

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

**Webinar**  
**March 2, 2023**

**Approved February 14, 2024**

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2. **Approval of Proceedings of March 24, 2022** by Consent (Page 2).
3. **Move to approve the range of state/regional options for 2023 black sea bass recreational measures developed using the Recreational Demand Model as presented today** (Page 7). Motion by Nichola Meserve; second by Jay McNamee. Motion carried with one abstention from NOAA Fisheries (Page 9).
4. **Main Motion**  
**Move to approve the use of the Recreational Demand Model to establish 2023 scup recreational measures to achieve a 10 % reduction of the RDMs estimated 2023 harvest under 2022 measures, and recommend NOAA Fisheries reconsider the federal waters closure based on the reduction achieved by the state regulations** (Page 9). Motion by Joe Cimino; second by Dave Borden. Motion divided (Page 9).
5. **Move to divide the question** (Page 10). Motion by Adam Nowalsky; second by Chris Batsavage. Motion carried with abstentions from NH and NOAA (Page 12).

**Divided Main Motion 1: Move to approve the use of the Recreational Demand Model to establish 2023 scup recreational measures to achieve a 10% reduction of the RDMs estimated 2023 harvest under 2022 measures.** Motion substituted.

6. **Motion to Substitute**  
**Move to approve the range of state/regional options for 2023 scup recreational measures developed using the Recreational Demand Model as presented today** (Page 12). Motion by Nichola Meserve; second by Jason McNamee. Motion carried (8 in favor, opposition by NJ and abstentions from NH and NOAA) (Page 15).

### **Divided Main Motion 1 as Substituted**

**Move to approve the range of state/regional options for 2023 scup recreational measures developed using the Recreational Demand Model as presented today.** Motion carried. Roll Call: In Favor - MA, RI, CT, NY, DE, MD, VA, NC; Opposed - NJ; Abstentions - NH, NOAA. (Page 17).

### **Divided Main Motion 2**

**Move to recommend NOAA Fisheries reconsider the federal waters closure based on the reduction achieved by the state regulations.** Motion carried (6 in favor, 3 opposed, 2 abstentions) (Page 20).

7. **Move to adjourn** by Consent (Page 24).

## ATTENDANCE

### Board Members

Renee Zobel, NH, proxy for C. Patterson (AA)	Joe Cimino, NJ (AA)
Nichola Meserve, MA, proxy for D. McKiernan (AA)	Tom Fote, NJ (GA)
Raymond Kane, MA (GA)	Adam Nowalsky, NJ, proxy for Sen. Gopal (LA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	John Clark, DE (AA)
Jason McNamee, RI (AA)	Roy Miller, DE (GA)
David Borden, RI (GA)	Mike Luisi, MD, Administrative proxy
Justin Davis, CT (AA)	Shanna Madsen, VA, proxy for J. Green (AA)
Bill Hyatt, CT (GA)	Chris Batsavage, NC, proxy for K. Rawls (AA)
John Maniscalco, NY, proxy for B. Seggos (AA)	Chad Thomas, NC, proxy for Rep. Wray (LA)
Scott Curatolo-Wagemann, NY, proxy for E. Hasbrouck (AA)	Emily Keiley, NMFS

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

### Ex-Officio Members

Alexa Galvan, Technical Committee Chair	Scott Simmons, Law Enforcement Representative
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### Staff

Bob Beal	Tracey Bauer	Jeff Kipp
Toni Kerns	Kurt Blanchard	Chelsea Tuohy
Tina Berger	Emilie Franke	

### Guests

John Almeida, NOAA	Frank DiPietro	Vincent Palmer
Max Appelman, NOAA	Steve Doctor, MD DNR	Michael Pirri
Pat Augustine, Coram, NY	Michelle Duval, MD (AA-Acting)	Michael Plaia, Newtown, CT
Dave Bard, NOAA	Skip Feller	Will Poston, SGA
Julia Beaty, MAFMC	Jack Fullmer, Allentown, NJ	Michael Purvin, Purvin Law
Rick Bellavance, Kingstown, RI	Saverio Governale, NYS DEC	Kathy Rawls, NC (AA)
Frank Blount	Steve Haasz	Stephanie Rekemeyer, NYS DEC
Nicole Bogan	Hannah Hart, MAFMC	Paul Risi
Colleen Bouffard, CT DEEP	Victor Hartley	John Schoenig
Jeff Brust, NJ DEP	Jay Hermsen, NOAA	Allen Seigel, Berlin, MD
Peter Clarke, NJ DEP	Jesse Hornstein, NYS DEC	Scott Steinback, NOAA
Steven Cannizzo	Steve Kearney	David Stormer, DE DFW
Lou Carr-Harris, NOAA	Jared Lamy, NH F&G	Mark Terceiro, NOAA
Matt Corbin, MD DNR	Arthur Lein	Wes Townsend, Dogsboro, DE
Jessica Daher, NJ DEP	Lisa Vinny	Corinne Truesdale, RI DEM
Kiley Dancy, MAFMC	Stu Moore	Anthony Vernola
Lorena de la Garza, NC DENR	Brandon Muffley, MAFMC	Mike Waine, ASA
Greg DiDomenico, Cape May, NJ	Susanna Musick, VIMS	Patrick White

**Guests (continued)**

Kate Wilke, TNC  
Angel Willey, MD DNR

Steve Witthuhn  
Rich Wong, DE DFW

Erik Zlokovitz, MD DNR

The Summer Flounder, Scup, and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission, convened via webinar; Thursday, March 2, 2023, and was called to order at 10:30 a.m. by Chair Justin Davis.

### CALL TO ORDER

CHAIR DR. JUSTIN DAVIS: Good morning, everybody. I'm going to call to order this meeting of the Atlantic States Marine Fisheries Commission Summer Flounder, Scup, and Black Sea Bass Management Board. My name is Justin Davis; I'm the Administrative Commissioner from Connecticut, and also currently serving as the Chair for this Board.

We're convened here today for purposes of approving state and region proposals for 2023 Scup and Black Sea Bass recreational measures. I won't go back over the process we've been through; you know over the last five, six months or so in detail, but just as a brief refresher. This Board was most recently convened jointly with the Mid-Atlantic Council back in December of 2022, at which time we approved a 10 percent reduction in both coastwide scup and black sea bass harvest.

For black sea bass, the Board and Council opted to proceed with regional conservation equivalency, as opposed to implementing uniform coastwide measures. For scup, Board and Council agreed to reduce the federal possession limit to 40 fish, and shorten the season to May 1 to December 31. But as this did not achieve the full 10 percent reduction, Board and Council also agreed that states would further modify state measures for scup to achieve the full 10 percent coastwide harvest reduction.

Then following that meeting, those of us in the states have been working with the Recreational Demand Model. Big thanks to Lou, for all his work with us on running all those options, and that brings us to the point we're at today, which is to approve the options the states and regions have put forward for scup and black sea bass.

### APPROVAL OF AGENDA

CHAIR DAVIS: Moving along on the agenda, the first item up today is Approval of the Agenda. I'll ask the Board if there are any suggested corrections or additions to today's agenda. Toni, Tracey, just as a heads up. I'm going to try to manage the hands today and keep track of them, but if that is not working out, I'll call on Audible and ask you to take that over. Again, I'll just ask if anybody has any suggested additions to the agenda this morning.

MS. TONI KERNS: Justin, if you're going to manage the hands then I need to make you an organizer, so you can actually. Hold on for a second. I will do that.

CHAIR DAVIS: Okay, well actually, let's just go ahead and call that Audible then, and I'll have you manage them. Sorry about that.

MS. KERNS: Okay. I can make you an organizer right now, which I will do, so you can see them. But Adam Nowalsky has his hand up.

CHAIR DAVIS: Okay, go ahead, Adam.

MR. ADAM NOWALSKY: Good morning, everyone. With regards to the items on the agenda, I do think it's important that we have some discussion about scup Waves 1 and 2, the decision that was made back in December. I'm not sure, given the timeframe that we need for a lead and federal rulemaking, as this would play out for 2024. I'm not sure if in your mind that discussion would be part of Agenda Item 4, or whether that would need to be considered as another business item.

Then the second item, I'm just looking for clarity that I think we need to have some discussion on is, if we've gone through this RDM process now once for the 2023 fishing year, or at least reaching the conclusion of that process. I think we've all got some ideas about how we can provide additional input and improve that process moving forward. I would like to just have some discussion as time would allow, to discuss what that process might look like.

CHAIR DAVIS: Okay thanks, Adam. I think to the first point, discussion around the scup Wave 1 and 2 issue. I suspect that will come up under Agenda Item 4, so we'll play that by ear if we feel like we don't address that adequately. I think we could get to that under Other Business. For the second item, the RDM process, I agree and I would suggest that we try to discuss that under Other Business at the end of the meeting if time allows, if that is agreeable.

MR. NOWALSKY: Very good, thank you very much.

CHAIR DAVIS: Okay, any other suggested additions, edits to the agenda? If not, we'll consider the agenda approved by Board consent.

#### **APPROVAL OF PROCEEDINGS**

CHAIR DAVIS: Moving on, are there any suggested corrections or additions, edits to the proceedings from the March 2022 Board proceedings which were provided in the meeting materials for this meeting?

Okay, not seeing any hands, we'll consider those meeting proceedings approved by Board consent.

