer. Clearly, the May and June period will be important since that's traditionally a period when we have high recreational landings of scup.

So, through the MRFSS data, assuming we can get that data on a timely basis, and I suspect we can, we may actually be put in a position in our own state of doing something towards the fall if indeed we see that things are going awry, that because it's a MRFSS survey with all the uncertainties involved in that survey, if we see that we're repeating in 2004 what happened in 2003 in May and June with private rental, not just party/charter, we may put ourselves into a situation where we'll have to terminate the season early, in other words, not close it as we projected here as already announced to the public, closing it on October 6th, I believe. We might have to close it earlier by way of some emergency action.

All right, that pretty much summarizes what we've done and why we've done it. To our way of thinking, the most important thing for us to do this year is to keep to the 40

percent reduction.

Ideally, I'd like to be ruled out of compliance down the road if we're not keeping to the 40 percent reduction, if we go over the amount, but, obviously, that's after the season is over so that's probably not a very satisfactory action by this particular board.

But, again, it's the best we can do, the lateness of the decision by ASMFC, the need to respond to very legitimate industry concerns, and the need for us to, as we said we would do, come up with a schedule, a set of strategies that is expected to give us the 40 percent cut.

We did the analyses. We believe we'll get the 40 percent cut, but, of course, time will tell as we traverse this fishing season for scup, and we see, as everyone else will see, whether or not the MRFSS data will indicate that indeed we've all kept to our specified percent reductions.

CHAIRMAN FREEMAN: Eric.

MR. SMITH: Thank you, Mr. Chairman. I have some difficulty with this one for a couple of reasons. Mode splits were not allowed by the board. Last December or January we specifically voted for that.

Massachusetts knew that. They went ahead and did this, anyway. That is a little troubling. There is an obligation of a state to submit a plan in time for review by the technical committee. Again, it's how the whole group protects the interests of the group instead of a state doing its own analysis and at best maybe making a harmless mistake that doesn't get caught until far later, so there is that obligation.

I note in the footnotes in the document

Massachusetts did not submit that plan in time for review. Now if a state doesn't do this, it thwarts the ASMFC process. In fact, that's exactly what has happened here.

In the last week of May we find Massachusetts potentially out of compliance on measures for their May fishery. The month has gone. Frankly, I have a motion on this and you can probably sense that from my tone.

But I think, as we begin to look at the future improvements to this plan, we have to resurrect an idea that's a little different than that payback issue that had us tied up in the past.

I think we need to look at a penalty for a state, whether it's Connecticut, Massachusetts or anybody else, that slides past the beginning of a fishery, doesn't have measures in place that control the way the board had voted for them to be controlled and, therefore, by the passage of time, skates.

I don't think that's right. We may need to add a penalty section to our plans. I don't know how you would do it, but to avoid that kind of thing happening. I will offer a motion, Mr. Chairman.

I move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with the Scup FMP in that it has not implemented the required management measures for the recreational fishery.

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP.

In order to come back into compliance, the Commonwealth must implement a recreational management program that is approved by the management board and has management measures that are consistent for all modes of recreational fishing and meets the technical criteria for review and approval of state plans.

CHAIRMAN FREEMAN: All right, there has been a motion. Is there a second to that motion? Second to the motion by Pres Pate. Dave Pierce.

DR. PIERCE: Yes, regarding one particular point that Eric made quite significant. He made the point that we did not submit the necessary analyses to indicate whether or not our strategies would get the 40 percent reduction, and we did.

We did submit five specific options with one option, two options actually being broken into two different sub-options. The option that we picked was one of the options that the technical committee said it didn't want us to adopt, and we disagreed with the technical committee's perception.

Our staff did the analysis. Our staff, my state staff determined that particular strategy would give us the 40 percent reduction. This, as far as I am concerned, is a very legitimate difference of opinion between a state scientific staff and the scientific staff that has been provided by all states, I guess, for the technical committee purposes.

Now, obviously, we're supposed to be ruled by technical committee advice, but in this particular case I worked with my staff for a long time on this one, and I was very confident that he did an excellent job and that 40 percent would be achieved with this particular set of strategies.

So, it was provided. I understand Eric's concern. If it wasn't provided then his concerns would be extremely legitimate. I want that to be known for the record. In addition, with regard to the mode split, yes, indeed we did, in a sense, we did mode split.

I indicated why we mode split it, why we did the mode split, because we didn't want to be more liberal in the May and June period, anyways. In addition, with regard to the mode split, my feeling is that the states that opposed the mode split at the last meeting did so largely because they were concerned about competitive advantages being provided to Massachusetts with the mode split.

Now Rhode Island may have a legitimate beef on this, and I'll let David and company speak to this particular issue. I don't think that New York and Connecticut have as big a gripe as they had last time around.

Because of the significant cuts in recreational landings that they've had to endure because of their overages of last year, they've had to shut down their recreational fishing when now we'll be open.

So, we're not drawing any effort away from those other states because they're closed. If they were open, it would be a different story. Now, for New York I think they are open for a portion of the time.

I think they're open the middle of June so there is a little bit of overlap there, but New York has gone up to 11 inches, so I would suspect that the draw will still be to Massachusetts because we have a 10 inch, and New York would have an 11 inch.

So, the concern about the mode splits should

not be as severe as it was the last time around when we talked about, this because if competitive advantage is still driving people or driving individual's concern about the 100 fish versus 50 fish, the concern should not be as strong as it was a few months ago.

But, like I said, Rhode Island, slightly different story although Rhode Island is at 10 -- are you at 10 inches? You're at 10.5 inches, right. So you're at 10.5 and we're at 10 so there is still a half inch difference.

Will fishermen go by Rhode Island to come to Massachusetts because of a one-half inch difference? I don't know, maybe they will. But, nevertheless, Rhode Island had to go with 10.5 and the other measures that they have in order to achieve their specific percent cuts.

There was never any intention on our part to provide any purposeful competitive advantage. Frankly, I don't think there is one. It's just the way it always has been in our particular state versus the other states. So, Rhode Island, maybe some concern. Connecticut should not have concern because they're closed. And New York, maybe some concern because they're open on June 16, but then, again, they have the 11 inches. Those are some points I wanted to make regarding the mode splitting.

CHAIRMAN FREEMAN: All right, Gordon Colvin.

MR. COLVIN: Dr. Pierce has suggested what might have motivated board members in the past to vote as they did or take a position that they did with respect to whether or not to support mode splits in the addendum that governs this year's scup fishery.

For the record, I think that that assertion on

this record may be incorrect. It is certainly incorrect with respect to me. I can only speak for myself, but I suspect that other board members' motives may well have been as mine.

That is that the only motion that was ever placed on the table on this issue in 2004 was to adopt an option with a statistical degree of reliability that was sufficiently broad that the technical committee recommended that we not adopt it.

And that motivated my vote, not anything about allocation or competitive or economic advantage. I don't think that the record of this board's discussion of this issue should allow that assertion to remain on the record unchallenged, hence my comments.

Now, with respect further to suggestions about what New York may or may not be entitled to hold as a matter of position, again, I'll only speak for me. I believe that we are entitled to hold whatever position that we adhere to and announce and articulate.

In this case, my vote will simply be motivated by one simple thing, and that is my assessment of whether or not the current regulations in the Commonwealth comply with the requirements of the management plan as laid out by this board, nothing else.

CHAIRMAN FREEMAN: David and then Tom.

DR. PIERCE: Yes, again for the record, I believe the record will show that at least one state did make the statement on the record at our last meeting the concern about the competitive advantages that were created by the 100 fish was of concern to him.

I assumed, therefore, that it did influence the

decision. This is not a criticism. I'm just trying to point out that indeed this is a multi-faceted issue, and there are a number of different concerns relative to 100 fish.

Whether it is competitive advantage, whether it is statistical precision, there are a number of reasons why, as Gordon said, the board members voted the way they did. But, that particular concern about competitive advantage was expressed at the last meeting.

CHAIRMAN FREEMAN: Just for clarification, staff has a comment. Toni.

MS. KERNS: I have in front of me the five options with Option 3A and 3B, which were not approved by the TC, and that Option 3A and 3B is not the same as what you've put forward, David, so that 40 percent reduction from a technical standpoint has not been turned in and has not been reviewed.

CHAIRMAN FREEMAN: Dave.

DR. PIERCE: Yes, Toni, would you clarify what exactly is different? If you mean the January 1st date --

MS. KERNS: The difference is what was turned in said open May 13th with 50 fish, and then open July through August with 35 fish, and then you would close October 12th. From August through October 12th you would have 50 fish. And there is just a variation of dates for Option B from that. None of those have 100 fish as a bag limit.

DR. PIERCE: That is correct, the 100 fish is not in there as a bag limit because, again, referencing my staff's analysis and for the sampling that we've done of our own party boat fleet, we have every reason to believe that the 100 fish has almost no impact.

I believe this has been discussed at the

technical committee, by Paul Caruso specifically, maybe a 1 percent difference in terms of the amount of landings that would occur by being at 100 fish versus 50 fish. So, you're correct, and I'm glad you mentioned that for the record.

CHAIRMAN FREEMAN: Okay, I had Tom and then Gerry and Gil.

MR. FOTE: Well, that's the same question I was going to ask. I wanted to know exactly what -- and which should have been -- if we're going to vote out of compliance was all the proposals that a state puts in which were approved and disapproved, especially when it comes to we're going to rule a state out of compliance.

I'm clear now that you never did put the 100 fish in. I know we've gone around this argument about three or four years in a row. I don't know if it is competitive or not, but it is a different regulation.

It wasn't too long ago, four years ago, that we basically didn't have bag limits on scup. I remember first it being proposed, well, we should have bag limits on scup. So a lot of the states remember when they used to take out the party and charter boats, which is a fishery in New Jersey for a low income that basically went out to actually get fish they could take home to eat and basically started putting bag limits on them.

It greatly affected who goes out on charters and party. It was a tough decision by all the states. Maybe 100 fish doesn't make a difference of only 1 percent, but it does make a difference when people decide whether they're going to take a trip or not.

I mean, it affects all the states so it is a big difference psychologically. It's like what's the success rate for summer flounder if you

go out on a trip. If you look at the statistics, we only catch 2.1 fish.

But when you reduce the bag limit down to 3 fish, it makes a big difference when you go out with 8 fish that you're not going to catch. So that's the real perception there. So the perception up and down the coast is a lot different. That's all I have to say.

CHAIRMAN FREEMAN: All right, Gerry.

MR. CARVALHO: Yes, thank you, Mr. Chairman. I want to offer some practical observations. The size of the scup that is available in Massachusetts and Rhode Island waters is considerable.

When you think of 50 fish -- and certainly the charter boats are going to target the schools of larger fish because they have the ability to do so -- we're talking about fish that may average two pounds or better.

So we're talking about an individual recreational fisherman getting his limit at 50 fish, catching 100 pounds of fish. That's a lot of fish for a recreational person. It's not like we're talking small fish, or they're going to go out and catch a 10-inch fish.

They're going to go out and catch large scup, and that's what's out there, as large as four pounds. So, from a practical standpoint, times have changed in that the total poundage of fish that they're going to get by the numbers being at 50 pounds is considerable.

CHAIRMAN FREEMAN: Thank you, Gerry. Gil.

MR. POPE: If I didn't make it clear before, I'm sorry. That 100 fish I do consider to be a competitive disadvantage. That's something that there have only been a

couple of times that I can remember, and both have been on scup with Massachusetts, one with the court case and this one with the 100 fish.

I really do think that is really way out of line in consistency with the rest of the 50 fish that everybody else has to have, especially with the sizes that are out there. So I just wanted to make it clear, if I didn't make it clear before, that I am now, that I do consider that to be an advantage because if people know that they can get double the number of fish, then they will make their plans accordingly.

The other thing that I don't understand is the difference between 50 fish and 100 fish you're saying would represent 1 percent of the catch. If that's MRFSS saying that they can get down to within 1 percent of the information, I just don't believe it. I just don't believe that they can measure that closely. Thank you.

CHAIRMAN FREEMAN: Okay, Eric, one issue not in your motion is a date. I'm just wondering if you want to put such in there or --

MR. SMITH: I would entertain the addition of the same language that we had in the others. This should be by a time certain, and the date would be left blank to be determined at the Policy Board meeting.

CHAIRMAN FREEMAN: All right, Other comments on the motion? We've been around this. Let me put it this way, any new comments on the motion? All right, is there need to caucus on this motion?

Any board member request a caucus? **All right, not seeing the need to, Carrie has inserted the time to be announced when the Policy Board deals with this.** I'll ask

that we vote by hand.

All those that favor this motion, please raise your right hand; all right, those who oppose this motion, same sign; abstentions; null votes. All right, the motion carries.

