

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

Sheraton Atlantic Beach Hotel  
Atlantic Beach, North Carolina  
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### **Welcome/Call to Order**

The meeting of the Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Fear/Outlook/Atlantic Room of the Sheraton Atlantic Beach, Atlantic Beach, North Carolina, on Wednesday, October 25, 2006, and was called to order at 7:35 o'clock, a.m., by Chairman Mark Gibson.

CHAIRMAN MARK GIBSON: Could I have your attention please. I'm going to call this Board to order. We have a couple of states missing. Hopefully they will join us. Okay, New York is here. I don't have anybody from Maryland or North Carolina but hopefully they will come in.

I would like to welcome you all to the Summer Founder, Scup and Sea Bass Board. We have a rather challenging agenda and only about three hours to get it done so we have to work efficiently and expeditiously.

### **Board Consent**

The first order of business is the agenda, itself. I'm aware of, Toni has made me aware of one agenda item that needs to be added and that is a, some updated information from her on the scup/sea bass specifications.

Apparently there is a proposed rule that has been filed and Toni needs to advise you of that. Where would you like to put that in? At the end of the day. I guess that would come up after Item 8.

Is there any other changes or adjustments to the agenda that the board would like to see? Seeing none, is there any objection to proceeding with the agenda that I've outlined with that added item. Seeing none, the agenda stands approved as adjusted.

The next order of business is the proceedings from the May 2006 meeting of this board. Does

the board have any comments, adjustments or edits needed to those proceedings? Bill Adler.

MR. WILLIAM A. ADLER: Other than I don't think we need to, it hasn't been approved by the Sturgeon Board.

CHAIRMAN GIBSON: I'm not following you.

MR. ADLER: At the bottom of the minutes it said, "has not been approved by the Sturgeon Board." You know, computer stuff.

CHAIRMAN GIBSON: The wrong species. Okay.

MR. ADLER: Not serious. **I'll move to accept it.**

### **Public Comment**

CHAIRMAN GIBSON: We'll fix that. All right, is there any objections to approving the proceedings with the species correction that Bill Adler has noted? Seeing none, those proceedings stand approved. The next order of business is public comment. And this opportunity is for the public to comment on items that are not on the board agenda.

There will be opportunity for the public to comment on the action items that are listed on the agenda when those items come up and when there is a motion before the board. Is there any public comment to be made at this time? Seeing none, -- Pres, did I see your hand up?

MR. PRESTON P. PATE JR.: You did, Mark, thank you. And this really is not on the agenda. It's just to remind everybody that participated in our fishing tournament this week to turn in your cards to the registration desk this morning so we can have everything ready to go at lunch today. Thank you.

### **Presentation of Summer Flounder Reference Points**

CHAIRMAN GIBSON: Thank you for that announcement. Okay, the next order of business

is the presentation on the summer flounder reference points and peer review. This is going to be a bit technically-challenging. We're going to have this presentation made remotely. Are we ready to proceed with that, Toni?

MS. TONI KERNS: I think so. Rick, are you there?

DR. RICHARD METHOT: I am here.

CHAIRMAN GIBSON: Okay, Toni is going to, and Dr. Methot is going to -- welcome. I know you had to get up very early for this. Thanks for joining us. You're on.

MS. KERNS: Okay, you're on, Rick.

DR. METHOT: Okay, thank you very much.

MS. KERNS: Are you there? We lost him.

CHAIRMAN GIBSON: We are trying to reestablish communications. Are you all ready to vote on the TAL?

MS. KERNS: All right, you're on.

DR. METHOT: Okay, why don't I just go right to Slide 2, Toni.

MS. KERNS: Okay, Slide 2. We're there.

DR. METHOT: All right, so this review of this summer flounder assessment update was convened by the NMFS Office of Science and Technology specifically in response to some questions and ongoing concerns over this assessment.

We met mid-September via the Northeast Fisheries Science Center in Woods Hole. The three reviewers, myself, Dr. Joseph Powers, and Dr. Owen Hamel, are all stock assessment experts with particular expertise in rebuilding analyses and the National Standard 1 technical guidelines for rebuilding plans.

Our next slide, the terms of reference for this review were specifically to review the summer flounder biological reference point update for 2006 prepared by Mark Terceiro of the Northeast Fisheries Science Center.

And specific questions were to provide comments and recommendations regarding has an appropriate historical time period been used to provide biological inputs for the projections?

Has an appropriate adjustment been made for the assessment model stock retrospective pattern? And is the rebuilding target and rate based upon an accurate estimate of the recruitment levels expected as the stock rebuilds?