#### **PUBLIC COMMENT**

CHAIR DAVIS: Moving along the agenda, next up is Public Comment. At this time, I'll provide opportunity for public comment for any issues that are not on the agenda today. To be clear, this would be public comment on items not including 2023 recreational measures for scup and black sea bass.

When we get down to Agenda Item 4 and discuss scup and black sea bass measures, I'll provide opportunity for public comment at that time on that topic. Is there any member of the public on the webinar who would like to make a comment on an issue not related to 2023 recreational measures?

#### **CONSIDER FINAL APPROVAL OF PROPOSED**

#### **REGIONAL SCUP AND BLACK SEA BASS RECREATIONAL MEASURES FOR THE 2023 FISHING YEAR**

CHAIR DAVIS: Okay, not seeing any hands, we'll move right along to our main agenda item, which is Considering Final Approval of Proposed Regional Scup and Black Sea Bass Recreational Measures for the 2023 Fishing Year. At this time, I'll turn it over to Tracey Bauer, who is going to give us a presentation.

MS. TRACEY BAUER: Great, thank you, Justin. I'll jump right into things here. I'll first go over a brief overview of what we'll be talking about today. First, I'll provide some background. Justin mostly got into it, so I think that will be a very brief slide. Then we'll get into some of the TCs decisions as they were looking at what management measures to propose in the models.

Then I will walk through the proposed state or regional measures for scup and black sea bass, and then lastly, the Board will consider the proposed measures for final approval. Like I said, Justin mostly covered this, that there was that December 2022 joint Board/Council meeting, which included that scup and black sea bass would get a 10 percent reduction in expected harvest.

The TC agreed to use the Recreational Demand Model for both black sea bass and scup to determine measures that meet the 10 percent reduction for their state or region, and the proposed measures that will be put forward today. The reductions for the options provided in the memo are for only individual states or regions.

The final total coastwide reduction for like scup for example, can be calculated once all the states decide on their final measures. Because of how the model is set up, black sea bass measures that are input into the model affect scup reduction and vice versa. The black sea bass and scup measures, you'll see them paired today when I present them, which is how you calculate the reduction for both.

#### **REVIEW PROPOSED REGIONAL MEASURES**

MS. BAUER: As I just discussed, I'll be covering the proposed measures for scup and black sea bass

together for each state or region. As each option with the estimated reductions has that particular black sea bass and scup measures associated with it. For all the measures I present to you today provided by the states, I will also show the status quo measures, or the measures that were put in place for 2022.

I will start off with the northern region, with Massachusetts, and work my way down the coast. I will be discussing each of the northern states separately, and then will provide a potential preliminary reduction for the region as a whole, for black sea bass and scup, based on the options the states have selected to calculate those reductions.

Although the proposed black sea bass measures may vary from state to state in the northern region, a majority of the options from the northern region have very similar scup measures. You'll see shortly in each of the slides for most of the northern states, but for the for-hire mode the scup option includes a 30 fish bag limit for the majority of the year, and then a 40 fish bag limit from the beginning of May through the end of June for Massachusetts, or September through October for Rhode Island through New York.

The private and shore modes have a 30 fish limit for the entire open season, with size limits of 9.5 inches for shore and 10.5 for the private mode. Scup season starts May 1st for all scup modes in northern states. Starting off with Massachusetts. For Massachusetts black sea bass proposed measures, most options kept the 16-inch size limit and lowered a bag limit for a portion of a year or for a specific sector or both. Option 1, increased the size limit by half an inch, and a day or several days were added to the beginning or end of the season. Options ranged from a 10 percent reduction to a 10.4 percent reduction.

For scup, options ranged from a 7.5 to a 7.8 reduction. I'll just spend a few seconds on the slide, just so people can review if needed. For Rhode Island, their black sea bass proposed measures achieve anywhere between a 10.1

and 11.7 percent reduction. For all options, bag limit stayed the same for black sea bass compared to the status quo.

In Option 1, the private and shore mode maximum size limit for black sea bass increases by half an inch, and there are some tweaks in the seasons start and end dates. In the same option for black sea bass the for-hire mode keeps a 16-inch size limit, and the season remains status quo as well. The remaining three options involve increasing the current minimum size limit for black sea bass by half an inch.

Option 2 also has a few tweaks to the season start and end dates. The seasons for black sea bass stay status quo in Option 3 and 4. For scup, the reductions fall between 3 and 14 percent. There is one scup option that is different from what I previously described on that first northern region slide, which can be found in Option 4 with a 10.5-inch size limit for all modes, a 30 fish bag limit for private and shore and for-hire, except for a 50 fish bag limit for the for-hire fleet from September 1st through October 31st.

We'll move on to Connecticut, which provided four potential options. For black sea bass, one option increases the size limit by half an inch, the other options make changes to the bag limit for specific modes, like lowering the bag limit to two fish for private shore anglers or season, and keep the 16-inch minimum size limit for black sea bass.

Black sea bass reductions with these options range from 10.1 to 14.5 percent, and the scup reductions range from 1.6 to 5.3 percent. New York provided three potential options for black sea bass. One option increases the minimum size by half an inch, the other two either shorten the black sea bass season or lower the bag limit for black sea bass for part of the year.

Reductions for black sea bass range between 10.8 and 11.7 percent, and percent reductions range between 14.9 and 15 percent. To calculate a preliminary regional percent reduction for both species, the northern states each selected an option from their sets of proposed measures. This was done due to the difficulty of calculating total



reductions for every possible combination of measures from these four states.

A potential regional percent reduction for both black sea bass and scup for the northern region is shown in the table on the slide. The regional percent reduction may change, depending on what options are ultimately selected by the northern states, as each option there is on the estimated reduction achieved.

I worked with Lou to calculate the 80 percent confidence intervals around the estimated regional harvest with this, in the case of scup, the 9.6 percent reduction and the harvest values for the exact 10 percent reduction falls within the 80 percent confidence intervals for this proposed or potential 9.6 reduction for scup, as estimated by the recreational demand level. Moving on from the northern region to New Jersey, which provided four options. For black sea bass for all four options, the minimum size is decreased by half an inch.

Some options lower the bag limit from July 1st through August 31st, other options keep the bag limits the same but shorten the season in July and August. These black sea bass options achieve between a 10.3 and a 10.9 percent reduction. For scup, the bag limit is lowered to 30 for all options, and the season is shortened, either so the scup season starts in August, and runs through the end of the year, or the season ends in mid-October, starting at the beginning of the year.

These options achieve between a 10.1 and 12.6 percent reduction for scup. For the southern states, Delaware through North Carolina, they've provided two options. For black sea bass both options close the fishery during the middle of the year. One option closes the fishery from July 16 through July 26, and the other closes the fishery from October 1st through October 9th.

These options achieve 10.8 and 11.5 percent reduction respectively, and for scup the southern states lowered the bag limit from 50 to 40, except Virginia, which will remain at 30

fish with no reduction predicted. Moving on to next steps. The Board's next steps, following any questions, will be to consider the proposed measures for final approval, and I will provide more information on the Board's options in the next slide.

At this point, final measures do not need to be approved. The state and regions will need to notify ASMFC staff once the final set of measures have been selected, hopefully by April 1st at the latest, and then ASMFC will submit the letter with the final scup and black sea bass recreational measures to GARFO.

Like I mentioned, the Board has a couple of options for next steps when they consider the motion for today. The Board may improve the range of state or regional options for 2023 scup and black sea bass recreational measures developed using the RDM, the Recreational Demand Model as presented today. This means when a state's regions are selecting their final measures prior to April, they must select one of the following options as presented today.

However, they would still be able to make small changes to the season, which would allow states or regions to add or subtract a few days within the same time block that is in the RDM, from the beginning or end of the season before final measures are selected. The other option the Board can go with, there is a more flexible motion to approve the use of the Recreational Demand Model to establish 2023 scup and black sea bass recreational measures to achieve a 10 percent reduction of the RDMs estimated 2023 harvest under 2022 measures.

This would allow the possibility for the states to make bigger changes to the proposed measures as presented today following this Board meeting, such as changes to bag or size limit before final measures are selected. However, just keep in mind that this would require additional use of NOAA staff time to complete more model runs, and if changes were made, and you needed to run the RDM again, we would need them to be provided to Lou all at the same time. With that I can take any questions.

CHAIR DAVIS: Okay, thanks very much, Tracey, excellent presentation, a lot of information to summarize there with all the options from the various states. At this time, I'll turn it to the Board and ask if there are any questions on the presentation. I see Nichola Meserve, go ahead, Nichola.

MS. NICHOLA MESERVE: Thank you, Tracey, for the presentation. I have one clarification about the Massachusetts options in the table that were shown, and also a question. The clarification is that there was an asterisk in the Massachusetts options that indicated that some of those dates still needed to be finetuned, and the dates that were presented in that table are actually the finetuned dates.

I wouldn't expect any changes to the season dates that were in that table for Massachusetts. That asterisk was just there from a prior version of the memo, where the model hadn't been run for all those options yet. Then my question is that there is a similar note for the southern region, Delaware to North Carolina, black sea bass Option 2, where it said that the mid-season closure there might continue to be finetuned.

I'm wondering if that is also true, or an artifact from a prior version of the memo. I'm also wondering if the intent is for Delaware through North Carolina to all select Option 1 or Option 2, or they would have the option of choosing among those two options for black sea bass. Thank you.

CHAIR DAVIS: I just saw Shanna Madsen's hand go up. Shanna, are you looking to respond to the question from Nichola?