Review State Recreational Measures for Summer Flounder

The State of New York

MS. KERNS: Next we have summer flounder. The state of New York's approved regulations for the summer flounder fishery to achieve a 48.5 percent reduction are on the third page of the memo in front of you. There are 23 options.

The regulations that were put in place read as follows: a 17-inch size limit, a three-fish possession limit and an open season from May 15th through September 6th. This regulation meets a 20 percent reduction, and New York is to achieve a 48.5 percent reduction for the 2004 summer flounder recreational season to meet the needs of the conservation equivalency program.

CHAIRMAN FREEMAN: All right, Gordon, did you want to address this issue?

MR. COLVIN: Thank you. I believe the staff distributed to the board copies of the news release that announced the adoption of the emergency regulations for fluke, scup and sea bass that New York state adopted and became effective on April 26th.

In that news release there is a brief description of the reasoning by which we settled on a 20 percent reduction for our fluke regulations, which is essentially equivalent to the reasoning that was laid out in my March 11th memo to the board that was discussed at length at the board's last meeting.

I'll try to keep this as brief as I can, Mr. Chairman, but it's important that I have an opportunity to get a few comments on the record. In effect, New York's fluke regulations have been essentially unchanged for three successive years.

Over those three years, our landings as estimated by MRFSS were just under 700,000 fish in each of 2001 and 2002, but rose to over 1.5 million in 2003. There has been considerable discussion at past meetings of this board by New York's members and people in the New York and New Jersey region that has laid out the concerns and kind of the disbelief of the fishing community as a whole in the 2003 estimate.

For the reasons that I think are fairly well articulated in our March 11th memo, New York has decided that it is a reliable and appropriate basis to calculate our reduction to use an average of the landings of the last three years when our regulations were the same, rather than simply to use the very unusual and unbelievably high estimate of landings for 2003 alone.

One of the things that went through our minds here was the question of on what basis historically has the board based its direction to states to use the last year's landings, the most recent year's landings alone, as the basis for projecting landings in the current fishing year.

I checked with staff on this earlier to see whether this has been memorialized in any kind of addendum or in the management plan itself, or is this a less formal guidance. I believe that, in fact, the use of the last year as opposed to what we're proposing now, a three-year average where regulations are stable, is, in fact, something that appears in

annual guidance guidelines.

It is not formalized as an addendum. Therefore, New York believes it is within the board's authority and purview to recognize the validity of our argument and to approve our reduction based on the three-year averaging at 20 percent.

Also, of course, just recognizing that all this is further based on the weakness, and we will assert the inappropriateness of the use of the MRFSS survey to assign and manage a state-by-state quota, and the highly variable results of New York's catch estimates for the last three years are further evidence of this.

I should also report to the board that, as you know, we have all requested a comprehensive review of the 2003 landings, which was provided to us within days of our last board meeting and which fell far short of, certainly, of New York's expectations in terms of its comprehensiveness and the thoroughness of the review.

We have and did at that time ask the National Marine Fisheries Service for substantially additional explanation and further information that would help us evaluate that report and to date have not received any of the information we requested, including any of the information that the MRFSS staff informally agreed to provide in the conference call subsequent to that letter.

So we have nothing further to report to you, unfortunately, about the review of the 2003 catch estimate that we've all discussed so much, because nothing further has been forthcoming.

The last point I'd like to make is that the regulations that we've instituted for 2003

reduce our creel limit from seven to three and our season from year-around to a season from the middle of May to Labor Day. It's a very substantial reduction in the season.

We've kept our size limit at 17 inches. We have chosen to achieve the entire percent reduction through management measures that are most effective at directly reducing exploitation of fishing effort, rather than to simply postpone the problem by getting on the treadmill that we've all been on of raising size limits.

This means that there is a pretty substantial amount of pain associated with meeting 20 percent. I can assure you that fishermen, fishing businesses in New York are feeling that pain dramatically. Our regulations, while adopted as emergency regulations, are also proposed for permanent adoption and as such are in the public comment period at this time.

We have received substantial public comment on the fluke regulations, and I have brought with me a copy of all of the comments we've received to date, which I'm going to give to the Commission staff and ask that they be incorporated as part of the record of this meeting.

I will also similarly forward a copy of all of the further comments that we receive before the comment period closes. But I assure you that those comments basically boil down to two words, outrage and skepticism -- outrage about the effect of the regulations on the fluke fishery in New York and the economics that support it, and skepticism about the MRFSS estimate for 2003.

I want to read just a couple of short excerpts from a couple of the letters that we did get that I think are representative of the entire body of comment. At that point, Mr.

Chairman, I'll close my yap and try to address any questions the board has.

This is an excerpt first from a letter from Didi Bradshaw, someone well known to many of the members of the board who frequently attends our meetings. Didi and her husband Kevin own the Dorothy B that sails out of -- it's an open boat that sails out of Sheepshead Bay in Brooklyn.

"Dear Gordon: Thank you for your continuing effort to give New York state recreational anglers somewhat of a fluke season in 2004. Though the extremely short season, along with the low bag limit, is disastrous for the party fishing fleet, it is the lesser of the available evils.

"Since going to a 17-inch fluke, my business has suffered a loss of fluke revenues of about 40 percent in 2002 and 2003. If 2004 continues the decline, a third generation 30-year boat operator will be forced to sell the boat as we have exhausted our capital reserves and will be unable to sustain a consecutive three-year loss."

This is a boat on the West End that's less affected by our regulations than the boats on the East End. The second letter is from Captain Fred Byrd, who is the owner and operator of the Flying Cloud. The Flying Cloud is an open boat in Montauk.

Fred may be less well-known to members of the board, though he has been a past industry advisor and has attended a number of our meetings. Fred has been in the business for many, many years, and he and his boat are legend in the fishery.

They are primarily a scup boat, but they also do fish for fluke seasonally and other bottom fish as well. An excerpt from Fred's letter:

"When the stroke of the pen signed into law

three fluke at 17 inches and 20 porgies at 11 inches, it told the end of the party boat industry. How do you in good conscience condone this?

"No longer can we hire the young kids in college who come out to get a start in life with a summer job in Montauk. The party boat has been traditionally the way the common man has been able to come out, catch some fish for dinner, or possibly freeze some for future use, for a reasonable amount of money.

"Years ago a customer could come to Montauk and return to New York City on a tank of gasoline which cost \$.55 a gallon with a cooler full of fish. Gasoline is now over \$2.00 a gallon and rising.

"With the new regulations, any sensible fisherman will not come to Montauk. The DEC has absolutely destroyed our fishery with their regulations. As it stands now, our patrons can go to neighboring states and can keep from 50 to 100 porgies of a lesser size than New York.

"The fact that these customers will go elsewhere results in the loss of a lot of tax revenue and jobs that guarantees the extinction of a way of life that I have known for 60 years. I grieve for the clients that have sailed with me for many years that the DEC has now turned their back on.

"Hotels, motels, restaurants, delicatessens, gas stations and many other businesses will suffer tremendously from this cut. I strongly suggest that you increase the fluke and porgy quota to at least be comparable to the surrounding states."

Now Fred's letter is also going to be part of the motivation for what we get to later when I talk about transferring some of the commercial porgy quota, but I also wanted

to tell you that his thoughts on fluke are consistent with all the thoughts we're hearing from the Eastern Long Island party and charter boats this spring.

Mr. Chairman, thank you. I will be more than willing to entertain any questions that any members of the board have.

CHAIRMAN FREEMAN: Thank you, Gordon. Tom Fote and Jack Travelstead.

MR. FOTE: The question I've been asking from Dave when we started talking about the numbers is what happened in 2003? What got us to where we were with New York and New Jersey both going over?

Because, unlike years previously, maybe 2000 or 1999, some of us would look at the tables, took what was the best advantage for us on the table and not being as conservative as possible.

With certain states beating the drum for paybacks, that was no longer happening. It was also when it was aware that states like Delaware and Maryland and Virginia went over, and they had to take drastic cuts, that people weren't doing anything any more.

They were basically looking at how they could be more conservative than either tables allowed them to be. New Jersey did that in 2003, so did New York. So, under that frame of reference, I've been sitting here trying to figure out the numbers for the last couple of months of how we got here.

Well, one of the reasons we got here is because of NMFS. No where when we sent to set the 2003 figures did they tell us that they had hired a new contractor, that the figures weren't good for the first waves, and that basically they extrapolated the figures.

Now, there should have been an asterisk when we started doing this and basically setting the quotas for 2003 that says, by the way, don't use 2002. Be very careful because the figures aren't right.

When did I find out the figures weren't right -- 2004. That upsets me. I mean, because we do things in good faith based on figures to set quotas and for the following year and bag limits.

Also, what happened here is I said, well, maybe there is something else going on here. Let me look at the figures for marine participation which has nothing to do with really -- well, it basically starts with how many anglers are fishing.

That's your participation. And you basically extrapolate those numbers to basically give you how many fluke are caught by using trips and everything else. So I looked at the 20-year history of New York, and I looked at the 20-year history of New Jersey.

And the trend seemed to go along. When they're up, we're up. When they're down, we're down. We've always had about two times or even three times sometimes the number of anglers they've had in New York, New Jersey. I can never figure that out. We have a lot smaller coastline, but we have a lot more fishermen, I guess, according to statistics.

Looking over the statistics, New York averages, over the long- time period, to about 2000, averaged between 400,000-600,000 participation. New Jersey, during that time period, went from highs of 1.3-1.4 million down to about 800,000. That's about the low point we went.

So, let me compare some figures and look at it. Well, I went back to 2001. In 2001 New

Jersey had 1.3 million participation. My mind is getting a little old as I go along. It's either we had 7.4 or 7.6 million trips.

2002 we threw out because everybody told us it was wrong. We dropped by a huge number of trips and so did New York. I look at New York. They're at about an all-time high in 2001, which New Jersey was not, but they were about 700,000 participation. I don't have the trip figures. Gordon probably could supply that.

Again, we throw 2002 out because we know the figures aren't any good. What upsets me is when I look at 2003 participation. Now we know that 2003 was a bad year. It was a bad year weather. It was a bad year. Fluke moved off shore real early, both in New York and New Jersey.

And we look at those figures. What happens when we look at the marine rec figures? New York is 200,000 marine participation higher than they've been in the 20-year time line we've been doing figures, while New Jersey went from 1.3 down by almost 250,000. The trends should have been the same.

I mean, this is where -- and I've asked the question. I was hoping when we had the meeting down in D.C. and I couldn't make it that week but Bruce went down -- I know Pat -- I was expecting some answers to try to explain that.

I haven't received an answer to explain that. I spent an hour last Monday trying to get clarification from the people down at statistics. We were talking about some other thing with Dave Voorhees and says, where is the problem here? What happened? Still haven't gotten an answer.

Somebody said to me, well, when you're talking about competitive edge before,

whether 100 trip or 50, 100 fish bag limit in Massachusetts is better for Rhode Island or hurts Rhode Island by 50 fish.

You know what my captain is telling me this year in New Jersey? Their greatest fear, and it's probably true in Connecticut, is that because of the three-fish bag limit and 17 inches, that all of those anglers are going to come back, that were fishing in New York, are going to come to New Jersey or Connecticut, and we are going to jump, and we're going to be over and we're going to be in the same ball of wax next year.

That is a real serious problem because we have done nothing. We've basically used the best figures, more conservative. We took everything we should. And by the state next to us having to reduce their season, we're going to go over.

I think even if they had these regulations of three fish at 17 inches that Connecticut and maybe even Rhode Island -- I don't know -- but I know New Jersey is going to see a lot more participation and a lot more people fishing on fluke boats down there.

I would say the guys in New Jersey would say that's great, normally. They're not saying that. They're saying we don't want that. We don't want to put the fishermen in New York, first of all, out of business, the charter and party boats.

But, also, we don't need that influx of anglers to put us over so this next year we can't do business. Those are my concerns. That's why I supported this motion the last time. And nothing the last time around, knowing no more information from that point on until now has made me change my mind.

NMFS has not come back and justified those

numbers to me, has not justified those numbers to anybody. I cannot see 2003 being the all-time. Now, maybe New York is doing better sampling but, again, that's my greatest fear.

Somebody said to me one day, what would happen if we actually get a real count of what is actually happening each day? They basically said, we're all over, because we'd get a more accurate count. That's another story, but I'll leave it right there, but I've made my statement.

CHAIRMAN FREEMAN: All right, I have Jack Travelstead, Gerry, then Rick Cole, Bill Adler and Pat Augustine, in that order. Go ahead, Jack.

MR. TRAVELSTEAD: To me this boils down to whether or not the MRFSS survey in the state of New York in 2003 was accurate. I understand the report has been done by NMFS of those data. Gordon, can you remind us of what that report says?