And certainly, at the time we would have a review like this we always will take an opportunity to provide any comments or recommendations we can regarding possible future improvements in this assessment. Next slide.

We have four major findings coming out of this review. The first is that spawning stock biomass be used as the metric for tracking the rebuilding of the reproductive potential of the stock; second, that long-term biological characteristics should be used to set status criteria and rebuilding targets and only short-term characteristics be used for total allowable landings calculations.

The third major finding is that the causes of the retrospective changes to fishing mortality, that's F, and biomass, they are unknown at this time but there is certainly reason for caution and further work.

The fourth major finding is that long-term recruitment levels to the extent possible should be used to set the status and rebuilding targets. Next slide.

But with regard to spawning stock biomass, recent assessments have tracked total stock biomass as the measure of rebuilding.

This total stock biomass or TSB has been calculated on a January 1st reference date.

In doing so it included Age Zero fish which at that time actually have very small body weights but because they are not yet observed at that time body weights are obtained only later in the have been used in the calculation, hence inflating the contribution of the Age Zero animals to the TSB contribution.

Further, the Age Zero abundance is not very sensitive to the effects of fishery or to the degree of rebuilding that is occurring. And certainly we find that there is sufficient technical information available to calculate SSB and use it in place of TSB. Next slide.

So spawning stock biomass more directly measures the reproductive potential of the stock. And it is a reproductive potential in particular that is referred to in the Magnuson Act and the National Standard 1 Guidelines with regard to fishery management plans and rebuilding plans.

And in switching to spawning stock biomass it's still going to include the contribution of the approximately 38 percent of the Age Zeros that are mature on the reference date of November 1st. Next slide.

Our second major finding was with regard to the use of long-term biological information. This slide shows the trend in average body weight over the period 1982 to 2005. And certainly there has been some fluctuations and some even, you know, longer-term changes that might be seen here.

However, we see no reason for a transition to only short-term biological information when calculating the long-term rebuilding plan, rebuilding point. The long-term is certainly best for use on the reference points and for status criteria and short-term body-weight calculations should only be used and are best used for short-term calculations such as the total allowable landings calculations.

So, short-term calculations for short-term forecasts but the long-term average is best used for the long-term reference points and rebuilding targets. Next slide.

This shows the time series of abundance of Age 4 fish as observed in five of the surveys that are used in the assessment. I show this as a lead-in to the discussion on the retrospective bias that is showing up in the assessment.

What we see in this slide right here -- and this is not the way in which the data go into the assessment model but presented here for illustration of this trend in the abundance of the Age 4 fish -- what we see is that by the early 1990's there has been a severe depletion of the number of fish of this age.

There is a rapid increase in the late 1990's since fishing mortality on the younger fish was reduced so fish could survive to this Age 4 level.

What we then see after about the year 2000 or so is that the current level of catch of older fish is now hindering a further rebuilding of this Age 4 class. So we see here some direct evidence of rebuilding and then a stall in that rebuilding. Next slide.

So with regard to retrospective pattern itself, since 1998 as an additional year of survey and fishery data is added to the assessment model calculations of previous year's fishing mortality go up and abundance go down.

This pattern has diminished somewhat in the most recent year.

And all the catches have been near the TAL levels based upon  $F_{max}$ . The retrospective calculations of  $F$  are exceeding the  $F_{max}$  because of this retrospective adjustment to the numbers.

The survey trends as shown on the previous slide directly indicate that rebuilding has slowed at current levels of catch. So whether or not we

can understand the cause at this time of the retrospective pattern, just the hard evidence of looking at the survey trends, and this is averaged across five different surveys, is showing this pattern.

There is a complex set of possible causes to this retrospective pattern. But it's difficult to investigate and it certainly was beyond the scope of this particular view. We can recommend a small adjustment for the treatment of the survey data in the assessment but that does not remove the retrospective pattern.

So what we've concluded is that a quantitative adjustment to this retrospective pattern is, within the assessment model is not feasible without knowing the particular cause of the retrospective pattern. Next slide.

The fourth point is with regard to the use of average recruitment for calculating the rebuilding targets. Our recommendation here, as it was on body weight, is to use the long-term recruitment. But what we're seeing in this slide here are two lines. The line in purple -- and hopefully it's coming across as purple there in your slide --

MS. KERNS: Yes.

DR. METHOD: Is showing the trend from 1982 to the present of the annual recruitment of SPR. And the line in blue is showing the calculation of spawning stock biomass which was continuing to decline through the 1980s, reaching a low around 1990 and then growing continuously since then.