MS. SHANNA MADSEN: I am, Mr. Chair. To clarify a little bit on what our asterisk actually means. What will be happening is the southern states will select either Option 1 or Option 2. There shouldn't be fine tuning with those dates that you see there. Thus far right now what the southern states are proposing is that Delaware, Maryland and Virginia are going to select Option 1, and North Carolina is going to select

Option 2, which does in fact get us to the 10 percent necessary percent reduction.

Really, the point of what we were trying to say there is just we might select either one of those options, but we'll ensure that the entire region meets the required regional reduction for black sea bass. Since I have the floor, I'll just note to everyone so that folks are kind of aware of Virginia's intent.

With their February season we did open our February season, and so what we will do is we are going to go with the Option 1 for the July closure, which means that we'll extend our July closure on either end to account for that February season. We won't make another mid-season closure; we'll just extend the mid-season closure that we select. Feel free to ask me any more questions if you have them, Nichola, I'm happy to help.

MS. MESERVE: Thank you, Shanna. Part of that question, you know I think it speaks to the type of motion that we might want to approve here. It seems like the states have had an opportunity to fine tune those season dates. I think that's something to think about when we talk about what motion we want to approve, whether it's approving the methodology, or approving the options that are actually laid out in the document. Thank you.

CHAIR DAVIS: Any additional questions for Tracey? Nichola, I see your hand is still up. Do you have another question or is that left over from before? Okay. Any other questions relative to the presentation? Mike Luisi.

MR. MICHAEL LUISI: A question for Tracey, as far as workload goes. You know something that we talked about in the southern region was the possibility of adding a few days to the closure, to maybe address the increase in size limit from 12.5 to 13. Would that require Lou and folks from the Service. Would a whole new model run have to happen to account for that, or is that something more simple that can be explored still?

CHAIR DAVIS: Go ahead, Tracey, I was going to kick it over to you anyways.

MS. BAUER: Sorry about that. If it's only a few days and it's within the same, at least as far as I understand, the model splits up the month into two-week time blocks. If it's just a few days within that time block, it's basically a back of an envelope calculation of a couple of days of what that will do to the harvest. The model would not need to be run again. It's something we would be able to do much quicker.

MS. KERNS: Justin, just to reiterate, I think we've done this before. But if it is not in that time block then it could have implications, not only on the black sea bass measure reductions, but also the scup measure reduction. Just keep that in mind.

CHAIR DAVIS: Okay thanks, Mike, does that answer your question?

MR LUISI: Yes, so what I was saying was, I just anticipate the question coming from our stakeholders about whether or not going from a 10-day closure to possibly a 14-day closure may allow for a smaller size limit. I just wanted to see how much effort that would require. I obviously don't want to stress the analysis any more than it has already been done. I just wanted to have an answer for our public when they asked that question. But I think I got the answer I was looking for, thanks.

MS. KERNS: Justin, I would like to put it on the record that a change in the size limit would be a major change, and has the potential to have implications for the other fishery. That would be a big change and would not be allowed under one of the scenario motions that Tracey presented.

MR. LUISI: Okay that's what I wanted to hear. Thanks, Toni.

CHAIR DAVIS: Okay, I'll turn back to the Board to ask if there are any additional questions on the content of the presentation. I'm not seeing any hands, so at this time I think what would be helpful is if we could get a motion on the board to move us forward. I'm going to suggest that we deal with the two species separately,

because I think that is probably the quickest and cleanest way to proceed. I'll turn to the Board and see if anyone would like to make a motion. I see Nichola Meserve. Go ahead, Nichola.

MS. MESERVE: Thank you, Mr. Chair. I'll start with sea bass, because I think that there may be some more discussion about scup, such as was suggested by Adam in the discussion of the agenda items today. Regarding sea bass, I think we have a pretty full range of options before us. Each state has had about two months to work together as regions, and request very many runs from Lou and in the Recreational Demand Model.

You know I'm comfortable where Massachusetts is with our range of options to go to public hearing. Many of the states have already started that process, and so at this point I am prepared to endorse or support the Board approving this particular suite of options that have been presented, as opposed to approving the methodology.

I've raised in the past, concern about some state closures that were shorter than two weeks in length, and I think that resulted as a consequence of the Board sometimes saying, okay we're approving the methodology, and then the states sometimes came back with options that I don't know that everyone would have supported at that point.

#### **CONSIDER FINAL APPROVAL OF PROPOSED REGIONAL MEASURES**

MS. MESERVE: You know I'm much more comfortable approving the range of options that are before us today in the document. **My motion would be to move to approve the range of state/regional options for 2023 black sea bass recreational measures developed using the Recreational Demand Model as presented today.**

CHAIR DAVIS: Great, thank you, Nichola. We've got a motion on the board. I'll look for a second. I see Jason McNamee. The motion is seconded by Dr. McNamee. At this point the motion is the property of the Board. Nichola, I'll turn back to you to see if

you want to provide any additional rationale for the motion at all.

MS. MESERVE: I think I jumped the gun and gave it up front, so I am good to defer to the Board's conversation at this point. Thank you.

CHAIR DAVIS: I'll turn to Jason McNamee to see if you would like to provide any rationale for the motion.

DR. JASON McNAMEE: Really nothing to add to what Nichola said, so I'll save us some time here and not restate what she already said so well, so thanks.

CHAIR DAVIS: I'll look to the Board to see if there is any discussion on the motion. Adam Nowalsky, go ahead.

MR. NOWALSKY: I'm not sure that I oppose this motion, and I'm not ready to make a substitute motion, but I do think I would want to highlight that this is a departure from how we've done business in most recent years, where we've been approving a process, as opposed to a particular set of measures that a state then has to go back and select from. I think I would just ask for clarity, either from the makers of the motion or from staff, if that is in fact the case that in this case, we're not just highlighting the process, we're actually specifying that limited set of measures.

CHAIR DAVIS: Tracey, I'll turn to you to see if you would want to provide a response there, and then also it could provide opportunity for Nichola or Jason to follow up as well.

MS. KERNS: Justin, can I jump in and just say that I think part of where this goes is that with this new process and using this new model, that there are implications when you make bigger leaps on the other species, which then has the potential to send everybody back to the drawing board. Therefore, I think that a change in process is acceptable if the Board is wanting to go that way. It doesn't break the rules that we have in our Addenda Guidelines. It's not

outside of the scope of the Board's decision to do so.

CHAIR DAVIS: Okay, thanks, Toni, and to be clear, I think if this motion were to pass, it does (and please correct me if I'm wrong, Tracey or Toni) it does limit states to selecting the options that they've presented in the document that the Board has right now. But there would be the opportunity for some small changes to those options following this meeting.

As long as they're sort of within bounds that would not be expected to produce major changes in the reductions that are achieved for scup, for instance. To your point, Toni, you know if you change your black sea bass option enough, it can change the reduction you're getting on scup. It can change the regional reduction achieved for a species. It sort of can have ripple effects beyond what the state does. I do think there would be room for some small adjustments, to for instance seasons by a day or two following this. Am I correct in that?

MS. BAUER: Yes, that is correct.

MS. KERNS: As long as it's in that time block.

CHAIR DAVIS: Adam, does that adequately address your concern and your desire to have some discussion on the record about how this process is different from what we've done in previous years?

MR. NOWALSKY: I'm not sure it rises to a concern, so much as I just think it's important that we note. Obviously, an awful lot has changed here in what we've done this year. I guess it shouldn't come as any surprise to anyone that we're continuing to change that as this continues to evolve. I just thought it was important to have on the record a recognition of this one additional change, in case anybody is keeping track of all the things we've changed here in the last year of our management.

CHAIR DAVIS: Nichola Meserve, go ahead.

MS. MESERVE: I could use a little bit more clarity on the fine tuning of seasons that could still be done. I know, for example, that if Massachusetts were to take a day off Wave 3 and add it to Wave 5 that

changes our reduction more than you would think. I am not seeing how that type of fine tuning that was not really the intent of my motion, to suggest that states could still do that.

If you're referring to, however, like a two week in-season closure, that whether it's the first two weeks of a month or the third and fourth, you know two weeks of the month. That would be equivalent, because it's all within the same wave. I think Toni made a reference to the same time block. Just I'm not sure what that means.

CHAIR DAVIS: Tracey or Toni, do you have any input? Can we put some bounds on what is acceptable under the sort of moniker of minor adjustments?

MS. BAUER: I think the original intent of the fine tuning, I think Nichola covered this earlier, but was just to get states, at least as was communicated to me, was that states wanted to get as close as possible to 10 percent, to a 10 percent reduction. Like I said, at 10.4 they might mess with the days a little bit to get to a 10.1. But as Nichola pointed out earlier, it sounds like states are in a better place now, at least the ones that she mentioned. This might not even be an issue any more. It may not even be needed by anyone.

CHAIR DAVIS: Go ahead, Nichola.

MS. MESERVE: For the sake of clarity, the intent of my motion is to lock in the particular dates that are shown in the document for each of the state's options for black sea bass, because I believe that the states have already gone through that process of fine tuning to get to as close to 10 percent as possible. That opening up this door here presents a little bit of concern to me, in terms of what may be the eventual outcomes and the implications for all of us.

CHAIR DAVIS: I think that is helpful to clarify the intent of the motion that you've made here. I think what might be helpful at this point is

given that clarification on the intent of the motion. If there is any state that is looking at this motion and thinking that would be problematic if this motion were approved, and essentially would preclude any adjustments to the options that are presented today, to sort of speak up and bring that to light.