You also mentioned that you're expecting more in-depth analysis by NMFS. Can you tell us what you expect that might say? And then, Harry Mears, can you tell us perhaps has there ever been a case where NMFS has analyzed the MRFSS results in a particular state and found them to be grossly inaccurate and had to be adjusted?

CHAIRMAN FREEMAN: Gordon.

MR. COLVIN: I hesitate before I answer in terms of saying what that report said, because it isn't my report, and because I have so many questions about what it says that I have transmitted to the National Marine Fisheries Service.

But I'll tell you what I think it says. I think it says we checked our math and couldn't

find any mistakes; or we did, we found a couple of little mistakes, and when we corrected them, it didn't really change the bottom line very much, I think is even a more accurate answer.

But, as I said, that report does not address major questions that we continue to have, questions like why did you change the distribution of your telephone intercept samples by wave, which they did.

How did you change the distribution of angler intercept stations, and how did it compare to prior years, and how might that have affected the outcome, which they did change and that question remains unanswered. And there are lots and lots of other questions.

We have asked the Service to comprehensively examine the stratification of all of their samples in 2003 as compared to a series of prior years in a fashion that addresses the hypothesis that something changed in 2003 that biases those results as compared to prior years.

That analysis isn't done. So, it remains surprising to us in light of all that the industry has said -- and you've all heard it -- that we could see the highest single effort estimate in the entire MRFSS time series for the year 2003. That makes no sense. Sorry to give you my spin on the answer, Jack, but I needed to do that.

CHAIRMAN FREEMAN: Harry.

MR. MEARS: Thank you, Mr. Chairman. In response to Mr. Travelstead's question, I'll do the best I can from my perspective as a board member. The issue of the MRFSS in terms of scup and black sea bass, summer flounder management certainly has been a topic before this board on several occasions

where both staff from National Marine Fisheries Service and also from the ACCSP program indicated their own individual perspectives on what can be done, what can't be done.

Certainly, what I recall is that, yes, it can certainly be done to monitor in this case summer flounder harvest on a state-by-state basis. In terms of following up what Gordon presented, I'm somewhat curious in terms of what might have been the most recent results of communication with MRFSS staff within the agency.

It is currently my understanding that specific questions from the state of New York have been articulated in detail, and that a response over and above that was presented in the past will be provided to the state by the end of the month.

In terms of whether or not harvest in retrospect was grossly erroneously calculated, I can't answer that, and I would defer to MRFSS staff on that particular question. My only final comment is I certainly recognize and I in no way undersell the importance of the MRFSS in this case in management of summer flounder.

But I'm not so sure, based upon what I've heard, that is the key issue before us today. What I heard earlier from the report from the PRT is that there were a series of 23 options that were presented and were subsequently reviewed in accordance with meeting the objectives of the plan.

What is before us today, if I understand the situation correctly, is a 24th option that, in fact, was not reviewed and, in fact, does not have the overall result of meeting the 48.5 percent reduction as was required from all of the other states.

So, once again, yes, we do have an MRFSS situation. These questions are not new. From my understanding, the questions and answers are ongoing, but equally and just as important is that we have a very important process question here, as important as the ones we just previously addressed for scup and black sea bass. Thank you.

CHAIRMAN FREEMAN: Okay, Gordon, you wanted to respond?

MR. COLVIN: Yes. Just one more point I need to make, too, Jack, and I'm sorry I didn't make this before. Don't get me wrong, I'm not critical of National Marine Fisheries Service for what it has done to date, and what it hasn't been able to do to date with respect to these analyses.

I appreciate the fact that the request we've made for an examination of the 2003 report and the follow-up request we've made for further analyses require extensive work. I'm asking the Service to do a lot of work.

They didn't ask for this. I think it has been pretty clearly articulated, at least it has been clear to me, that the Service has said that we don't produce the Marine Recreational Fisheries Statistic Survey harvest estimates by state for the purpose of managing quotas and adopting state-specific quotas and all that goes with it.

That's your choice, ASMFC. You chose to do that, and we're telling you that there are real shortcomings. And those shortcomings, I think, were pretty clearly articulated, most recently, by the Service in its presentation to the Mid-Atlantic Council in January. So, I appreciate the fact that because the situation has come up, we're asking them to do a lot of extra work.

Unfortunately, that is the way it is, but I want the record of this meeting to reflect the fact that I'm not being critical of them. I know we're asking for a lot of extra work. The difficulty is that they didn't put themselves in this position. We all did.

CHAIRMAN FREEMAN: All right, I had Gerry Carvalho.

MR. CARVALHO: I pass.

CHAIRMAN FREEMAN: Rick Cole.

MR. COLE: Thank you, Mr. Chairman. My primary concern is in our process. We've all collectively worked at least four or five years developing this conservation equivalency program that we use for summer flounder. We've all been bound by it.

We've all had to follow the procedures. The staff provided us all with a memo on January 29th that detailed how we were to achieve the conservation equivalency measures that the Commission needed to follow.

Necessary tables, equations, time lines to have the review by the technical committee were all there. It's a process that we've developed, again, over four or five years. I'm concerned that by New York not following this process, we have a very real possibility that the whole process will be scuttled, and it will be invalid in the future.

I think we need this process to keep this recreational fishery under control. It's extremely important. As everyone around this table knows, I think out of the last seven or eight years we've exceeded the recreational harvest approximately six times.

So, this is a major issue. From the

standpoint of the MRFSS report, the only thing I can do is read directly from the report. And I'll quote this. This is in the second paragraph of the summary.

It says, "A review of the 2003 MRFSS summer flounder harvest estimates and angler intercept data did not reveal any significant errors that would cause errors in the estimates." And that's referring to the New York data.

But, again, my concern is our conservation equivalency process that we have in place. I think it's important that we maintain the integrity of that process, and we need to continue to carry on with it.

For that reason, I'd like to offer the following motion. **I move that the Summer Flounder, Scup and Black Sea Bass Management Board recommends to the ISFMP Policy Board that the state of New York be found out of compliance with the Summer Flounder FMP in that it has not implemented a recreational management program for 2004 that is consistent with the annual specifications set by the management board.**

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a recreational management program that achieves a 48.5 percent reduction in landings in number relative to the 2003 landings by a date to be determined by the ISFMP Policy Board.

MR. BORDEN: Second.

CHAIRMAN FREEMAN: All right, a motion has been offered and seconded by

Mr. Borden. Let me go through my list. There may be others. Bill Adler, I have next and then Pat Augustine.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I want to ask Gordon a couple questions. First of all, Gordon, did you say that your technical team reviewed this proposal that you've offered here or what you plan to put in? That was the first question.

Somebody reviewed it and said it's only worth the 20 percent reduction, and I was wondering, even though you went from seven fish to three, is the reason that it was given why you didn't do 48.5 percent, was that because of the longer seasons than what was in, for instance, in your Options 1 and 2, they basically are a 40-day difference and a 60-day difference, given 17-inches and seven fish.

So, Gordon, first of all, was it your technical team that reviewed this proposal and felt that it was okay? And, secondly, is it only worth 20, because even though you've cut the fish number, the more days in the season is the reason it didn't make it? Can you answer those?

MR. COLVIN: Bill, the Options 1 through 23 that you see in the report were all determined to achieve a 48.5 percent reduction, which is to say they are based on reducing last year's catch of 1.5 million fluke to this year's quota.

The option that we would probably have chosen would have been one that is similar, I think, to -- well, I guess I'm not even sure. The option we were talking about doing at 48.5 was an 18-inches, three fish, May 15 to Labor Day.

Instead, we, for reasons that I've described to you, ultimately decided that rather than

reduce our landings by 48.5 percent because that was based on the one year, the 2003 catch estimate, we would look to a three-year average of 2001, 2002, 2003, which translates to a 20 percent reduction, which enabled us to have a 17-inch size limit, a three-fish limit and a May 15 to September 6 season. The essential difference between 20 and 48.5 is 17 inches versus 18 inches.

MR. ADLER: And, if I may, Mr. Chairman, this looks like the technical team did look at it, because they're the ones that said this regulation meets 20 percent, so they must have looked at it; is that true?

MR. COLVIN: I don't know. When you say the "technical team", I do not believe that all of the board's technical committee made that judgment. That assessment is New York's assessment.

MR. ADLER: All right, so your New York technical team assessed it at only 20 percent?

MR. COLVIN: That's correct. And I have no doubt, frankly, based on the way it was done, that the board's technical committee would concur in that. It's basically using the same formulas that we used for the 48.5.

CHAIRMAN FREEMAN: All right, Bill, did that answer your question? Okay, Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Mr. Colvin made a very good presentation trying to describe where we are and how we got there. We, in New York, have been very diligent in trying to do the very best we could with the management plan.

I won't repeat all the things he has said, but it's rather sad and interesting at the same

time that when we all went back and looked at how we were going to take care of the years 1998 to 2001, there wasn't a clearcut picture as to how good, excuse me, "good," how adequate MRFSS was, so we turned up as a case in point. We averaged those all together so we used 1998 to 2001 as base.

Then 2002, as Mr. Fote has suggested, there were a couple of waves that were questionable, and to my understanding, there was a proxy for that. Now 2003 comes along, and as everyone has indicated, we've not only changed the way the process was handled, but we still then have to live with whatever they came up with as what we caught in 2003.

We, a group of us, attended the MRFSS review two or three weeks ago. Quite frankly, most of us around the table were very doggone skeptical, as I believe our chairman was, at that meeting. Yes, at the end of the first day and second day it became abundantly clear that MRFSS works on a coast-wide basis.

The points that we're questioning keep coming up year after year after year, and for lack of money it appears the surveys aren't either done more often or more frequently. We've had some change in how the telephone surveys is accomplished.

A tremendous amount of money was spent on making 100,000 calls, of which about 8 percent are effective, at a cost of \$1 apiece, and you wonder if you get a bang for your buck worth it. We talked about the random surveys, and we don't know how random they are.

The folks at the dock that come off the dock or off the boats only check those that carry fish or those that don't carry fish. So what is "random"? To believe that with having a

change in the consulting firm and having a change in the places that these folks are intercepted, combined with the fact that these folks are being paid a pittance for what they do in each one of these surveys, combine that with the fact that the state of New York, as others, have been led down the merry path that you're doing fine, your management is working for a couple of years only to find ourselves in such a sad state of affairs.

Here we are literally putting an industry on its butt, putting them out of business. And for what purpose? So, granted, I can't convince you any more than Mr. Colvin or any of the folks around the table can that this is a unique and unusual situation. It's pretty obvious.

Yes, the plan pretty well says we can do this, but as Mr. Colvin pointed out, nowhere in our documents does it state that we can't use some other approach. Yes, are we questioning how we deal with MRFSS? And the answer is yes.

The questions that have been asked by the state of New York since September/October timeframe into December, when the goods were supposed to have been delivered, understanding that MRFSS has a very, very heavy load, the fact is we were promised information.

January came, no information. February came, no information. We finally get into May, and we have a meeting at Silver Spring, and we're still asking the same questions. And to this date we have not seen a look at the raw data, because everybody is too busy to give it to us.

So it surely makes the so-called "excellent system," the MRFSS system, questionable. What is it that we're asking for that is so

unique and unusual that would help our fishery survive for a year? Not that we're asking for anything that we shouldn't be getting.

But the fact that we had all these facts laid on us at the twelfth-hour, so to speak, where we have to take a cut of 48.5 percent compounded by the scup, it is just unusual and unique that all of this comes together at one time.

With the states of New Jersey and not so much Connecticut but Rhode Island and Massachusetts, I'm sorry, Massachusetts, in particular, when we have folks from various communities do a lot of fishing on the Freddy Byrd boats out at Montauk and the folks in the Northport, they are not going to those places to fish.

It has had a detrimental economic impact on the state of New York and in particular on our party boat/charter boat folks. To that extent, it is bothersome to know that we are going to lose a tremendous amount of business.

As Mr. Fote pointed out, God help you folks in New Jersey next year, because you are going to suffer, and, hopefully, we'll have put an amendment in place, an addendum in place, to fix this problem to assure that it doesn't happen again. As far as the motion is concerned, I respect your motion, Mr. Cole. Thank you for the opportunity to put these notes on the record.

CHAIRMAN FREEMAN: Okay, I have three people that need to speak yet, and we've already reached our time limit, and we're cutting into other things so I would ask that those people either address new points or be brief in your comments, because there are other things we need to deal with, and we're just not going to have time. I

have David Borden, Gil and David Pierce.

MR. BORDEN: Yes, thank you, Mr. Chairman. I'll try to be brief to get you back on schedule. While I'm sympathetic to the fishermen in New York, I just note that the fishermen in Rhode Island went through the same type of thing a number of years ago on summer flounder.