As we look at this trend in recruitment, although, you know, there were some higher recruitment levels occurred in the first two years of this time series the trend has been actually quite remarkably constant compared to many stocks that we've seen and that we see no reason that the stock as rebuilt would not be capable of producing recruitment from throughout this range.

So I've included this slide and I will in the next few slides a couple of additional points that show the green circles off to the right. What this is showing for the R level is the level of average recruitment that we would expect only on average.

We would certainly expect the fluctuations to continue throughout the rebuilding period but on average those fluctuations would be at and dashed purple line and that green circle showing our average. We also showed here what the rebuilding would look like if we were able to get this stock rebuilt by 2010. On to the next slide.

This shows another perspective on this same recruitment and spawning stock biomass data. On the left side this panel shows the ratio of recruitment to spawning stock biomass over time. And what we see is that as the spawning stock biomass declined to its minimum there around 1990 this ratio got to be its highest because the spawning stock biomass is in the denominator.

And then as spawning stock biomass has rebuilt partially through the 1990's to present we see a continuous decline in this recruits per spawning stock biomass. And we'd expect this measure to be at near its lowest level when the stock is finally rebuilt.

Over on the right hand panel the same information is again shown as recruits per spawning stock biomass but now shown relative to spawning stock biomass on the X axis.

And the calculation here is superimposed with a dashed line which is showing what this ratio would look like if you just took the constant recruitment or constant average recruitment of 30.7 million recruits and divided it by that year's spawning stock biomass.

And what we see is that this overall trend in recruits per spawning stock biomass is basically

pretty close to exactly what we would expect from a more constant recruitment.

It's also showing here off to the right in that green circle where we would expect this measure to be from a fully-rebuilt stock. This would be a stock rebuilt to its BMSY proxy and certainly not rebuilt to its unfished level. Okay, next slide.

Further perspective on, you know, the progress towards rebuilding that is occurring and how far we have to go in order to complete the rebuilding is shown here. And what this slide, the information here, is showing the spawning stock biomass contribution of each age in the population.

So, in red we see the average spawning stock biomass per age during 1985 to 1995. What we see here is that most of the spawning stock biomass was actually contained in the Age 1 animals at that time and that there was very little contribution by Age 3, 4, and none by the time you got to Age 5.

The year 2000 are after the national measures had reduced the mortality on younger animals. What we see here is that there had been in orange the substantial increase in the survival to Age 1 and now some further survival out to Ages 3, 4, and 5.

By 2005 we have still further rebuilding extending out to older animals. But for the stock that is rebuilt and is being fished at  $F_{max}$ , certainly not an unfished stock but fished at  $F_{max}$ , what we see here is that most of the spawning stock contribution which come from the Ages 3, and 4 and we see some contribution out to Age 10 and beyond. This would be fully-rebuilt age structure for this stock. So next slide there.

So, again, here at Age Zero what we're seeing is that because recruitment has been essentially constant over this time period there is no need to

rebuild the zeros because they, fortunately, have not been depleted. Next slide.

For the Age 1 animals they've already been substantially rebuilt by the reduction of the fishing mortality on the Age Zeros so we've already accomplished that, the rebuilding plans.

And then the fourth click, here for the Age 4 animals what we see is as we showed on the previous slide where the trend in surveys showed that the Age 4 animals were very low in abundance during the early 1990's, that they substantially rebuilt but they're only about halfway to their eventual target.

Now from a rebuilding plan that was based only on  $F_{max}$  we would slowly build out this full age composition to reach the purple line. The thing about rebuilding using  $F_{max}$  is that we'd be very slowly approaching the final stages of that rebuilding because the early and the more abundant younger animals get rebuilt early-on.

It would take several years before the survival of animals would reach out into the older age groups to fully fill out this full age composition. So for a more rapid rebuilding it is necessary to fish at a level that is less than  $F_{max}$  in order to build up some more biomass in the younger age groups to compensate for those older age groups that are not yet fully rebuilt. You can see this again in the next slide. This is showing --

MS. KERNS: Rick, are you on --

DR. METHOT: Spawning stock biomass over time on average extending out through the rebuilding period. Now this is shown here just what the average and certainly there is a cloud of future possibilities around each of these lines because we don't know exactly what recruitment levels will hold in the future.

All we know is that it's very likely to follow a probability distribution that looks like what we've seen in the past. So what we see here in the lower slide is a projection based upon  $F_{max}$ .