That we can potentially make an adjustment here if necessary. I'll just ask the Board if there is any state that views that as problematic to please speak up and let us know. Okay, so not seeing any hands, I think Tracey, you might be correct in your suspicion that that need to make minor adjustments may not be a thing any more. With that I'll ask the Board if there is any additional discussion on the motion.

Okay, not seeing any hands. I'll turn to the public, and ask if there is any member of the public who would like to make a comment on the motion, please raise your hand. Okay, I'm not seeing any hands from the public. I think at this point, given there is no desire from the Board for further discussion, I'll go ahead and call the question. But first I'll ask if there is any state that needs to caucus. If you do, please just raise your hand on the webinar.

Okay, I see Rhode Island has raised their hand, so why don't we provide two minutes to caucus, and I'll try to keep that time here locally. Okay that was two minutes. Does anybody need any additional time to caucus? Okay, not seeing any hands. I think what I'll do is ask first, are there any objections to this motion? **Please signify by raising your hand on the webinar. Okay, just confirming, Toni. I don't see any hands.**

MS. KERNS: Will you just ask for abstentions as well? I confirm though that there are not hands.

**CHAIR DAVIS: Right, will do. Are there any abstentions? I see one abstention from NOAA, National Marine Fisheries Service, so we'll consider this motion approved by consent with the one noted abstention from NOAA National Marine Fishery Service.** Okay, one down, then I'll turn to the Board and see if anybody would like to make a motion relative to scup recreational measures. I see Joe Cimino. Go ahead, Joe.

MR. JOE CIMINO: With all due respect to the conversation we just had, I did not have an objection to that. But for scup I would like some flexibility, and it's a little bit more gauged towards the 2024 fishing season. I would like to make a motion towards what staff put forward as that Option B.

That would be to accept the RDM model for scup. Also, as I mentioned, I'm looking toward the 2024 season, and so I would hope that in this motion that we can ask the National Marine Fisheries Service to reconsider the federal waters closure. Let's make the motion and if I get a second, I'll speak to it.

CHAIR DAVIS: Okay, Joe, would you mind reading the motion into the record?

MR. CIMINO: Right, of course. I would like, it looks like there was one with the reconsideration.

MS. BAUER: This one here?

MR. CIMINO: Yes, thank you. **My motion would be to, I guess I'm going to have a hybrid here. My motion would be to approve the RDM.** Oh, I see what we did here. Yes, we can do that.

MS. KERNS: I can help you, Joe, really quick. Tracey, can you take the second half of this motion? He's looking to use the other motion with the end, recommend NOAA. Yes. Take that and put it into the other one.

MR. CIMINO: Thank you, apologies everyone. **I would move to approve the use of the RDM to establish 2023 scup recreational measures to achieve a 10 percent reduction. The RDMs estimated 2023 harvest under 2022 measures, also to recommend that NOAA Fisheries reconsider the federal water closures based on the reductions achieved by the state regulations.**

CHAIR DAVIS: Okay, thank you, Joe, so we've got a motion on the board made by Joe Cimino,

looking for a second. Is there anybody who would like to second the motion? I see John Schoenig on the webinar with the hand raised. I'll apologize, John, not sure. Are you a member of the public or sitting on the Board? I see a hand from David Borden, so we'll take a second from David Borden on this motion. Joe, I'll turn back to you and ask if you want to provide any additional rationale for the motion at this time.

MR. CIMINO: Yes, thank you, Justin. You know I think for 2023 we're really getting into things. I think states need to set measures. I do think that this is really a state waters fishery, and that with the measures that we're going to be putting in place, once everything is aligned, that I think that federal waters closure could safely be removed. That's my intent here.

CHAIR DAVIS: I'll turn to David Borden, see if you want to provide any additional rationale.

MR. DAVID V. BORDEN: Yes, thank you, Mr. Chairman. I seconded it, because I wanted Joe to have an opportunity to at least float the idea and explain his thought pattern. But I'm curious, do we have anyone from NOAA on the call that could react to this motion, in terms of their ability to affect it in a timely manner? Thank you.

CHAIR DAVIS: Toni, I do believe we have a representative from NOAA GARFO on the line today.

MS. KERNS: Yes, Emily Keiley. She's got her hand up.

CHAIR DAVIS: Emily, go ahead.

MS. EMILY KEILEY: Hi everyone. Thank you, Mr. Chair. This just came to my attention just briefly before the meeting that there were some thoughts about reconsideration of that with that Wave 1-2 closure for scup. It's a little bit of a tricky situation, because we've got the joint actions of the Council and Board recommending that closure to us.

We're in the process of starting our rulemaking. One potential avenue I can see forward is if the Commission, you know everyone onboard, wrote us

a letter during this rulemaking, during the open comment period, you know describing the concern and asking us to reconsider implementing that closure, and with that providing rationale and the data essentially to back up that these state measures will be sufficient to achieve that 10 percent reduction.

You know as you all know; we based on comments last year reconsidered what we did with scup for 2022. We do have an opportunity, potentially, to reconsider that closure to that rulemaking. My other thought was if that couldn't be pulled together in a timely way within this potential rulemaking, if the concern really is 2024, which realistically is the case, given this final rule won't be in place for a while.

Maybe if it cannot be done right now in this rulemaking, could the Council and Board take some action at the August meeting. Obviously with the appropriate rationale data, you know something we potentially could do through the specifications rule, which would be in place before January 1, 2024. It's a little bit rambling, but a little on the spot, so those are my thoughts. I think that it is possible to do something, but we can't just do it based on this motion. You need sort of a letter, comment and sort of the information to support that. Thank you.

CHAIR DAVIS: Thank you, Emily, that is helpful. Joe, go ahead.

MR. CIMINO: Just a follow up. New Jersey is really a small part of this harvest. There is a challenge of what happens in Wave 1 in particular, since we don't have estimates. But we fully acknowledge the harvest and we have ways, I think to put forward something. We fully intend to put forward something on behalf of and send it to NOAA that acknowledges that harvest, if January and February were open, and to take measures to kind of cover that for our reduction.

CHAIR DAVIS: Adam Nowalsky, go ahead.

MR. NOWALSKY: Given those comments from the Service, which I'm greatly appreciative. Clearly, they've given us a couple of paths forward, not just one but multiple. **I would like to move to divide this question, Mr. Chairman, so that we can go ahead and address 2023 separately from what we need to do with the federal waters Wave 1 and Wave 2 issue moving forward.**

CHAIR DAVIS: Okay, Adam. A motion to divide, I'll admit I haven't handled one of these before. Can you be clearer on exactly what you're looking to do here? Split this into two motions, would it be the first, essentially what we're doing with the RDM to address 2023 harvest, and then splitting off the question of recommending to NOAA Fisheries the reconsideration of the closure into a separate motion?

MR. NOWALSKY: That would be my intention, Mr. Chairman.

MS. KERNS: Tracey, if you'll write up a motion to divide the question, motion by Mr. Nowalsky, and then we'll see if we get a second.

CHAIR DAVIS: We have a motion on the board to divide this question made by Adam Nowalsky. I'll look to the Board to see if there is a second. I see Chris Batsavage, so we have a second by Chris Batsavage. Okay, so we've got a motion on the board with a second. It's now the property of the Board. I'll turn to Adam Nowalsky to see if he would like to provide any additional rationale for this motion.

MR. NOWALSKY: The rationale is so that we can address both of these on their individual merits here. We had two pathways forward for the 2023 measures, and I think the question of whether or not, how to recommend NOAA Fisheries reconsider. Again, they put forward two different ways forward. I think that's going to merit discussion. I don't want to see the question about 2023 get hung up in any way as we debate the merits of the Wave 1 and/or Wave 2 closure in federal waters.

CHAIR DAVIS: Thank you, Adam, and I'll turn to Chris Batsavage to see if you have anything to add there.

MR. CHRIS BATSAVAGE: Thanks, Mr. Chair, no, I think Adam covered it really well, thanks.

CHAIR DAVIS: Okay, I'll look to the Board to see if there is any discussion on this motion. Not seeing any hands I'll ask if, oh I see Bill Hyatt. Go ahead, Bill.

MR. WILLIAM HYATT: I just have a question. I'm a little bit foggy on understanding how, if these two were in their original format and combined, how a recommendation to reconsider ties things up in any way. Maybe I'm just missing something, but if I could have some clarity provided on that it would be helpful.

CHAIR DAVIS: I think I'll turn to Adam Nowalsky, the maker of the motion, to see if you can provide the answer to Bill's question.

MR. NOWALSKY: If there are concerns by Board members today about whether or not we should recommend a reconsideration of that closure, and perhaps there are none. Perhaps all Board members at this point in time are completely onboard with both aspects of this motion. If everybody is completely onboard with both aspects of the motion, or if everyone is completely opposed to both aspects, then perhaps there is no reason to divide the question.

But my sense is, given what we did with the black sea bass motion, I don't know where all Board members are. If they want to go in the same direction with scup as they did for black sea bass, with limiting things purely to the options presented here today, or whether they are open to just continuing to approve the process of use of the RDM.

I have the same questions on the side of recommending the reconsideration of the federal closures. I do not know if every member of the Board here today is in support or not of that. It just seems to me, from procedural perspective, it makes sense to address these two things separately. But if it is

not the will of the Board to do so then it won't be the will of the Board to do so.

CHAIR DAVIS: Okay, thank you, Adam. Nichola Meserve, I saw your hand up there but it looks like it went down. Just wanted to clarify. Go ahead, Nichola.