At that point the board basically took the position that the integrity of the process was more important than the impacts on one state and basically had us implement the actions in spite of the fact that we were convinced that we had problems with MRFSS.

I think Gordon has raised a lot of valid points here. There probably are some problems with MRFSS, so I'm sympathetic. I support the motion. I have no objections, just so everyone understands, to the concept that Gordon is putting forth in terms of a three-year moving average. I think that's something that the Commission should explore, but it's not in the plan. Rick Cole is correct.

I think it's somewhat ironic that a number of people around the table have talked about MRFSS and its application to individual states when, in fact, we've had this discussion numerous times, and each time that we have the discussion the conclusion is always the same.

The scientific community comes back and tells us do not use MRFSS on an individual state basis because of variability in the data. It wasn't designed or intended to be used like that. Use it on a coast-wide basis.

Yet, the conclusion of every state around here is to use it on an individual state basis, because the states want flexibility to tailor-

make their regulations to meet the needs of their constituents.

So, I mean, we can't have it both ways. If we're going to argue that, then every state around the table has to be prepared to go forward with some kind of uniform regulations with all the inherent problems that are associated with that.

Just two final points. One is the consequences of being wrong here -- and I've said this at previous meetings and David Simpson can correct me if this is erroneous -- the consequences of New York not meeting its mortality reduction is that if, in fact, that is the case, then what happens is next year the stock size is less.

In other words, they take more than they should, and the consequence of that is not a commercial versus a recreational issue. What it is, is every single state around this table and every single constituency outside the state of New York will get to harvest less fish next year, all other things remaining the same.

So, I look at this very much -- although I am sympathetic to the state of New York, I think what they're proposing ought to be an addendum to the plan in terms of averaging. I think it's very logical what Gordon and the state have put forth, but it's not allowed.

The last point is my position would have been totally different, I would point out, had this board adopted the A version of the recreational pay-back provision. The reason there is very simple. Had we had that, we would have been in a position where we could have cut the state of New York a little bit of slack, and they would have had essentially made the situation even in a subsequent year, but we don't have that.

What we have, as a previous speaker pointed out, is a whole history here of recreational overages that have gone on for about six years, or six out of nine, I think, or six out of eight, with a consequence that we have not met our rebuilding objectives and retarded the rate of rebuilding in this stock.

I mean, in spite of that, the stock is rebuilding, clearly. I understand that this year's survey index may be the highest on record but the -- I mean, we're not there. So, I'm going to support the motion, and it's unfortunate that I have to.

CHAIRMAN FREEMAN: Gil.

MR. POPE: Thank you. David made a lot of my points, but I just want to reemphasize that what we do here is like when you push down on one part of something, it comes up somewhere else. What we do to New York, or what we do to any of the states here that is severe is going to affect either New Jersey or Connecticut.

Those anglers are not probably going to stop fishing because we say you have to stop fishing. They're just going to go somewhere else and fish. So we have to start looking at this in a little bit more different way, and we know this.

It seems like every time we get in a meeting we know exactly what we really should do back in the back of our minds, but we never get around to it when we sit around the table, or we never schedule a type of a meeting where we can reassess our process and change the process so we don't keep going down these same roads.

When Virginia was over one time by 50 percent, I guess, and had to reduce in one year, I don't know if the people went to Maryland or whether they went to North

Carolina. These are all things that we should also be exploring to temper this process because this is not like medicine where we know the exact dosage that we should give for a precise disease or we know exactly what the disease is.

This is all fuzzy, gray stuff when we work with the MRFSS, so we have to temper what we do here. We know all the problems, weight versus numbers. These are all things in the process that we talk about.

For another point, it isn't as if we haven't been doing anything as far as the recreational fisheries are concerned, because I can remember when it was 15 inches, eight fish. Now it's going to the point of up to 18 inches in some cases and three fish.

I mean, there have been things that have been done here. so it isn't as if we haven't reacted to it, but I don't think the reactions that we are having here are doing any good.

All they're doing is hurting the recreational anglers rather than doing what we would say, helping the rebuilding. I mean, the two things just don't seem to jive to me. I just would like to see us schedule some time or schedule some more workshops on how we get ourselves out of this mess. Thank you.

CHAIRMAN FREEMAN: Okay, thanks, Gil. Dave Pierce.

DR. PIERCE: Yes, we discussed much of this at the last board meeting, and we came up with the percent reductions for state, 48.5 percent for New York, specifically. At the time, I supported that particular percent reduction, because I was of a mind that the 2002 data points for fluke in New York are probably wrong.

I think I remember correctly that didn't we

have some information to suggest that the particular number of 696,343 in 2002 was actually an underestimate. So, there seems to be a climbing trend for landings of fluke in New York.

I had a number of points relative to what David said. I won't get into them because he said them. But, clearly, if indeed, New York goes with what they want to have in place for this particular year, then we really do run the risk, a real risk of seeing 2003 repeating in 2004 and the implications of that are pretty drastic.

That will spill over into the commercial fishery rules and regulations. It will make things even worse for the recreational fishery next year. So even though I'm very sympathetic to New York, obviously, because of what I've already said about scup and the positions I've taken on scup, this is certainly different from scup, notably in Massachusetts where we've been ruled out of compliance because there is disagreement because the board doesn't believe we picked the right measures to get the 40 percent we're required to take.

Here New York doesn't want to take the cut it's required to take, which is the 48.5 percent. Significant, indeed, but necessary in light of the fact that the consequences of New York rising back up again to about 1.5 million or more in 2004 are just severe for the entire region, especially because there is no payback, as David indicated.

CHAIRMAN FREEMAN: Okay, thank you, David. Tom, you wanted to speak. Remember, now, we're going against time here, so we need to keep these comments very succinct.

MR. FOTE: I'll keep my comments short. New Jersey, when we basically look at

directed trips, 40 percent of our directed trips are for summer flounder, which if we figure out the state recreational fishing is worth about \$1.4 billion.

I'm not going to say it's 40 percent of \$1.4 billion, but it makes up a huge amount of cash, probably \$100 million or more. I would be probably guessing. I'm looking at a vote here on an impact that probably in New York, even if I approve this 20 percent reduction will cost \$20-\$30 million to New York's recreational or more, maybe \$40 million.

I can't estimate it, but I know it's going to be a large number. We never did a socioeconomic. There is no economic data, which should have been done on fluke but never has been done.

The other fact that we should be all aware of, we talk about recreational overages. We do it every year, but we also never solved the original problem. In 1994 or 1993, when I first came -- well, I was here in 1991, but when we first started doing the summer flounder plan in '94, we had a collapsed stock. The recreational were landing so many fish, numbers of fish.

I am sitting here in 2004 on a recovered fishery where the quota has grown dramatically; and when we look at the actual number of fish the recreational community is taking home, the number really hasn't changed.

In 2000, I mean, it's not where the number has doubled. Matter of fact, some years it has actually been lower in the last four or five years, so we're basically taking home heavier fish. Now the fecundity of a small fish has got to be a lot less than the fecundity of a big fish, yet we're harvesting that which have spawned four or five.

No where were we ever taking that into consideration. No where have we dealt with it and we really need to deal with it in summer flounder. That's all I have to say. I'm going to keep it short.

CHAIRMAN FREEMAN: All right, we need to bring this to a vote. I would ask, however -- a number of people in the audience had comments. Does anyone care to comment on this issue before the board votes on it? Kathy, would you come forward, please, to the mike?

MS. REESE: Thank you for your time in regards to this matter. I am here representing the New York Sports Fishing Federation.

CHAIRMAN FREEMAN: Identify yourself for the record.

MS. REESE: I apologize. My name is Kathryn Hemline Reese, and I am here representing the New York Sports Fishing Federation, the Captree Boatmen Association, and I own a party boat out of Captree called Tradewinds. But more importantly, I'm here representing my family and myself.

I have heard from the last two meetings that I've been at -- and I am new to this. My husband has been a captain for 25 years. We've owned a boat for only three years. But I've heard across the board of the inconsistencies with the data. I am not going to reiterate what everybody has talked about.

There is a financial hardship being put on us, just the burden of financially coming down here. Calling my husband this morning, we didn't sail yet again. We are only a summer fluke boat. We rely on the

weather to get out. We only go out in the ocean.

So when I look at the MRFSS for 2003, I am literally amazed because, quite honestly and on a personal note, if our boat doesn't get out on the ocean, it doesn't go out. But if it goes out and the conditions are such, I don't go out because I get seasick.

So, I mean, when I look at the numbers, it amazes me, so I ask that -- I've heard across the table about the flaws. Please just don't put us out of business until we find out where these flaws are coming from because it sounds to me -- and I was here last meeting with my youngest son, and I'm here with my oldest son. This isn't just about the fish.

My family is a fishing family. My son just got the Jacques Cousteau Marine Biology Award. We're concerned about the environment and about the marina. But it's about the people, the people that trust this system. They trust everybody, and you hear it across the board.

So please don't take the faith away from the people that have put everybody here. Our bills don't get paid. I'm not being paid to be here. I'm here fighting for my business and I'm here fighting for a love that everybody has and that's fishing. So thank you for your time.

CHAIRMAN FREEMAN: Thank you, Captain Paul.

CAPTAIN PAUL FORSBERG: I'm Paul Forsberg, owner of the Viking fishing fleet, Montauk. I hear these regulations. We're cut down to 20 porgies in New York. We're cut down to three fluke. Let me just tell you a little story.

I'll be quick about it, but Saturday my grandson took the all-day Viking boat out fluke fishing. We had eight people. There was less than 100 people between nine boats that sailed fluke fishing from Montauk on Saturday, a beautiful sunshine, flat, calm day.

The word was out that fishing is fantastic. My grandson called me on the cell phone. He said, "What do I do now, Grandpa? I got my limit of fluke, and the people are starting to yell at me because I'm telling them they have to throw them away."

I said, "Start riding. You waste time riding, you can't worry about catching fish. Tell them you're going to go look for some real big fish. See if you can find a trophy fish." When the people got off the boat -- when they got back in, I was at the dock. They were actually pissed off, in plain English. They were mad.

We wasted a whole day fishing. I caught my fish in 45 minutes. All those fish in the water and now we can't catch seven fish. I drove 150 miles for three fluke. What are you doing to me? They blame it on us; we're holding the fish back.

We get into the porgies. We'll have 20 porgies a man, New York. The way the phone is ringing, we're not going to carry any people porgy fishing. We have the sea bass season closure. At least, if I could catch sea bass and porgies at the same time, I could say, hey, look, you can catch 25 sea bass, you can catch 20 porgies, maybe I could have some people on the boat.

They're not going to drive 100-odd miles to catch 20 porgy, believe me. So you put us out of business there. The two-week closure in October, after the sea bass closure gets over with, we can say, okay, guys, we're

open catching sea bass and porgies.

Now we've got a two-week closure in October. Well, the 17th of October, by the time that closure is done, we're out of business again. We won't get the people to come back in November, that late in the year, so we're finished. So technically, my season ends in October.

I just want to remind everybody here multi-passenger boats' primary business is with people that can't afford their own boat. We're dealing with low-income bracket people. Your fluke boats are your normally low-income bracket mixture of people, and your porgy boats are low-income bracket people with color.

These people, five to six people to an automobile, they're mostly retired people, senior citizens. Their family chips in together to send grandpa out fishing and catch him a mess of porgies to bring back.

This is just a thing that they do. They've done it for years. This can't happen any more now. You just took that away from the people. The forgotten people are being forgotten again. I have to lay off nine people in my business just to take care of the porgy that's related to the porgy business.

I have two boats that go porgy fishing. I laid those crews off and I have one person collecting tickets. I have nine people now I have to eliminate these jobs. I don't know how many jobs they're going to eliminate on a fluke boat.

I'll tell you what happened this morning. Four people showed up for Montauk, all the boats -- four. Freddie Byrd, his name was mentioned, he lost. We flipped a coin, who is going to take the four people out. He had two and we had two.

He lost, he had to take them out. We lost less money by staying tied to the dock. We're the lucky ones. Beautiful sunny day, look out the window. The biggest, worst thing about this is we're not saving fish; we're just destroying jobs. We're destroying people. The biomass of the fish is up there.

For crying out loud, if it was fish we were worried about, that would be one thing. We have more fish than we know what to do with. The problem is we have too many fish, too big a fish. And now we're being put out of business and closed down.

I have to take my hat off to Massachusetts. They really break their back to keep their multi-passenger boats in business. God bless them. Unfortunately, New York doesn't do that. They had the chance and they gave it up, and now they're letting us be sacrificial lambs, too.