MS. MESERVE: I can support dividing the question, because I do have some questions about the first part of it, just to kind of address Adam's statement. You know I was more comfortable, I think, unless there is a state that really needs to continue to fine tune the measures that have been presented in the document for 2023, to approve the particular set of options that have been provided, so that we can try to wrap this process up in a more timely manner. That's all, thank you.

CHAIR DAVIS: Any additional hands from the Board for discussion on this motion? Mike Luisi.

MR. LUISI: The question I have has to do with the timing of the different alternatives that Emily provided. If somebody could help clarify for me, are we talking about, as far as the reconsideration from NOAA Fisheries, I'm thinking about the timing of the closure. Are we talking only about 2024, or is it possible that reconsideration could occur for 2023? I'm just a little confused as far as the timing, with how it would play out.

CHAIR DAVIS: Emily, could you address that?

MS. KEILEY: Yes, happy to. Thanks for the question, Mike. We have not yet put out the proposed rule for the 2023 measures, so realistically a final rule that would implement the closure, if that is what we were to do, is probably not going to be published until after the closure would be over.

Correct me if I'm wrong, but the scup fishery would have opened back up in May, so I don't think that 2023 is actually really in play here, given the timing of our rulemaking. That is why I was sort of addressing 2024. In terms of what the states would need to do, we're still trying to achieve a 10 percent reduction for this 2023 year. I acknowledge it's a little weird, because of the timing of our rulemaking.



I think though, if for some reason the final rule were to occur before the end of that closure, yes, we would be sort of reconsidering that closure, I guess from both years. We would essentially not be putting that in the regulations. Because really, the problem for 2024 here is that we're not going to have a recreational rule done in time to sort of undo what we've done this year for the 2024 Wave 1 and 2. I'm sorry if that was more confusing than helpful.

MR. LUISI: No, that was helpful. That is what I had thought. I think if we ultimately decide to divide this question or not, I think it might be helpful for the public and for all of us, if somewhere in this motion 2024 was mentioned, you know just to make sure everyone is clear as to what direction the Board is suggesting. I'll leave it at that, but thanks, thanks for the answer, Emily.

CHAIR DAVIS: At this point I'm going to go ahead and call the question. I will ask if anybody needs time to caucus. Please, raise your hand if you do. Not seeing any hands I'm going to ask, is there any objection to this motion? Sorry, John Clark, I saw your hand go up there for a second. Are you saying that you need time to caucus?

MR. JOHN CLARK: I think it will be okay, Mr. Chair, thank you.

**CHAIR DAVIS: Okay, thanks. I'll ask again, is there any objection to the motion? Not seeing any hands I'll ask if there are any abstentions. I see one abstention from New Hampshire, and one from NOAA National Marine Fishery Service. We'll consider the motion approved by consent with two abstentions from New Hampshire and NOAA National Marine Fishery Service.**

MS. KERNS: Okay, Tracey, once you get that done, bear with us while we do so, if you will pull the first half of this motion, so from move to approve. Then let's put that on a new screen. That will be the first motion we'll

tackle. I believe Bob Beal can correct me if I'm wrong, but it becomes the property of the Board and there is no maker or seconder.

EXECUTIVE DIRECTOR ROBERT E. BEAL: That's correct, Toni.

MS. KERNS: Thanks, Bob.

CHAIR DAVIS: Okay, thanks, Bob and Toni. We have a motion on the Board, move to approve the use of the Recreational Demand Model to establish 2023 scup recreational measures to achieve a 10% reduction of the RDMs estimated 2023 harvest under 2022 measures. I'll turn to the Board and see if there is any discussion on the motion. Nichola, go ahead.

**MS. MESERVE: I would like to substitute to approve the range of state/regional options for 2023 scup recreational measures developed using the Recreational Demand Model as presented today.**

CHAIR DAVIS: Okay, thank you, Nichola, we'll just give a moment here for staff to get that substitute motion up on the board.

MS. BAUER: Nichola, some clarification just to make sure. Is that the first motion, like we did for black sea bass?

MS. KERNS: Tracey, I believe yes, it is. You can just pull from that other slide. Once we have it up, Nichola, just let us know if there is something that is not correct in there Tracey, this will have a maker. Perfect.

CHAIR DAVIS: Okay, Nichola, does this wording on the board match the intent of the motion you wanted to make? I see that Nichola is showing up as offline.

MS. KERNS: Yes, I think we might have lost her for a second. I'm not sure what is going on, because her microphone is open. But I wonder if she lost internet connection. I'm going to text her the call-in number.

CHAIR DAVIS: Toni, would it make sense to maybe take a five-minute recess here while we see if we can get Nichola back online, and confirm this is the substitute motion she had in mind?

MS. KERNS: She texted me that she just lost internet, but she did confirm that she wants the same motion as the black sea bass one, which is what we have put up on the board. In the meantime, I'm going to try to see if I can figure out what the phone number call-in number is to text that to her so she can just simply call in.

CHAIR DAVIS: Okay. For clarity, I'll read this motion into the record. It's a motion to substitute. Move to approve the range of state/regional options for 2023 scup recreational measures developed using the Recreational Demand Model as presented today. Motion made by Ms. Meserve, and I will look to the Board to see if there is a second for the motion.

I see Jason McNamee, so seconded by Dr. McNamee. Hopefully we'll get Nichola back on the line here soon, and she'll be able to provide some rationale for the motion. At this point I will open it up for discussion. Mike Luisi, I see your hand. Go ahead.

MR. LUISI: Oh, I'm sorry, Mr. Chairman, I was raising my hand for a second. I'll put it down, thank you.

CHAIR DAVIS: I see Chris Batsavage.

MR. BATSAVAGE: Just a question I probably should have asked earlier, but since we're on this motion I guess it's relevant. I just want to be clear that regardless of which option for the scup measures is selected by the states, basically from New Jersey to Massachusetts, that those combined with what is proposed in federal waters will indeed meet the 10 percent reduction, or are there some combinations that won't quite get us the 10 percent?

CHAIR DAVIS: Thanks, Chris, Tracey, I'll turn to you to see if you can address that question.

MS. BAUER: I believe you're looking at the coastwide reduction of scup. It's going to be with the combinations I've messed around with, you know changing up the New Jersey ones with what the northern region has provided. At least for the example northern region it would come out to be around 9.6 percent, coastwide, sorry.

CHAIR DAVIS: Chris, does that answer your question?

MR. BATSAVAGE: I think so, Mr. Chair, so the 9.6 up in the north combined with what New Jersey proposes, and then federal waters measures collectively would meet 10 percent. But if the northern states pick some other combinations to where they weren't 9.6 percent, would we still be at that coastwide 10 percent, or are we starting to fall below that 10 percent line? It's going to help me better understand how this is going to work under either motion that we do right now, and also when we consider the federal waters closure later on.

CHAIR DAVIS: Okay, thanks, Chris, and for clarification, I think, and Tracey, correct me if I'm wrong here. Under the substitute motion there would be the ability for the northern region to select some other option, other than what's been presented here today. But under the original motion. I'm sorry, I have that backwards.

Under the original motion the northern region could essentially develop new options, select different options after this meeting, because it would be just approving the RDM. But under the substitute motion the northern region would not be able to do that. We would essentially have to select from the options that have been presented today. Do I have that correct, Tracey?

MS. BAUER: Yes, that is right.

CHAIR DAVIS: I think I'll take Chris's question as, under the original motion. Are there other options? And, correct me if I'm wrong here, Chris, but you're asking if there are other options under consideration that could be selected that could then drop us below that 9.6 that we have under the options we're proposing currently.

MR. BATSAVAGE: Actually, kind of looking more towards, I guess the substitute motion on hand, where some of the options, depending on which state, have scup reductions in the 2 to 3 percent range, and then others in that 10 to 14 percent. Do all the combinations, because Tracey showed example combinations that will get us a 9.6 up in the north. But are there any combinations that are already presented in the north that will fall less than at 9.6, and therefore could drop us back below 10 percent coastwide? Just looking for some clarification on that.

CHAIR DAVIS: I'll turn back to you, Tracey, but I believe, you know the northern region at this point is only proposing one option for scup. Collectively the states have all proposed the same option that as a region achieves that 9.6 percent reduction.

MS. BAUER: Yes, we haven't calculated every single combination. If one of the northern states was to choose from within, you know a different option within the options presented today. But I think that's something that we're going to, you know when everyone puts forward their final options in a month or so, we're going to look back and make sure that it is somewhere around that 9.6, 10 percent. Toni can correct me if I'm wrong, but if it isn't there, we might ask them to select a different option or something.

CHAIR DAVIS: I'll turn back to you, Chris, to ask if you are satisfied that that answers your question.

MR. BATSAVAGE: That's great, and I appreciate that. Thank you, Mr. Chair, and thank you, Tracey. That answers it.

CHAIR DAVIS: Toni, do we have Nichola back on the line yet?

MS. KERNS: Yes, hold on. She can open up.

MS. MESERVE: Thank you, Mr. Chair. Apologies, I'm not sure where I dropped out

there. But it looks like you got the gist of the motion that I was trying to present, and my rationale largely was very similar to black sea bass, that the states have had time to develop a range of options. To my understanding there is not a state that is looking to offer something other than was in the document. For the sake of clarity, and moving forward with 2023 measures as quickly as possible. Using what's in the document would serve that purpose best. Thank you.

CHAIR DAVIS: Look to the Board to see if there is any additional discussion on this substitute motion. Joe Cimino, go ahead.

MR. CIMINO: I appreciate Nichola's comments and I honestly think that New Jersey would probably intend to move forward with the 2023 measures. Given the discussion we just had with Chris Batsavage's questions, I think the flexibility should be there for the options. I'm going to speak against the substitute and still support the original motion, thanks.

CHAIR DAVIS: Tracey, as a point of clarification, the substitute motion, if it was approved as the main motion and voted up, would mean that states would have to select from the range of scup options presented today. Under the original motion states could also select from those options presented today, or have the option to develop new scup options after this meeting, correct? You know, it wouldn't preclude using the options presented today under the original motion.

MS. BAUER: Yes, that is correct.

CHAIR DAVIS: Okay, thanks, I just thought that might be a helpful point of clarification. Okay, I'll turn to the Board to see if there is any additional discussion.

MS. KERNS: Mr. Chairman, I do want to sort of point out, I guess one of the big differences between these two motions is that we don't exactly have a process identified for the original motion versus the substitute motion, because we are in this sort of new realm and new world. The model has to be run by Lou. In addition to the fact that one set of

measures for one species can impact the other species measures.

I don't know, it is a little bit more of an unknown scenario under the first motion. It's not that it's not something that we can't handle. I don't want to try to get that impression, but if we get to that motion, we will need to describe how that would work, and if there are any bounds around that flexibility or not. It would be helpful for us, and we would need to establish a timeframe, so that we can make sure we can still get to the April 1st deadline of finalizing measures.

CHAIR DAVIS: Thank you, Toni, that is helpful. One last call to the Board to see if there are any additional comments or discussion on the substitute motion. Okay, not seeing any hands. I'm going to provide three minutes to caucus. From Connecticut's standpoint I need some time for a caucus, so we'll provide a three-minute caucus, and then we'll come back and vote on the substitute motion.

Okay, that was probably a little bit less than three minutes, but I'll just ask does anybody need any additional time to caucus? Please raise your hand. Okay, not seeing any hands, we'll go ahead and call the question. I'll ask all those in favor to signify by raising your hands on the webinar, and Toni, if you could, read off the hands on this one that would be great, thanks.

MS. KERNS: Waiting for the hands to settle here. I have Massachusetts, Rhode Island, Delaware, New York, North Carolina, Connecticut, Maryland and Virginia. I will put the hands down.

CHAIR DAVIS: Okay, we have all the hands down. I'll ask all those opposed, signify by raising your hands.

MS. KERNS: I have New Jersey.

MS. BAUER: Toni, I didn't get the total number in favor.

MS. KERNS: I'll read it out to you, Tracey. We'll still need the abstentions, so we're not quite ready.

**CHAIR DAVIS: I'll ask if there are any abstentions.**

**MS. KERNS: We have two, NOAA Fisheries and New Hampshire.**

CHAIR DAVIS: Okay, any null votes?

MS. KERNS: No hands.

**CHAIR DAVIS: Okay, I believe the motion carries with, check my math here, 8 in favor, 1 opposed with 2 abstentions.**

MS. KERNS: I have the same.

CHAIR DAVIS: Okay, so the substitute motion has passed. That motion will now become the main motion. I'll just give a moment here for staff to reconfigure the board.

MS. KERNS: Again, Tracey, the same applies the second half at no maker or seconder.

**CHAIR DAVIS: Okay, so the substitute motion is now the main motion. It is move to approve the range of state/regional options for 2023 scup recreational measures developed using the Recreational Demand Model as presented today.** Adam Nowalsky, I see your hand up. Go ahead.

MR. NOWALSKY: Given that the range of measures that have been presented today, and their sum equate to a 9.7 percent reduction instead of 10. Are we at risk of this not being approved by GARFO and, if the answer is no, does that signal to us that moving forward, now that we're using the RDM, we don't actually have to reach the full reduction, we just have to get to within the lower bounds of the confidence interval?

CHAIR DAVIS: Thanks for that question, Adam. Emily, not to put you on the spot, but would you be able to reply to that question?

MS. KEILEY: Yes, so I think in terms of just needing to exceed the lower bounds of the confidence interval. That is definitely not the precedent of

what I think we're trying to achieve here. What I see here is that we've done our best to get as close as possible to 10. We're talking about less than half a percent. I, you know observed in the black sea bass measures, those aren't exactly 10 either, they're a little bit over the 10 percent reduction.

I think in the realm of being reasonable, given the uncertainties and the challenges particularly using this model, that the species affect each other in that interplay and uncertainty. You know I think we've got to do our best to achieve that 10 percent. But I also recognize that it would be very challenging to get a model run to be exactly 10.00 percent.

I'm sort of a little bit on the spot here, but that is my view of this. We're not trying to creep away from 10. I think we need to try to achieve that. But I also recognize that we have to be reasonable about what our actual capabilities are, and what we can manipulate and change, and then how close we can actually get to that number.

MS. KERNS: Justin, I just want to point out a semantics here. The scup is different than summer flounder and black sea bass, where it is not an official conservation equivalency process, and it's not necessarily an approval of measures from GARFO. GARFO takes into consideration the state water measures when they are developing their federal water measures.

CHAIR DAVIS: Okay, thank you, Emily and Toni, for those clarifications. Adam, does that address your question adequately?

MR. NOWALSKY: I absolutely loved the answer, Mr. Chairman.

CHAIR DAVIS: Okay, great. I'll turn to the Board and ask if there is any additional discussion on this motion. I see a hand from Nicole Bogan.

MS. KERNS: A member of the public, Justin, but I've opened up their line.

MS. NICOLE BOGAN: Hi, sorry. I know I'm a little bit late to the meeting, but I am speaking on behalf of my father, Howard Bogan. I just wanted to ask a question, as far as like your 10 percent. Will the amended proposal, can you guys amend a proposal to a closure from March 1st to April 30th? Not that it's necessary but delaying the season opening one day, May, would most likely account for all the scup in January and February. Therefore, the season couldn't be closed March 1st through May 1st, and it will easily achieve the same result or more.

CHAIR DAVIS: Okay, thanks, Nicole. I think what I would ask is we sort of put a pin in that question until we get to the second half of the motion we divided earlier, which has to do with the issue of the federal closure. I think we'll have some discussion there that might address that question. I'll turn to the Board.

Not seeing any additional hands for discussion on this motion. I'll ask if anybody needs time to caucus, please raise your hand. Okay, not seeing any hands, call the question. We'll see if we can do this the easy way. Are there any objections to this motion? Joe Cimino, I see your hand, I'm assuming that's raising an objection.

MR. CIMINO: Yes, Mr. Chair.

CHAIR DAVIS: I'll also ask if there are any abstentions.

MS. KERNS: We have two, New Hampshire and NOAA Fisheries.

CHAIR DAVIS: Toni, is it sufficient to note that the motion passes, noting the one objection from New Jersey and two abstentions from New Hampshire and NOAA National Marine Fishery Service?

MS. KERNS: Can we raise the hand for yesses? This is a final vote, and therefore technically it's a roll call. I just want to have it real correct on the record.

CHAIR DAVIS: Sure, okay, so I'll ask all in favor of this motion to please raise your hand on the webinar.

MS. KERNS: I'll go real fast here. I'm pretty sure it's the same as before. Mass, Rhode Island, Delaware, New York, New Hampshire, Connecticut, Maryland, and Virginia, and that is 8.

MR. BATSAVAGE: North Carolina voted yes. You said New Hampshire.

MS. KERNS: Sorry about that. Still 8, I was counting them in my head, but not out loud.

**CHAIR DAVIS: Correct, I have 8 in favor, 1 opposed, 2 abstentions. Thanks, I think at this point we have dispensed with the first part of that divided motion, and we can move on to the second part.**

I'll just give a moment here for staff to get the second half of that divided motion on the board. I'll read that into the record.

**It's move to recommend NOAA Fisheries reconsider the federal waters closure based on the reduction achieved by the state regulations.** As this was a divided motion, we don't have a maker or seconder for the motion. I'll turn to the Board and ask if there is any discussion on this motion. Joe Cimino, go ahead.

MR. CIMINO: As others have said, I appreciate Emily's comments on this. I apologize to her for being on the hot seat all morning. I just want to reiterate that New Jersey does, even though we are a small player, we do intend to send comments to NOAA and to the Board on any interest we may have, you know our hope to have a Wave 1 season in 2024, and what that would mean for the rest of our 2024 season.

CHAIR DAVIS: Adam Nowalsky.

MR. NOWALSKY: I think it would be useful to clarify this motion, what exactly we're recommending. I don't think this motion as written is a motion to reconsider our motion from December as a Board, which I think would also require some like action from the Council at some point.

My vision of this would be to follow the pathway that GARFO set out, Option 1 or Step 1, as a result of this motion would be to write a letter during public comment using staff's input on justifying the allowance of federal waters to stay open. If that carries today then great, we can be done. But if that shouldn't carry the day, then I think what this is doing is saying that we're going to have an agenda item, and request that the Council do that in concert with us.

In August, during specification setting that would seek to revisit it. Whether there is consent for that moving forward, and just having it on the record is sufficient, or whether you need some specific amendments made to this motion, Mr. Chairman, I'll defer to your preference. But to me this motion as written didn't spell it out. I offered a way here, what this means, what it would mean to me, and I'll defer to you if that is sufficient, or you want something in a formal amendment.