We're going down the tube. Maybe at the end of this year they'll see what the tax revenue fell off, how many people lost their jobs and how many bankruptcies are in this business now. They might look at things a little differently, a little late.

I have a boat up in Massachusetts right now porgy fishing. I wish there was enough room to bring all my boats up there, because my boats sitting in New York aren't doing anything. I don't know what I'm going to do with them.

I employ 48 people. I've got nine off already. I don't know how many people are going to go down before this is over with this year. We have bumper stickers now that are out, "I love New York; I fish elsewhere." Think about it.

Are we saving fish or we just destroying

people that happen to be living in New York. My business has been there since 1936. We're on a fourth generation. I want to just correct one thing that a man from Massachusetts over here made a remark about 100 porgies being too much at two pounds apiece.

Not everybody on a multi-passenger boat catches 100 porgies. It's very hard on a multi-passenger boat to catch 50 porgies. Not everybody catches 50. Some people do.

You might have a couple of people that will catch those 100 porgies, but most of those people caught far less than that for different reasons, whether they're handicapped, they're aged more than the other person or tangled up more or whatever.

To catch 100 porgies in a day is a lot of hard work, but it's the idea of having the opportunity that maybe I might catch 100 porgies, that's what counts, or maybe I might catch my 50. But being limited to 20 in the state of New York and people driving over 100 miles, they don't have the chance. They're not going to waste their time.

If you take 100 porgies, remember, everybody, there are 100 heads that have to be cut off. There are 100 tails. There are 100 sets of fins. There are 100 porgies have to be scaled and gutted.

Let's weigh up what meat and bones is left, and I think you will find that two 28-inch striped bass will be more meat than those 100 porgies. And keep in mind that most of the people don't have the 100 porgies. I said it. That's where I'm at. Thanks.

CHAIRMAN FREEMAN: All right, thank you, Paul. Anyone else? Tony.

MR. TONY BOGAN: Thank you, Mr.

Chairman. My name is Tony Bogan from United Boatmen of New York and New Jersey. Kathy and Paul pretty much already said the main points we wanted to make, just a couple real quick things I'm going to throw in. First of all, one of the points Paul was making was that this isn't about the fish. He and I talked about this for a while over the last week.

If this was a situation where this stock was in trouble, and fluke were disappearing wholesale, and the industry came up here and started screaming and yelling about how you're hurting our business, we would look foolish.

We would look shortsighted if we did that. That is not the case. As was mentioned earlier, we're talking about a second year in a row of possibly the largest trawl survey in recorded history of this stock.

I mean, this is a totally different situation. So when the comments were being made that this is about people, not fish, that's the context that we wanted to put it in. That's where this comes from.

The other thing would be, there have been comments made at previous meetings, and it has been alluded to here about how, well, in the past, other states have had to cut back similarly. That was mentioned at the last meeting.

Comments about, well, you know, hey, this is what it says right here on this piece of paper, and this piece of paper right here says, well, that's what it is. So, of course, since we read it in print, it must be true.

While that may make Mr. Cole feel comfortable, I would hope that the board as a whole would not be quite so myopic and not quite so narrow minded in looking at this issue.

While there have been other situations and other times where other states have had reductions that have been required, I personally have never seen the volume of information that was provided by the state of New York to contradict the information that came from MRFSS.

You know, it was mostly industry's fault. I'll take the blame right up front. In the past, most of the time we just screamed out, hey, these numbers are wrong, but we didn't give you anything to work with to say why we thought it was wrong.

Well, that sure as heck is not the case this time. So this in my mind is not a situation where a state is being footloose and fancy free and flipping its bird at the system and saying, hah, we're not going to cut back by that, we're going to cut back by this.

New York has the strictest fluke regulations on the Eastern Seaboard right now. Think about it, less than a four-month season with three fish at almost a foot and a half long. We're talking about fluke here.

We're concerned about reductions? I mean, the volume of information you people were given, we might not be able to tell you what the landings were. That's not our job to tell you what the landings were.

I certainly feel that in my mind and in industry's mind we feel that we raised enough questions to show that there was a level of ambiguity in the MRFSS numbers that this is the way to address it, which Mr. Augustine brought up before.

This board has averaged MRFSS in the past for the coast as a whole. MRFSS itself has averaged effort numbers when it has had problems to deal with so this is not some

precedent-setting event.

This is simply a way to try and address, try and mitigate some of the adverse consequences of the ambiguities of MRFSS. I feel that the people from the state of New York, both industry, for-hire industry, bait and tackle sales, the state itself, has made a very good argument to warrant doing something like that.

And, again, this is far more -- I'd be wringing my hands and ripping my hair out if I had to deal with these regulations and, unfortunately, I agree wholeheartedly with Mr. Fote that we're concerned that we'll be in a similar situation next year. Thank you very much, Mr. Chairman. I appreciate your time.

CHAIRMAN FREEMAN: All right, thank you very much. Anyone else from the audience? All right, we'll bring this back to the attention of the board. We have a motion. Is there a need to caucus on this? Gordon.

MR. COLVIN: I wonder if I could have one more word, Mr. Chairman?

CHAIRMAN FREEMAN: Yes.

MR. COLVIN: Thank you. I want to address a couple of things that were raised earlier in our discussion. A couple members of the board spoke in terms of the integrity of our state-by-state conservation equivalency program and suggested that in the past we've talked about the flaws, but all the states have supported the program. I want to state again for the record that New York has consistently opposed the institution of the state-by-state conservation equivalency system for the recreational management of fluke. I find it ironic that we're in this position having historically

taken that position, but such is life.

The memo that I referred to earlier explains the reasons. I'm not going to rearticulate that now on the record. It's part of the record. But, we do not support it and we will continue to strongly advocate a return to a process that develops consistent coast-wide regulations for these species.

I cannot tell you strongly enough that we are destroying ourselves, and we are going to destroy this process if we don't go in that direction. I guarantee it. I may not be here when it happens, some of you may not be, but it will tear us apart. And if you don't believe me, read my letters that I'm about to give to the staff.

Now a couple of other points. To me what this whole thing is boiling down to is this simple question. On what basis do we assume what New York's landings would be this year if we didn't change our regs?

The process that we use -- and it's not part of an addendum and it doesn't require an addendum to fix it -- is we simply assume that this year's catch will be last year's, and then it's going to somehow change as a result of whether we increase or decrease the conservatism of our rules.

New York had the same regulations in place for three years. In 2001 we landed under 700,000. In 2002 we landed under 700,000. In 2003 we landed 1.5 million, according to MRFSS. Why in 2004 is it any more likely that we will land 1.5 million than under 700,000?

New York could be sitting here making the case to you that after all, in two years we landed under 700,000 so maybe that's what we should assume we're going to land this year -- 695,000, because in two out of the

three years, that's what we landed with the same regulations. We're not making that case.

What we're saying is it's reasonable to average the three years together and assume that the most likely landings for New York for 2004 is the three-year average that resulted from the same regulations in place over a three-year period.

That's our whole case. The softness of the MRFSS estimate is what we offer in support and justification for that line of reasoning. Last point, a lot of comments have been made about the status of fluke in this year's spring trawl survey estimate.

We can make similar discussion and probably will later when we talk about porgies. This board and this Commission, with its partners in the Mid-Atlantic Council and National Marine Fisheries Service, need to move towards a comprehensive amendment of our management program for these species.

We are rebuilding, rapidly rebuilding these stocks. At the same time we sit here and watch our sport fishing industries being destroyed by our regulations, and that is happening. I don't think that's the objectives or the goals of these management plans.

But that's the outcome that we're experiencing. We need to get back to our management program, go back to the beginning, address what we want out of these recovered and recovering stocks and manage them accordingly, because that's not what we're doing.

That's another opportunity for me to bang on the table with that theme, which I will return to. I'm not sure how we instill a

greater sense of urgency in ourselves to get on with that job but, believe me, it is absolutely essential. Thank you.

CHAIRMAN FREEMAN: Okay, back to the motion. Do we need a caucus on this motion?

MR. COLVIN: Mr. Chairman, I request a roll call.

CHAIRMAN FREEMAN: All right, let's take a one-minute caucus and then we'll have a roll call vote.

(Whereupon, a caucus was held.)

CHAIRMAN FREEMAN: Everyone take their seats. All right, this will be a roll call vote as requested by one of the board members, so I'll ask Toni. As your state is called, then just indicate whether you support, whether it be yes, no, abstention or null vote for the record. Toni.

MS. KERNS: The Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: No.

MS. KERNS: New Jersey.

NEW JERSEY: No.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland.

MARYLAND: Yes.

MS. KERNS: Potomac River. (No response) Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina.

NORTH CAROLINA: Yes.

MS. KERNS: U.S. Fish and Wildlife.

U.S. FISH AND WILDLIFE SERVICE: Yes.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

MS. KERNS: **Nine in favor of the motion, and two against the motion.**

CHAIRMAN FREEMAN: **All right, the motion carries.** Tom.

MR. FOTE: The reason I voted against it -- New Jersey voted against it is because we have to have a system that works and we all should be working together for a system. But when the system, when we see an outlier like this, it really says there is something major wrong here.

Also, I'm looking at the fact that we're still harvesting the same number of fish that we were in '94 recreationally. We've got to fix this because we're going to have the same problem with scup year after year.

And that was more of a point of saying we've got to fix the system. We've got to do something. Gordon is right. I mean, you think about it, we had more party boats sometimes operating in '94 when we had in those summer flounder than we have right now only they can't make a living doing it.

I mean, it's just a real problem and we're going to see the same thing with scup, the same thing with your problem. We watch as recovered fisheries come along, and we haven't kept pace with what goes on.

Part of the problem is the lawsuit that happened a couple years ago. We caved in. I voted against going on that and the million pounds that we paid back for a year and carried forward. We're rebuilding this stock. The stock is in good shape. We just don't know how to manage it.

Discussion of Multi-Year TALs

CHAIRMAN FREEMAN: Okay, we have two other items that we need to get through. I'm going to ask Toni to address the issue of multi-year specifications. The Mid-Atlantic Council has moved forward on this to amend the plan, their Framework 5.

I'm going to ask her to go through the options, and she'll indicate how these mesh with what the Mid-Atlantic Council has done. I'll also ask that Dan Furlong come up to the mike up here in case there are any questions. All right, go ahead, Toni.

MS. KERNS: As Bruce said, Framework 5 has been put out by the Mid-Atlantic Council, and they have gone forward as their preferred option, Option 3 that is in the document that is being passed around to you.

That would be to allow for multi-year TAL

setting with an annual review, which I will go over in this document. The proposed time line for this addendum would be to have this go out for public comment this summer, June and July, and to go ahead and make a final vote on it in August. This time line has been put forward so that we can stay consistent with the council's movements.

The purpose of the addendum would be to allow for a specification of total allowable landings of fishing TALs for the summer flounder, scup and black sea bass fisheries to be established in any given year for the following one to three years, so it could be one, two or three years.

So everyone is clear on how TALs are set currently, the monitoring committee meets annually to make recommendations to the board. Those recommendations are reviewed by the advisory panel. Then both the monitoring committee's and the advisory panel's recommendations are then taken to the board, and we annually set the TALs based on those recommendations.

Option 1 in this document would be to take no action. There would be no adjustments to the current specification-setting process. Therefore, we would set our TALs on an annual basis.

Option 2 would be to allow for multi-year TAL setting. This option would modify the FMP so that within a given year TALs for the Summer Flounder, Scup and Black Sea Bass Board could be specified for each year to the following one to three years.

It doesn't mean that it would always have to take place. It just gives the option for multi-year specifications. The TALs would not have to be constant from year to year, so you could have 3 million pounds one year, 4 million pounds the next and 5 million

pounds the following.

The TALs are based upon expectation of future stock conditions from the best available scientific information. There would be no annual review of the stock condition between the years of the multi-TAL.

So that would mean if you set a TAL for three years, that would not be looked at for that three-year time period. It wouldn't be until the end that we would look to see how the performance of the stock has done compared to the TAL that was set.

So the new steps for setting the TAL with Option 2 would be the monitoring committee would meet once every two to three years to make recommendations to the board. The advisory panel would meet following those recommendations every two to three years. Then the board would set the TAL based upon the above recommendations every two to three years. Option 3 would be to allow for multi-year TAL setting with annual review. This would be a very similar process to Option 1, but there would be an annual review by the monitoring committee each year to see how the stock condition is doing based on the current fishing year.

The steps to setting this TAL would go as follows: The monitoring committee would meet every two to three years to make their recommendations. The advisory panel would make comments on those recommendations.

Then the board would set a multi-year TAL based upon the above recommendations. Then annually, in between each year, the monitoring committee would update the stock condition based on the performance of the fishery.

If it is found the performance of the fishery is inconsistent with the way the TALs have been set, then the monitoring committee would make a recommendation to the board to set new TALs, and the specification process would start all over. Are there any questions on any of these processes? David.

DR. PIERCE: With this third option, if we end up setting, let's say, a three-year TAL, and the monitoring committee then does its thing and in the first year of review they determine that, unfortunately, we have a repeat of recent history in that the recreational landings for scup and for fluke are way above where they are supposed to be, does this option allow for the monitoring committee to acknowledge that problem and then to trigger the specification process in response to that overage?

MS. KERNS: It would, yes, because then they would review the process, see that there is an overage that is greater than needed to be and then they would go through and reset the TALs.

DR. PIERCE: Would that flexibility also exist with Option 2, the multi-year TAL setting?

MS. KERNS: No, it would not. There would be no review of the fishery between those years.

DR. PIERCE: Okay, so with Option 2 there would be no review between the years, which would mean, then, consistent with the language in the draft, the board and the council would have to be most likely extremely conservative with its management approach in order to deal with expected overages of the recreational fishery and other considerations.

I hate to be pessimistic, but I have to, and I

think we all need to be aware of that possibility with that particular option. I'm just saying these things to make sure I completely understand exactly what this second option entails and the sorts of caution we would have to employ. Am I correct with my assessment of --

CHAIRMAN FREEMAN: David, just bear in mind this applies to the entire fishery, not just recreational.

DR. PIERCE: Well, absolutely, but with the commercial fishery there are quotas, so it's pretty much handled, but with the recreational fishery, we always have these problems. We'll have these problems since we don't have any payback provision. The ASMFC and the council rejected that particular strategy, so we're still hanging out there relative to how we effectively control the effort.

CHAIRMAN FREEMAN: Yes, and bear in mind that this was in response to the comments we received both from the commercial and recreational to have some stability to the fishery to come up with a business plan, rather than have this up and down, back and forth from year-to-year gyrations which we're going through at the present time. Toni, you had a comment.

MS. KERNS: I just want to remind everyone that the council's preferred option is our Option Number 3, to have an annual review.

CHAIRMAN FREEMAN: Bill.

MR. ADLER: Thank you, Mr. Chairman. I heard earlier about no conservation equivalency for black sea bass in its plan. I didn't know where, when, it's appropriate to try to put that into some addendum/amendment or whatever. Is this

the place that something like that would be to allow some flexibility in the black sea bass, or somewhere else?

CHAIRMAN FREEMAN: All right, Bob, would you speak to that?

MR. BEAL: Thank you, Mr. Chairman. I think, Bill, to answer that question, it would be better to do that in a different document in coordination with the Mid-Atlantic Council.

The majority of the black sea bass landings come from federal waters; and for just the Commission to do conservation equivalency on black sea bass for recreational fishery is probably not as productive as if both groups handled the situation.

MR. ADLER: Okay, thank you.

CHAIRMAN FREEMAN: Bill, also, when the specifications are done, depending on which options are chosen, they'll be done, as we have in the past, a meeting of both the council and the board.

MR. ADLER: And it could be like put in if it is appropriate, that type of thing, is that how it works?

CHAIRMAN FREEMAN: Well, I'm just indicating that, again, this wouldn't be done separately. We'd continue with the plan we had in the past where both groups will meet to make a determination what the quotas should be under any one of these options. It's not that we'd act independently. And, Dan, you had a comment.

MR. DAN FURLONG: Yes, just to clarify, the Mid-Atlantic Council's preferred option would be most analogous to your Option 2, the one where there is no annual review. That was the preferred option that the

council voted on.

And to expand on that a little bit in terms of Dave's comment, all the other aspects of the plan are still in place so that if -- recognize this as a tool in the tool box. You don't have to use it.

But if you opted to use it, and then in that subsequent year two or three, if there was an overage in the prior year in the commercial sector, it would still be offset in that subsequent year.

In terms of the recreational sector, if there were overages in that sector, assuming that the council and the Commission would agree to conservation equivalency in those subsequent years, then some sort of reduction in effort would have to take place in some combination of size/season/bag to recognize the overage that occurred in the recreational sector.

Now that's all on autopilot, the idea that if the agency promulgates a rule that adopts what the council's preferred option is, which is the idea to no adjustment, then that's what you've bought into for years two and three is that TAL and everything else that is still in the plan today.

CHAIRMAN FREEMAN: Okay, recall that this is a document that would go out for public comment, so this is not the final vote. It's just these are the options that are being offered. David.

MR. BORDEN: Thank you, Mr. Chairman. I support the document for public hearing processes, but I'm just kind of curious. There are two ways of looking at multi-year TALs. One is to specify, I think, as Dave Pierce was indicating, the same number basically for a couple of years.

That's one strategy, and we discussed this in that strategy. If that's the case, then I think it does force you to be a little bit conservative. The other way is to actually -- and this is discussed in the document -- is to have the scientific community look at the stock status and basically forecast what an appropriate TAL is for next year and then the following year, which gives you a different number each way.

This is a long-winded way of asking a question. Has the technical committee examined objectively their ability to do that in a multi-year context, that second method of forecasting stock sizes? Maybe they did that, and I'm not privy to it, or Rick Cole can answer the question.

But we are talking about two different ways of doing this. It seems to me the second one relies on the ability of the technical experts to forecast based on the stock assessment information what a stock size will be in years two and three. So, Rick had his hand up, Mr. Chairman, and maybe he can answer.

CHAIRMAN FREEMAN: Rick, go ahead.

MR. COLE: Yes, Dave, recall that the SARC does that every year. When they update the assessment, they provide us with two-year projections of quota, so the process is done. It has been done, and the information is available.

CHAIRMAN FREEMAN: All right, other questions. Pres, go ahead.

MR. PRESTON PATE, JR.: Thank you, Bruce. Maybe the staff can explain what the real difference between Option Number 1, no action, and the third option is.

It seems to me that but for setting the three-

year period under Option 3, we're going through the same process each year of evaluating the status of the stock with the option of adjusting the TAL in a subsequent year based on any significant reason that would have come out of the stock status evaluation, which is what we're doing now for all intents and purposes.

MS. KERNS: It is what we're doing now, but if there were no adjustments needed, then you could continue on without having to go through the specification process.

MR. PATE: Thank you.

CHAIRMAN FREEMAN: All right, other questions? Is there a motion to -- Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Do you want to state the motion you were about ready to state?

CHAIRMAN FREEMAN: Yes. Well, I would indicate that I think the board needs to take action on this to at least take it out to public hearing.

MR. AUGUSTINE: **Yes, Mr. Chairman I move that we prepare this document to go out to the public for review and assessment, Addendum XIII to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan.**

CHAIRMAN FREEMAN: All right, is there a second to that motion? Bill Adler. Okay, Dave Pierce.

DR. PIERCE: Yes, just a clarification. I think Toni or you, Mr. Chairman, mentioned that we've already said or this board has already said that Option 3 is our preferred alternative; is that true?

MS. KERNS: Dan corrected me. I was stating that the council's preferred option was our Option 3, but he corrected me, and the council's preferred option is Option 2. We do not have a preferred option as the Commission.

DR. PIERCE: I'm sorry, did you say we have to or we don't?

MS. KERNS: We don't have to.

CHAIRMAN FREEMAN: No, she says that we don't normally --

DR. PIERCE: Okay.

CHAIRMAN FREEMAN: -- have preferred unless we so desire, but it's not necessary.

DR. PIERCE: Okay, I will make a motion for a preferred option. I have to evaluate this a bit further. In particular, I would like to take a closer look at Option 2, because it seems like the monitoring committee is given a lot of power in setting quotas from year to year, and that the board and the council would be out of the loop, so I have got to study this a bit further. I have no objection to the motion, and I won't make any amendment.

CHAIRMAN FREEMAN: Okay, well, again the motion would simply be to take this out to public comment. The idea here, also, is to have our action complementary to the action that the council is doing so these hopefully will come together.

All right, any need to caucus on this? I'd simply ask for a voice vote for those who favor the motion, signify by saying aye; opposed, no. **The motion carries.** Go ahead.

MS. KERNS: Can I get an indication of

what states would need public hearings for this particular addendum?

CHAIRMAN FREEMAN: Okay, just if you want a public hearing or more, please raise your hand. Certainly, New Jersey would want one, Rhode Island, New York. David, public hearing? Yes, okay. Pres, North Carolina. Howard, Maryland? No. Jack? No. Rick? No. And that should do it.

MS. KERNS: Can I also get an indication of who will need a public hearing for the Black Sea Bass Addendum XII?

CHAIRMAN FREEMAN: Yes, North Carolina, Virginia, New Jersey, David, Maryland. Rhode Island, no. Delaware, yes. And David, Massachusetts, public hearing for the commercial sea bass?

DR. PIERCE: It wouldn't be very productive in my state, no, not at this time.

CHAIRMAN FREEMAN: Oh, you'd love to have one, come on.

DR. PIERCE: Pardon me?

CHAIRMAN FREEMAN: It's going to be simple, two years or three years.

DR. PIERCE: All we'll do is revisit the percent shares, and I don't want to go through that debate again.

CHAIRMAN FREEMAN: All right, none for Massachusetts. One for New York.

DR. PIERCE: Mr. Chairman, excuse me. All I have to do is refer Toni to the record, pull the record out and just resubmit the record. It's all the same comments.

CHAIRMAN FREEMAN: All right, we'll do that. All right, I've got to tread very

carefully here, because I promised Vince we'd be done at 4:00, and we do have another meeting, but we'll take a few minutes.

New York had made -- everyone received a letter from Gordon relative to a suggestion he had made. I indicated we'd try to move this to the board for their attention so, Gordon, if I give you a few minutes to reiterate what you had proposed and then take whatever appropriate action.

New York Request to transfer Scup

MR. COLVIN: Thank you, Mr. Chairman. I think my letter to you was distributed to the board. I think your response has been distributed, indicating that the appropriate time to discuss it would be here.

Since the time of my letter, I think we've had pretty much a final tally on the Winter I commercial fishery. The unlanded Winter I scup total is about 2.3 million pounds, I believe.

It has been suggested to me that probably because of the way we handled the decision this year on the assignment of the recreational management, there is probably about 200,000 pounds of scup more than the quota imbedded in the final allocations to states.

Maybe it would be prudent not to try to account for all of that. Maybe instead of trying to make a transfer, we should set 200,000 pounds kind of aside and be dealing with 2.1 million rather than 2.3.

That said at the outset, my recommendation was for the reasons I indicated, that we considered transferring some of that to the recreational fishery by whatever is the appropriate mechanism. My letter suggested an emergency amendment to the FMP.

I would certainly accept any suggestions from the staff as to whether there is a more pertinent or appropriate mechanism for doing it. I'm prepared to offer a motion. I'll hold off for a second on it pending any further advice from staff on the process.

But the essence of the motion would be to recommend transferring 1.5 million pounds of the Winter I commercial surplus to the recreational fishery for this year only in light of the extraordinary impacts that are being experienced in the recreational fisheries because of the reductions this year.

As I said earlier, I've got a stack of letters, including a number of specific pieces of correspondence from New York's bait and tackle, party and charter boat fisheries that are laying out the consequences of the regulations in place.

I'll just speak for us, but this year's regs in New York, we lowered the creel limit from 50 to 20. We changed the season from a year-around season last year to a season that runs from the middle of June through the end of November, but with a two-week closure during the fall fishery, which is an intense fishery in October.

We had to raise the size limit another inch. Now it is up to 11 inches. The combined effects of all this are pretty extraordinary, and I know that our fishermen are very concerned about the two-week closure in October.

We have some indication from several of the boats about the revenue loss that they expect to experience as a result of that, which I'll make available to the staff for the record.

They're also quite concerned that, frankly, even though the season reopens at the end of

it, that basically the customers will be lost, and the season will be, for all intents and purposes, over at that point. They're most concerned about that impact.

We also are very concerned that particularly, again, in Eastern Long Island, the prospect for people traveling for low creel limits is a tough one. It's a tough marketing job for the industry. Gasoline prices are already at \$2.50 a gallon and up and no end in sight. It's going to be a hard year for them.

The other thing to remember -- and it has been alluded to here today by Captain Forsberg that by and large the porgy fishery, particularly the porgy fishery as it is prosecuted on the for-hire boats and boat liveries, is one that is very much driven by minorities in New York.

What we are doing with the increases in size limit and the restrictions that are applicable to the for-hire fisheries and the liveries is we are taking this resource away from the people who use it.

Those people are predominantly in those fisheries, people of color. That is a matter of significant social and economic concern to us in New York. I think it ought to be of concern to all of us in the Commission.