CHAIR DAVIS: Okay, thanks, Adam. I think what you just described is consistent with the discussion we had and the input we got from Emily earlier in the meeting. From my standpoint it is sufficient to have that discussion in the record on how we're going to proceed, should this motion be approved. Toni, I'll just ask really quick if sort of you're in agreement there that that bit of discussion that we just had on the record about what will follow after this motion, should it pass, is sufficient, or if we need to clarify anything in this motion to provide more specific direction to staff on what will happen after this motion is carried.

MS. KERNS: I think you've put it in the record, unless somebody from the Board objects, then we can move in that direction.

CHAIR DAVIS: Mike Luisi, go ahead.

MR. LUISI: I'm not objecting to the concept, especially since Emily painted the path forward and gave us a couple options as to how to proceed with discussions with NOAA about 2024. I just don't know, based on what Emily said about the final rule and the process that is currently ongoing, whether

or not it would be, I'm trying to think of the right word.

Does a letter right now, because by the time the final rule publishes, the closure is going to be over. I wonder if we would be better off spending more time preparing for and coming up with recommendations for the August meeting, rather than providing that feedback from the Board and the Commission for 2023, since there is likely not going to be any. It won't matter.

But I don't know, as far as process goes, whether or not just having that on the record at this time within the federal program, would be beneficial for a future discussion. I'm just looking for some guidance here. I just don't want to waste people's time if we're already through the closure before the final rule even is released.

CHAIR DAVIS: I guess what might be helpful to clarify here, and correct me if I'm wrong, Emily. But what is really at issue here is the potential closure of federal waters in Waves 1 and 2 in 2024. We're sort of trying to figure out what would be the best path forward after this meeting to provide a recommendation to NOAA Fisheries to forego that closure. From my standpoint, this motion captures the intent of the Board, were it to pass, that we would like to recommend to NOAA Fisheries they reconsider that closure.

We've had some discussion on the record today about potential paths forward for that. I think there could be follow on discussions after this meeting between Commission staff, between NOAA staff, to sort of determine which is the most appropriate path forward, you know potentially including Mid-Atlantic Council in those discussions.

Then sort of deciding on which track is the best to take, either the sending the letter after this meeting, or defaulting to some joint action at the August joint meeting. That's just sort of my standpoint on that is that we could vote this motion up, capture the intent of the Board.

After this meeting have some subsequent discussions on what is going to be the most productive path forward, and would that satisfy your concerns, Mike?

MR. LUISI: Yes, I want to make sure as a member of the Council, and we do have a lot of Council members on line today. I just think that this would be more appropriate being decided on by both the Council and the Board. You know in my opinion, I think it would be best served to just hold this, maybe even postpone this motion and have it as an agenda item in August, for a full discussion by both management bodies. But that is just my opinion. I'm not going to object to it, I just think it's very vague as to what the next steps are.

MS. KERNS: Justin, could I maybe try to help a little. Maybe this will make.

CHAIR DAVIS: Absolutely.

MS. KERNS: I think that there is sort of two things that you can look at, those here. What I would want to make sure that we can work out with NOAA Fisheries, is that we're not asking them to do a double amount of work if there is a way that we can, in conjunction and working with the Council, not to pull you guys out of the loop on this.

But to not make NOAA staff do double the amount of work, in terms of dealing with 2024. Would like to try to achieve that and just remember that in essence we're trying to think about 2023 measures, but by default, because of the timing of the rulemaking, these Wave 1 and 2 closures don't actually impact Wave 1 and 2 of the current year that you're trying to get it to impact. But it actually impacts the following year.

Just talking through with NOAA about that, how we could achieve it working with the Council, to make sure that you guys are in the loop, and onboard with what we want to do if we need to make any recommendations. Maybe it's possible that the Council could address it at their April meeting. But if we can avoid double work for NOAA staff, I think that would be a goal I would try to achieve. But if it's not possible, then yes, of course we could address that at the August meeting.

CHAIR DAVIS: Go ahead, Adam.

MR. NOWALSKY: I appreciate what Toni just highlighted here, and not making double work on this issue. But I also appreciate Chairman Luisi's concerns as Chair of the Mid-Atlantic Council to not act unilaterally here. I do wonder if given the fact that the Mid-Atlantic Council has not yet noticed their agenda for the April meeting.

I wonder if maybe there were thoughts here about having a short period of time on that agenda, where Board members could join the discussion. Whether you want to call it a joint meeting or not, I think that might be an opportunity to have the joint discussion that Mr. Luisi seeks, and also tries to address the timing issue here to help the Service out, without doing double work, which would result by waiting until August.

CHAIR DAVIS: Just to clarify. Under your suggestion are you suggesting that we should not vote on this motion here today, or are you suggesting the Board should act on this motion and subsequently convene somewhat of an informal joint discussion on this topic at the April Mid-Atlantic Council meeting?

MR. NOWALSKY: I think my preference would be to, because we don't know, we can't say with any level, you know staff could chime in, or maybe staff could chime in here directly and say, we just can't facilitate a joint meeting, even with the Board members chiming in remotely. You know that would make this easy. Then we would have to address this today, in my opinion. Even if staff say we could allow the Board to participate remotely, we don't have with 100 percent confidence that in fact this would show up on the Mid's agenda in April. To me, I think that calls for this motion moving forward here today, but seeking some formal communication with the Mid, letting them know what we're doing here, and giving them the opportunity to include us in their discussion in April.

If the Mid chooses to go in a different direction, and chooses not to submit comments in favor of the proposed rule when it comes out, or submits comments in favor of it in opposition. Then I think that would be their position. That was long winded. The short answer to your question is I feel this motion should still go forward today.

CHAIR DAVIS: Toni, I'll turn to you one more time to see if you have any other remarks on this discussion.

MS. KERNS: I'm not going to say that the Board can't meet with the Mid-Atlantic Council. We have not indicated that we were. We always can notice a meeting. But I said this before, when Emily was chatting with us. But as a reminder that we make these recommendations for federal waters when we're meeting in December, to ensure that we're going to have some bit of reduction, because we don't know what the state waters are going to do, even though the majority of the harvest does come from the state waters.

If you recall in the past, sometimes we made those motions contingent on the states not doing anything or the minimum amount that the states would do. I think what we're trying to get at here is saying, the states have put forward a set of regulations. We need to see what the final set are that are going to achieve close to a 10 percent reduction. Therefore, what is necessary in federal waters to occur? Is anything necessary in federal waters?

That is the gist of why we would ask NOAA to reconsider. I think it would behoove us to go ahead and if the Board would want to even potentially ask NOAA to reconsider to make that motion today, and then we can carry forward with that, working with NOAA, working with the Mid-Atlantic Council to make sure we have all of our ducks in a row, and we're doing the right thing for the conservation of the species, and allowing industry to continue to fish. That's all I have.

CHAIR DAVIS: I think at this point we've had a pretty robust discussion around this motion. I think we should move to a vote. I'm going to ask if anybody needs time to caucus, please raise your



hands. Okay, I see one hand from Massachusetts, so we'll go ahead and provide two minutes to caucus, and then we'll come back and vote. Thanks.

Okay, does anybody need any additional time to caucus? Okay, not seeing any hands. I'll ask if there are any objections to this motion. Okay, I see a couple of objections, so why don't we drop back to doing this the normal way. **I'll ask, all those in favor of the motion, please raise your hand.**

**MS. KERNS: Letting the hands settle. I have Rhode Island, Delaware, New York, New Jersey, Connecticut and Maryland. I will clear the hands.**

CHAIR DAVIS: Okay, we've got the hands cleared, all those opposed, same sign.

**MS. KERNS: North Carolina, Massachusetts. One more, Virginia, sorry. I will clear the hands.**

CHAIR DAVIS: Any abstentions?

**MS. KERNS: New Hampshire and NOAA Fisheries.**

CHAIR DAVIS: Okay, any null votes?

MS. KERNS: No hands.

**CHAIR DAVIS: Okay, by my count, motion carries 6 in favor, 3 opposed with 2 abstentions. At this point we've dispensed with both parts of that divided motion.**

#### **OTHER BUSINESS**

CHAIR DAVIS: I'll just ask if we have any Other Business we need to conduct under this agenda item. I see a hand from Mike Luisi, go ahead.

#### **MID-ATLANTIC INPUT**

MR. LUISI: I thought it was important to move this forward, that is why I supported it. I just want to go on record to say that I think, well, I think you and I could work together, along with

Toni, Bob and Chris and other staff to have this as an agenda item. Not as an informal Board/Council joint meeting, but a formal Board/Council joint meeting. The next one that I believe that we'll all be in attendance, that will be the August meeting.

I have no problem with this being brought up during a joint meeting, saying that the Board already took action, and then get Council feedback on that. But I do want to make the point that I believe it's really important that the Council also have an opportunity to weigh in, in a formal way, and not just have a few Board members speaking to the motion in some kind of informal setting, which I think April would end up being something like that.

We are very close to having our agenda ready to go. It's a really long shot to be able to put something like this on the agenda, given the time that it may take for discussion purposes. I just wanted to put that on the record, and you and I can talk anytime in the next few weeks to try to get something set up for sometime this summer.

CHAIR DAVIS: Okay, thanks, Mike, that is helpful and definitely imagine we'll be talking after this meeting to move that forward. I'll just confirm with staff that we've dispensed with all the business that we needed to under Agenda Item 4.

MS. BAUER: Yes, I believe so.