So, Mr. Chairman, as I said, I really do want to pursue action on this. I am prepared to offer a motion to make an emergency amendment to the FMP, if that's the appropriate route, and I'll hold off on that motion until and unless there is any further procedural advice from staff.

CHAIRMAN FREEMAN: Okay, I think in order to try to focus this, because we do have time constraints, is simply ask Bob to brief the board on three items. One is the criteria for meeting emergency actions.

Second would be the process if the board agrees to support what you're proposing; and then, three, possible impacts on the federal FMP because whatever action we take there is -- and I spoke to Dan about this -- there is no way the federal plan could be modified in the time that you're suggesting for this year. So, Bob, if you'd address those issues, and then we can get into discussion, Gordon, as to the merits of your idea.

MR. BEAL: Thank you, Mr. Chairman. I'll take those three points maybe in a different order than you presented them, but I think I'll try to get all the information out there. First, let me address the board process issue.

In order for a change or a transfer from the commercial Winter I fishery to the recreational fishery to occur at this meeting, the only way to do that is through an emergency action. In order for the board to take an emergency action, two-thirds of the entire voting membership of the management board would have to vote in favor of that emergency action.

So what that would mean to this board today is that eight out of the eleven voting members here today would have to vote in favor of a motion to initiate or to establish an emergency action.

Following that, if that vote were to pass, the Commission is required to have at least four public hearings within 30 days to get public input on the effects of any emergency action that is taken by a management board. That's the process.

The definition or justification for an emergency is something that the board would have to have a little bit of discussion on in order to kind of correlate the situation

in the current scup recreational fishery with the definition that the Commission has in order to make sure everyone here at the board level is comfortable that this is an emergency and it is appropriate for the Commission to do it.

The definition of an emergency, I'll read it right out of the charter: "The provisions of this subsection" -- and this subsection is the emergency subsection of the charter -- "only apply to those circumstances under which public health or the conservation of coastal fisheries resources or attainment of the fishery management objectives has been placed substantially at risk by unanticipated changes in the ecosystem, the stock or the fishery." So those are the criteria that have to be addressed or met by the management board to justify an emergency.

The third point that you asked about, Bruce, was the impact on the federal fishery management plan. What this would result in is for the Winter II commercial fishery for 2004, the states and the federal government would have different commercial quotas.

The states and the federal government last year passed, or the council -- actually passed an addendum at the Commission level and a framework at the council to allow any unlanded fish from Winter I fishery to be rolled over into Winter II fishery.

My assumption is that the unlanded fish from the Winter I fishery will be rolled over to the Winter II fishery at the federal level at the Mid-Atlantic Council. So, their quota would be increased by approximately 2.3 million pounds that were not landed in this Winter I fishery.

The surplus, as Toni mentioned, I think, was 2.3 million pounds. So, all those fish would be available to the Winter II fishery at the

federal level. At the Commission level, my assumption is that 1.5 million of those fish under this proposal would be transferred to the recreational fishery.

The remaining 800,000 pounds of fish would be transferred to the Winter II fishery, so we'd end up with about a 1.5 million pound discrepancy between the federal Winter II quota and the state's Winter II quota. So that has in the past created a difficult situation for the two bodies to handle.

The other situation is that the goal of transferring fish to the recreational fishery is to obviously gain some relief for the cuts that sector is experiencing this year.

The Commission, passing this emergency action, would not affect federal permit holders, so the party and charter boat that have federal permits would either not gain any relief by this action, or they would have to forfeit those federal permits for the remainder of this year in order to gain some of the relief and only fish in state waters to gain the relief that would be afforded by passing of an emergency action. So, I think those answered your three points, Bruce. I can elaborate if it would help any.

CHAIRMAN FREEMAN: Okay, just to set the record so we can start this discussion, I had Vito, Bill Adler, Pat, Dave Borden.

MR. VITO CALOMO: Thank you, Mr. Chairman. First, Bob, that's a tremendous explanation. I think it cleared up a lot that I had in question. I have one question on procedure, Mr. Chairman, if you could please help me.

On the final schedule that I received on the agenda, it does not mention this. I'm just trying to figure out where does this fit on the

agenda? It isn't on my final agenda that I received.

It's on an agenda that has been placed here as a working agenda for all of us to enjoy, but not on the final agenda that was sent out to us, because I believe that you would have probably had a heck of a lot more commercial fishermen here to at least testify on their behalf of this, and that's my question, just procedure. Thank you, Mr. Chairman, and thank you, Bob.

CHAIRMAN FREEMAN: Okay, this item should have been on your agenda but it was -- and there has been several versions but I'll ask Toni. I'm not sure how --

MR. CALOMO: I'm talking about the one available to the public at the time that this was sent out. I don't have it. Thank you.

MS. KERNS: This item was brought forth after the final agenda was sent out to the public.

MR. CALOMO: After.

MS. KERNS: Yes.

CHAIRMAN FREEMAN: Yes, Eric.

MR. SMITH: I only make the observation that your letter to Mr. Colvin of May 11, which was cc'd to the entire board, says that this would be put on the agenda for this meeting, so there was some public notification, albeit not on the public agenda.

CHAIRMAN FREEMAN: Yes, I think Vito's point, though, wasn't -- it is an issue we would have liked to notify everybody. It just happened fairly rapidly, and we tried to get it on. I spoke to Gordon and indicated I would accept to at least have discussion on it during the meeting. So if there is fault, it lies with me. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. If I'm understanding this, if we were able to have an amendment and were able to transfer this 1.2, or whatever it was, over to the recreational, since this is a coast-wide quota, does that mean that would get split up or could be used by other states besides New York?

CHAIRMAN FREEMAN: Yes. Oh, yes, from the standpoint -- again, I've been I guess too close to this, but my discussion with New York was that this would not just be for New York. It would be for the four states. It would include New York, Massachusetts, Rhode Island and Connecticut.

MR. ADLER: And right now they can't -- right now this transfer of quota is not allowed and that's why an amendment is needed?

CHAIRMAN FREEMAN: Yes, that's correct.

MR. ADLER: There is no way we can transfer this to another commercial section?

CHAIRMAN FREEMAN: Well, in your packets there is a letter from Gerry who unbeknownst -- well, I'm not sure I speak for Gerry, but there was a letter representing his view, which was one of a somewhat different approach than what was suggested by New York.

In any case, Bill, it would take an emergency action, and then the board would have to decide whether it supported or didn't support it, and then if, indeed, it did support it, then there will be a difference between the federal and the state. We need to understand that. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Thank you for that clarification, Bob, it was very helpful. In regards to Mr. Colvin's point, I'm assuming, and I think it was on the record, that this transfer is a one-time situation for 2004. Mr. Chairman, could we have clarification? True?

CHAIRMAN FREEMAN: Well, that's the statement made by New York so --

MR. AUGUSTINE: That's fine. And then, secondly --

CHAIRMAN FREEMAN: Well, again, I think Gordon's point is that we'd really need a motion to understand all that he had asked for.

MR. AUGUSTINE: Thank you. Secondly, I'm wondering if for those folks that aren't aware of what happens when we do not have the same quota as the Mid-Atlantic folks, if Mr. Furlong could make a brief statement as to what the net upshot might be, unless Bob would like to elaborate upon it for the general public and for the rest of the board.

CHAIRMAN FREEMAN: Dan, go ahead.

MR. FURLONG: Yes, I think Bob did an excellent job of summarizing what would happen. If you're a federal permit holder, you would have to vacate that permit and then restrict your fishing activities to state waters. That's the basic essence of it, if there is a difference.

MR. AUGUSTINE: And follow on. If, in fact, there was an overage at the end of the time, like we had that scup overage -- was it last year or the year before -- and ASMFC agreed to just -- was it 200,000 pounds? It was a number that we just agreed to lop off the top. In the case of that possibly happening, we'd be in the same situation?

CHAIRMAN FREEMAN: No, last year, Pat, I think there was a million and a half pounds that were untaken. It may even have been larger than that by the commercial. If it's not used, it just disappears.

MR. AUGUSTINE: Falls by the wayside?

CHAIRMAN FREEMAN: Right. Because there is no provision for a rollover, except for Winter I into Winter II. That was a modification that we just made, but that's the only provision for a rollover in the present plan. All right, Vince had a comment.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. Just to make one thing clear, it has been said that the way to do this is through emergency action. It seems to me that the board would need to first make a determination whether this situation applies to the guidelines for an emergency.

On the face of it, when staff reviewed it, the situation did not appear to meet that. So before taking any action, sort of mentally, the first step is going to be a determination by members of the board that this fits the definition and criteria and would probably be helpful, if you decide to go in that direction, to make that articulation on the record before doing things.

I just want to ensure that the people who don't understand, it's more than just a simple issue of saying you can only do this with emergency action. I think in this case it's going to be a higher standard, and that is you're going to have to agree that this situation fits the definition of an emergency. We couldn't make that connection from a staff standpoint, Mr. Chairman.

CHAIRMAN FREEMAN: All right. Well, again, my objective here was to raise the issues that will have to be addressed if there is a decision to take any action. As Vince indicated, we have to support whether in fact this action does meet the criteria for an emergency action; and then the vote issue, as Bob raised; and then specifically what needs to be done or what could be done. Gordon.

MR. COLVIN: Thank you, Mr. Chairman. Having been the recipient now of excellent advice from the Commission staff that essentially indicates to us that emergency action is the only vehicle by which the board can act on this idea, and being convinced as I am that the idea has merit -- and I'll say a little bit more in a minute about the justification for it -- I want to offer a motion and then speak to it, if I may.

I move to take emergency action to transfer 1.5 million pounds of Winter I scup to commercial surplus to the recreational fishery for this year, only.

As I indicated, the justification for this is based on the economic and social emergency conditions that are being imposed on our sport fisheries. I'll only speak for New York, but I'm quite sure that other states in the Northeast are similarly disadvantaged with respect to this year's scup regulations.

We do have information, as I have indicated, from several industry participants that suggests the level of lost income associated with the season closure and anticipated business declines that I will provide to the staff for the record.

But, in effect, what we're talking about is the potential for fishing vessels and boat liveries to suffer substantial economic loss.

In some instances, businesses are actively threatened with failing as a result of the -- particularly those businesses that specialize in porgy trips.

A substantial loss in revenue to the bait and tackle industry is already being experienced, as bait orders and tackle orders are down and are expected to stay down for the course of the year.

Further, as I indicated, we have to think about whom we are impacting here. It is a matter, as I said before, that concerns us greatly. Now just what are the figures on this.

We think it is reasonable to assume that this is a surplus to the commercial fishery that they may not be able to take advantage of as they did not last year during the Winter II period.

Part of the logic that this proposal is based on is that last year, I believe, the Winter I surplus was about 1.8 million pounds that went unharvested, Winter I transferred to Winter II and was not harvested in Winter II either, and in fact, 2 million pounds -- I think 1.5 million pounds approximately was landed in Winter II last year.

That is out of the 2 million pounds originally assigned to Winter II plus the 1.8 million that rolled in, so it seems to us that it's appropriate to consider using this surplus to help resolve the impact our scup fishermen are experiencing this year without, it would seem, harming the commercial fishermen in Winter II.

Now that said, in all honesty, I have to tell you that the commercial fishermen in New York, some of them that I've talked to, do not agree with that assessment and have indicated to us that they do not want to see

this transfer to the recreational fishery happen and have so communicated with me.

But our judgment is that in light of last year's experience, nonetheless, we think that this proposal has merit and we offer in any stead. Thank you.

CHAIRMAN FREEMAN: This is a motion. First of all, is there a second to the motion?

MR. SMITH: Second.

CHAIRMAN FREEMAN: Mr. Smith seconds the motion. All right, further discussion? Vito.

MR. CALOMO: Thank you again, Mr. Chairman. Being 33 percent of the Commonwealth of Massachusetts' vote, I'm going to ask a request from Bob Beal again, if you would allow me, Mr. Chairman. I need to hear one more time, Bob, what emergency action criteria is. I heard you the first time.

I'm not quite clear. I listened to Brother Gordon here on his spiel in his plea and make some sense, and I need to hear that again, if you would allow it.

MR. BEAL: Bruce, is that okay?

CHAIRMAN FREEMAN: Yes, Bob.

MR. BEAL: Okay, thank you. The definition of an emergency, "The provisions of this subsection shall only apply in those circumstances under which public health or the conservation of coastal fishery resources or attainment of fishery management objectives has been placed substantially at risk by unanticipated changes in the ecosystem, the stock or the fishery."

CHAIRMAN FREEMAN: Eric.

MR. SMITH: Thank you. While I understand there is consternation over this, I support the motion fully. In fact, I do recognize the difference of opinion that some states have and will have on whether uncaught catch from the early winter period should go just to the summer recreational fishery or be shared out to the commercial fishery as well.

I had anticipated offering a motion to amend this to make it 750,000 to the summer commercial fishery and 750 to the recreational fishery. Hearing the process problems between the council plan and this plan and some of the other things that Bob and Dan have pointed out, I'm not going to do that, as a matter of fact. I know that means I'll get back home and people will jump all over me for the apparent one-sidedness of this, and I'll take that hit.

My view is the disproportionate huge change that has gone about in the scup recreational fishery and where it leaves the fishery of Southern New England out to Massachusetts this year with the kind of cuts that we've been wrestling with since last December justifies this as a stop-gap, one-time only, try and ease the burden of the massive cuts.

I wouldn't propose it for a long term. I think long-term solution, we have to look at this entirely differently. But this, in my view, responds to the two points in the justification for emergency, the attainment of your fishery management objectives and affected by unanticipated factors in the fishery is basically paraphrasing, I think meets the test in my view.

I support the motion. I can't support what I thought I would offer which might have done something to assuage some of the

concerns about the commercial versus recreational, but I don't know how you can do that, frankly, with some of the constraints we've heard described by staff. I think we have to limit it to this. Thank you.

CHAIRMAN FREEMAN: Further comment? Rick Cole.

MR. COLE: Thank you, Mr. Chairman. I can't support this motion. It makes me very uncomfortable to be asked to even vote on a motion like this without having any input from the commercial scup fishery.

The only comment I've seen from any commercial scup fisherman is this comment from the Long Island Commercial Fishing Association, and they're apparently adamantly opposed to it.

But, having dealt with the commercial scup fishermen up and down this coast for a number of years, I need to have some kind of input on what the commercial fishery would -- how they would respond to this.

There are the issues about process. There are the issues about the difference in the federal versus the ASMFC quota. We've been through all that before, and it is nothing but a nightmare.

Heaven forbid that we would allow any of these fish to go back into the stock to help continue with the recovery. But, again, without public input from the commercial fishing interests, I can't support the motion.

CHAIRMAN FREEMAN: Okay, Harry and then Jaime.

MR. MEARS: Thank you, Mr. Chairman. I agree with Mr. Cole's comments. He said them very well. We've already seen the train wrecks which occur when we have a

difference on a joint plan where we're trying to consistently and uniformly deal with a resource that is found in both state and federal waters.

Just as importantly, this is clearly not an appropriate use of an emergency action in accordance with at least the wording I heard read before, and also would put into question the entire credibility on those occasions on which into the future such an emergency declaration would be made. So, once again, Mr. Chairman, I do not support the motion. Thank you.

CHAIRMAN FREEMAN: Jaime.

DR. JAIME GEIGER: Mr. Chairman, I really appreciated Bob Beal's definition of emergency action. I thought that was quite clear. I would certainly appreciate if the New York representatives would clearly and precisely define how this particular action meets one or more of the criteria as mentioned by Bob Beal. Thank you very much.

CHAIRMAN FREEMAN: Other comments? Gordon.

MR. COLVIN: Yes, I'd like to address the issue that has come up a couple of times about how do you reconcile the difference in the federal and state quota that would result from this. I don't really think in this instance it creates a problem for us, and this is why.

If we were to do this, what would happen is that the federal quota for Winter II would be higher than the ASMFC quota. Yet, the states could assure that the ASMFC quota was not exceeded through the application of closures and landing prohibitions at such time that the ASMFC quota was determined to have been landed, if in fact that happened

-- of course, it didn't last year -- at which point there would be still federal quota on the books that wouldn't get landed, might have been landed in the recreational fishery during the summer and the stock comes out with a net no impact, net-neutral impact. So the impact to the stock is neutral. The impact to the commercial quota does not result in a problem in terms of the federal quota having been exceeded. It would not be.

I think one of the reasons that -- and I won't speak for him, but I think possibly one of the reasons that Eric Smith retreated from his proposal is that a problem of that nature could occur if some of that were transferred to the summer commercial fishery, and I can understand that.

The other point I'd like to make is that I share some of the concerns that members of this board have expressed about the desirability of having a proposal of this nature subject to public review and comment.

I agree, it ought to be. I would envision a process such as an addendum being a more appropriate approach to an action of this nature that would enable the development of a document for public comment.

Recall that in my initial correspondence, I envisioned a slightly different process than this. I envisioned a process where the board might conceive to have a conference call to agree to move forward on the action of this nature.

What I had in mind was that might lead to some kind of a public review and comment. The problem is that our emergency process is a little different than our addendum process, and it doesn't seem to have as much opportunity to do that as it ought to, and

maybe that's something that we should think about in the future.

Now, if there is a suggestion that we don't have an emergency in the fishery this year, I invite you to come down here and sit next to me and start reading the letters in front of me. That's my answer to Jaime Geiger.

CHAIRMAN FREEMAN: David.

DR. PIERCE: Regarding whether it's not an emergency, one point was made by Bob that seemed relevant to justify it being an emergency, and I stand to be corrected, unanticipated changes in the fishery.

The large recreational landings, were they expected, were they unanticipated? If they were unanticipated, then perhaps that would help create a definition of an emergency. Am I wrong; am I right?

CHAIRMAN FREEMAN: Bob.

MR. BEAL: Well, it's not my judgment call as whether you're wrong or right, David. It's the comfort level of everyone else around the table, given the definition that I've read and the description of the situation that Gordon has raised and now you have.

If the folks around the table are comfortable that this is an emergency, then an emergency action is potentially warranted to address it.

CHAIRMAN FREEMAN: Vince.

EXECUTIVE DIRECTOR O'SHEA: I think, Mr. Chairman, there are other sectors in other fisheries that overharvest in other years and will probably do that in the future as well. Whether it is the board's determination, when that occurs, it becomes an emergency, then that's one of the decisions that you'll have to make.

CHAIRMAN FREEMAN: Pres.

MR. PATE: Thank you, Bruce. As a matter of process, I think if the board is comfortable with this being an emergency action, it should be explicit in the motion and not implied by the motion.

CHAIRMAN FREEMAN: All right, let me just huddle with staff for a moment. All right, what I would like to do at this time -- again, this is somewhat of a complicated issue because it is -- well, without going into a deep explanation, let me just ask for public comment at this point. Greg, did you have your hand up to comment? Yes, would you come forward, please.

MR. GREG DiDOMENICO: Thank you, Mr. Chairman, committee members. My name is Greg DiDomenico. I serve as the Executive Director of the Garden State Seafood Association. I'm going to be real brief, specifically because I don't have a lot of input from my board.

I don't have a lot of input from the commercial sector. I certainly don't have a lot of information on what the possible impacts would be to the commercial sector if we were to give the recreational sector a million and a half pounds.

But, I think you need to consider the letters that vehemently oppose this from New York. There's two of them. I know you only got one from Bonnie Brady, but there is another one from Sema Fryerman here. She also opposes it on behalf of their group.

I'd like to say a couple things. Specifically, I'm not convinced this is an emergency. I would also like to say you would have received many more comments from the commercial industry if, in fact, we had been told that an action was going to be taking

place today.

I'd like you also to realize that we would like to see the same emphasis put on the commercial sector and possible regulatory proposals that would allow the commercial sector to fully utilize their quota.

Last, but not least, I keep hearing this word "unanticipated" conditions that justify an emergency. I can tell you that there can always be unanticipated conditions of stock. It could happen for scup in the commercial sector.

We could be looking at possibly being able to use another million pounds, so please consider that and consider that you might be looking at an emergency situation if, in fact, abundance was much greater or some weather conditions allowed us to fully utilize the fish in the Winter II sector. So with those comments, I'd like to conclude and thank you very much.

CHAIRMAN FREEMAN: Okay, thanks, Greg. Other comments from the audience, from the public? Tony.

MR. BOGAN: My name is Tony Bogan from United Boatmen of New York and New Jersey. Actually, first with your indulgence, Mr. Chairman, a quick question. If for argument's sake, this Commission, this board, rather, voted in favor of this motion, is this the end of it, or then would this, like similar to the addendum process, have to go out to public hearings? I don't know the answer to that question, if someone could answer it for me.

CHAIRMAN FREEMAN: Tony, let me have staff answer that because it is an important question. Bob.

MR. BEAL: This is the end of it. It doesn't

go to the full Commission or policy board or anything like that. Once an emergency rule is approved, the states are required to go home and implement any changes that are included in that emergency rule or emergency action, I should say.

However, there are, as I mentioned earlier, four public hearings that are required within 30 days after the approval of an emergency action, so those public hearings would take place. A summary of those hearings would be forwarded to the members of the management board.

It would be up to the board to determine, for lack of a better description, if they've done the right thing, if the decision or the content of the emergency action is consistent with public comment or the direction that the public is indicating the fishery should go in.

MR. BOGAN: Thank you. I assume then that board could then rescind that emergency action if they felt, based on the response from the four public hearings, it was an incorrect action to take?

MR. BEAL: Yes.

MR. BOGAN: Okay, because that was an important point with the commercial fishermen that I have spoken with over the past week, including Greg, who just got up here and spoke before. All of his comments were well taken and were all points that he and I actually had discussed previously.

My only point I wanted to make was that without the public comment period, I would not expect any commercial fisherman or any commercial fishing organization to support this, because as some of the concerns that were expressed before, you've got to have input on something like this.

I mean, that's vitally important. Whether or

not this particular process would allay those fears that they would have, I don't know because it's still a very brief time period.

My only point would be that in response to some of the comments that I got back from some of the commercial industry organizations that I spoke to was simply that they were amenable to the idea.

They had concerns. They had concerns about the amount. They had concerns about whether it was a one-time deal or going to be like where bluefish is built into the plan where it just takes a single vote by the council and it's done.

I appreciate all of Gordon's sentiments, and we've talked about this in New York, the different industry members. It would be a wonderful thing to try and help out the fishermen in the states to the north.

I am a little happy to hear that there would be a mandatory public hearing time frame even though it is only 30 days. I would hope that the motion would be supported, knowing that there is still the opportunity for the commercial sector to give their voice, which without the commercial sector this deal is dead right off the bat in my mind.

Without commercial support, in my mind I couldn't legitimately continue to push for this if they were solely against it, because it would not be right.

So, hopefully, a public hearing 30-day comment period will be enough to allay their fears that they can go in and give their two cents, and then the board would act appropriately. Thank you very much, Mr. Chairman. I appreciate you putting this on the agenda.

CHAIRMAN FREEMAN: Tony, let me

just hopefully clarify a couple of points. I think it relates to the question, and if I misspeak, I'd ask staff to correct me, and this is the reason I kind of huddled over there, because we need to understand once emergency action is taken, it is going to require a two-thirds vote by the board.

But then it puts it in place. Then we go through the public hearing process. Now, two things could happen at the public hearing. One is -- well, three things -- one is there is total support for it. The other is there is partial support.

The third option, there is total non-support. If, in fact, after the minimum of four public hearings, the board decides it needs to take some other direction, it would require a two-thirds vote to undo the emergency.

So, it is different than the process we normally go through. Yes, there are public hearings, but emergency is meant to be an emergency; therefore, action is taken almost immediately.

In this instance, again, as I understand what New York is proposing would be to essentially relieve some of the -- you're not going to completely eliminate some of the reductions they're going to have to take, but it is certainly could be greatly modified, and it would affect the four states. It would affect those, New York, Connecticut, Rhode Island, and Massachusetts. It wouldn't affect any other states.

MR. BOGAN: No, I'm well aware. Industry as a whole is well aware of that. I appreciate that. Your clarification and Bob's clarification of my question was excellent. I can fully understand Greg's position on this based on that.

The fact that that was a single-based concern

was fear that there was going to be no input from the public sector. So, it is a difficult situation for them, and, again, if I were in their situation, I would probably be standing up here saying the same thing, so that is very understandable. Thanks again, Mr. Chairman.

CHAIRMAN FREEMAN: Okay, thank you. Any other comments from the public? All right, back to the board. We need to take action. We are already an hour into another meeting. I promised Vince it wouldn't happen, and it has happened.

Again, do we need a three-minute or a one-minute caucus on this? All right, because it is an important item, I want everybody to feel as comfortable as they can on this issue. Is a one-minute caucus sufficient?

(Whereupon, a caucus was held.)

Okay, are we ready for a vote? Does anyone request a roll call vote? It doesn't have to be, but if there is a request we will do one. No, all right.

What we need to do is just have a show of hands. Those who support the motion, please raise your hand; those who do not support the motion, please raise your hand; abstentions; null votes, no null votes. **The motion does not carry.**

Okay, that concludes our business and I apologize to Vince for only taking an hour of your next meeting.

Adjournment

(Whereupon, the meeting was adjourned at 5:00 o'clock p.m., May 24, 2004.)

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