CHAIR DAVIS: Okay, before we move on to other business, I'm going to turn the floor over really quickly to Toni, who I think has some information to communicate related to the species that this Board manages that we haven't discussed yet today. The floor is yours, Toni.

#### **SUMMER FLOUNDER UPDATE**

MS. KERNS: I just wanted to clarify where we are with summer flounder. We've received a couple questions, and so I just wanted to put it on the record of the process that we took. In the end we have status quo measures for summer flounder. No state will make any changes to their recreational measures.

The Commission utilized the RDM run that was presented to the Monitoring Committee, which put

us into the box of allowing a potential liberalization, because of the discussions that we had in December. It was agreed upon that there would be no changes to the summer flounder measures, we just wanted to clarify that.

### **RDM PROCESS**

MS. KERNS: Then the other piece is that in the process of moving forward and using the RDM, and this being the first year, we've learned some lessons, had some questions, and the staff of the Commission and Mid-Atlantic Council agreed that we needed the Monitoring Committee and the Technical Committee, who are scientific advisors, on these species who understand the biology of these species the best, and implications of how we set these measures and the MRIP numbers.

We are going to have those two bodies get together late spring, early summer, to go through the process to evaluate the process that we went through this year, make some recommendations on where we need to potentially streamline, or set some requirements or guidelines on how to move forward. We will bring those back to the Council and the Board for your review and consideration. Adam, this may get at what you were wanting to talk about, in terms of the RDM process, so that is our plan.

CHAIR DAVIS: Thanks, Toni, does anybody have any questions for Toni about that information? Adam, go ahead.

MR. NOWALSKY: I definitely think this is the Other Business topic I brought up, so thank you very much. I think the biggest area of input is when we heard back in December that there were some changes made to the model runs that affected their output, and subsequent information we've gathered about that suggest that some of those changes may be preferential in nature, and really a management decision as to what the right parameter is.

Is part of the discussion that you're referencing here so far, Toni, would that include an

identification of what those parameters within the model might be that could be part of management decision, and in the timeframe, you laid out, do you think we have sufficient time for management to weigh in on those, understand the issues, and provide feedback as to what the right values might be for those parameters, before we start running models in the fall?

MS. KERNS: We can do that, Adam, for sure. I think that Kiley and Julia are on this line, and maybe Hannah, and they can correct me if I'm wrong, but I think it's something that we have the potential to bring back to the Board and the Council at the joint August meeting, so that we can ensure that the process would be complete in time for specification setting next year, or later in the year for this year.

Kiley or Julia or Hannah, if anybody disagrees, go ahead and raise your hand and I'll unmute you, because it's hard for me to find you on the list. I don't see them raising their hand.

CHAIR DAVIS: Okay, thanks, Toni, so sort of under a timeline. You are describing there would be a meeting of the technical folks in late spring or early summer, to sort of hash out what the decision points will be in parameterizing the model for the 2024 measure setting process, identifying those areas where there will be a need for management input. That discussion would sort of queue up a discussion between the Board and the Council at the joint meeting in August.

Then that would provide sufficient time, in your estimation, to inform the modeling that needs to be done to first sort of determine what reductions or liberalizations might be possible for 2024, and how the model should be set up to craft potential measures. In other words, there is not a concern that by waiting until August to have a joint management discussion about model parameterization, that we're not leaving ourselves enough time to set ourselves up for success for 2024.

MS. KERNS: Correct. I think we should have sufficient time to do that, and if Council staff a differing opinion, please raise your hand. I don't see Council staff raising their hand.

CHAIR DAVIS: Okay thanks, Adam, I'll just ask, you know you had suggested we discuss this under Other Business. Does that discussion sort of adequately capture what you think we needed to talk about today at this meeting?

MR. NOWALSKY: Yes, it does. Thank you.

CHAIR DAVIS: Okay, thanks and with respect to the other business item you had suggested, which was discussing, you know the Wave 1 and 2 issue around scup. I think we sort of had a pretty good discussion about the federal closure and the related issues under the previous agenda item. Were there any other items there you would like to discuss or put before the Board for discussion?

MR. NOWALSKY: No, there were not, thank you though.

CHAIR DAVIS: I will say, Nicole Bogan, I see your hand raised, and I did sort of say we would give you an opportunity to discuss when we got to that portion of the meeting, talking about the federal measures, and I neglected to do that. Nicole, I'll just give you a minute here if there are some comments you would like to make to the Board.

MS. BOGAN: Yes, I just had a question. You know I used to work in pharmaceuticals too, and are you guys using model-based data or data driven data, because at least from what I've seen through studies, like I know the different environments, like the model-based data is not really as accurate. Is that what you guys are solely basing it on, or are you actually using data-driven data or just model based?

CHAIR DAVIS: I think, Nicole, that is a big topic and a huge discussion. What I would suggest is if you would like more information on sort of how the scientific portion of our process works, I think Commission staff would be happy to talk to you and provide some information on sort of how that process works, but I'll turn to Commission staff to make sure I'm not speaking out of turn here.

MS. BOGAN: Okay, thank you.

MS. BAUER: Yes, Nicole, I can touch base with you afterwards, and we can talk more.

MS BOGAN: Okay, thank you so much.

CHAIR DAVIS: Thanks for that question, Nicole. Okay, I'll ask the Board if there is any other business for this Board today, before we adjourn. I see a hand from John Maniscalco. Go ahead, John.

### **HARVEST CONTROL RULE**

MR. JOHN MANISCALCO: Thanks, Mr. Chair. We have a management stock assessment for scup and summer flounder occurring this year. Unfortunately, black sea bass is another year or so out. I'm just wondering, or I'm assuming we'll find ourselves doing this again for scup and summer flounder, you know at end of 2023. It's unclear to me if we'll have to revisit black sea bass again as well, and then finally, I'm also interested in if we're going to resume looking at Harvest Control Rule options, other than the percent change approach. Thank you.

CHAIR DAVIS: Great questions. Tracey, I'll turn those over to you.

MS. BAUER: With the Harvest Control Rule options, that is something we're starting to look at. We've put together a timeline, which will be shared not at this meeting. We thought too much going on this meeting to talk about that. But potentially May meeting, timeline for that, and the Amendment. I think we're starting to look at putting together an FMAT, PDT and stuff like that. That is all in the beginning stages, and that will definitely be picking up steam, especially the Harvest Control Rule in the latter half of this year.

MS. KERNS: Tracey, a question. Okay, keep going and then I'll see.

MS. BAUER: I was just going to ask, what exactly was your other question, John. It was a little hard to hear you.

MR. MANISCALCO: Sure, sorry about that. We have management track assessments for summer flounder and scup, so I expect we'll be doing this again at the end of 2023. But I was also wondering, is black sea bass then going to be remaining status quo for 2024, or will we also have to revisit black sea bass?

MS. BAUER: As far as I understand, the last I heard with black sea bass and the delay in the assessment and everything like that, is that they are going to this year put 2021, 2022 data into the past model, to project the projections for specifications. We wouldn't be remaining status quo; we would be relying on what the projections tell us. Then once we have that research track completed, we'll do the management track and get back in cycle with summer flounder and scup.

MS. KERNS: I'll add to that in that I wish I could answer your question, John, and I think we should have a conversation with Mid-Atlantic Council staff and NOAA Fisheries to make sure we're all on the same page, and we can provide an update to the Board through an e-mail on what we will or will not have to do for black sea bass. But you are correct that scup and summer flounder would fall into the evaluation timeframe, due to the timing of the assessment update.

CHAIR DAVIS: Okay thanks, does that answer your questions, John?

MR. MANISCALCO: Yes, thank you, all.

CHAIR DAVIS: Okay, Tom Fote, bring us home.

MR. THOMAS P. FOTE: I'm not going to make anybody happy, but I needed to say this after sitting around listening to this conversation all day. Going out to the public, going out to the recreational community, and try to explain what we're doing with scup, and the cutbacks we need to take, even though the stock would be probably 20 percent under the overall quota is not a good situation.

I mean, we've been losing the trust of the recreational and the commercial community, because of our management of scup and black sea bass, because we realize there is so many fish out there, yet they are not allowed to harvest them. But when we basically put restrictions on them and we know that the quota will not be landed.

We basically still reduce the fishery on the recreational community. That will cause pain, cause suffering and loss of money to the charterboat, party boat, tackle stores and everything else, just because that's what it says on paper. We're not doing our jobs. I figured I must put that on the record after doing this job for 35 years.

CHAIR DAVIS: Okay, thanks, Tom, and I would say I can't agree with you more. I've certainly been having some very difficult discussions at home with our stakeholders about what we're doing with scup and black sea bass, and I suspect it's the same for everybody around the table. I guess what I would say is that we've been working hard to try to improve the situation.

I do think the Harvest Control Rule and the percent change approach was a definite improvement, but to the public that is out there listening, we recognize the situation. Everyone around this table is doing everything they can to work to get us to a better place.

## ADJOURNMENT

CHAIR DAVIS: All right, so with that I'll just ask if there is any other business before this Board today. We're a few minutes over our slotted time, but not too much, we did okay.

All right, not seeing any hands, I'll just thank everybody around this table, the virtual table, Commission staff, Mid-Atlantic Council staff, and staff from NOAA National Marine Fishery Service for all the work everybody put in to get us to this point this year. Thanks everybody for your hard work, thanks for your time and attention today. **This Board stands adjourned.** Thank you everybody.

(Whereupon the meeting adjourned at 12:35 a.m.  
on Thursday, March 2, 2023)