And this is increasing. But it doesn't reach this rebuilding target until about 2010 -- I'm sorry about 2020 or so.

And the last few years of fishing at Fmax we would be very slowly approaching that final rebuilt line. But by fishing at a lower level, which is now calculated to be an F of 0.15, we would approach the rebuilding target much more robustly.

And that means that as we get to that line there's a good chance that we would be on pace to slightly exceed the line so we wouldn't get into a situation of just slowly creeping up the line; we would get to it and then we would be able to get the stock completed in this rebuilding plan and then would be able to transition back to a long-term harvest policy, whichever that would be. So, next slide.

Certainly as a result of this review there has been several technical adjustments in the numbers. There has been a change from the January 1st TSB to the November 1st SSB as an improved measure of reproductive potential.

The change in the time period for the body weight averaging, and a change in the time period for average recruitment. Rather than just using the last ten-years' recruitment we recommend using the entire time series.

There has been an update to the VPA assessment for the treatment of survey observations. And the bottom line is that the new SSB target number differs from the previous SSB target but the differences are technical.

There is really nothing conceptually different here. We are just looking to get the best representation can of the reproductive potential of this stock and the rate of rebuilding that reproductive potential. Next slide.

So this slide shows the short-term projections for TAL into 2007 based upon the update

showing that fishing at Fmax recalculated the change to 0.28. The TAL would be at 24.8 million pounds. And the F rebuild of .15 would be at approximately 14 million pounds.

And also because of the substantial uncertainty that remains in this assessment, our F rebuild, it would have a 75 percent chance of not exceeding this .15 level. That catch would respond to 12.983 million pounds. Last slide under conclusions.

The TAL for 2007 based upon Fmax has increased over previous calculations but will not rebuild the stock by 2010. And it will exceed Fmax if the retrospective pattern that we've seen continues.

The TAL for 2007 is 14.16 million pounds, is based upon the recalculated F rebuild. And this F rebuild is calculated to have a 50 percent chance, and only a 50 percent chance, of rebuilding the stock by 2010.

And even this calculation does not take into account the retrospective pattern. Reducing the TAL a bit further to 12.98 million pounds has a 75 percent chance of not exceeding the calculated F rebuild so it builds in some buffer for this retrospective pattern.

The review team made a variety of recommendations on future research and on other issues, release mortality, survey weighting, sex ratio, and a few others, most of which have been seen in previous reviews.

And even though we've made these recommendations and as they are able to carry out these recommendations it certainly will result in some adjustments in the technical calculations in the future. And we see that none of this research is so critical that we would recommend any delay in implementing these current calculations. That concludes my presentation.



MS. KERNS: Okay, thank you, Rick. And what we're going to do is do questions. And if you can't hear the questions will you let me know and then I will repeat them for you, okay?

DR. METHOT: Okay.

CHAIRMAN GIBSON: Okay, to the board, questions for Dr. Methot on his presentation. Vince O'Shea.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. And thank you, doctor for signing in this morning. I will point out to the board that you are calling in from Seattle where it's three hours earlier than it is here in North Carolina so thanks very much.

My question is, we've received several letters from folks indicating that the reference point biomass number is based on an estimate of what the stock was back in 1930 and I was just wondering if -- with the implication being that that's an inaccurate way to estimate and an unrealistic goal for us to have in this rebuilding plan -- I was wondering if the review team had looked at that data and what your reaction is to the claim that we're trying to rebuild to a number that was based on 1930 data. Thank you.

DR. METHOT: I did hear the question just fine. Thank you. And we really wished that there were data extending back to 1930s so that we could actually do calculations that would span that entire period because certainly summer flounder has been fished throughout that entire period.

We do only have good enough data to start our assessment calculations in 1982. When we do the calculations starting at that point we're already able to see that the level of fishing mortality is far greater than the level of natural mortality occurring on the stock.

So, already that point we're able to base the calculation on how big this stock would be if it was only experiencing natural mortality rather

than the mix of natural plus fishing mortality that we see already by 1982.

So, the level of decline that we've seen in this stock is based upon this comparison of natural mortality only to natural mortality plus fishing mortality. And whether or not the stock was at that level at any particular year in the previous decades we can't say for certain but we do know that the stock has been fished throughout that period.

MS. KERNS: Thank you.

EXECUTIVE DIRECTOR O'SHEA: Thank you very much doctor.

CHAIRMAN GIBSON: David Pierce.

DR. DAVID PIERCE: Yes, thank you, doctor. Just a couple of questions. In the presentation that you just gave us there is one figure on Page 6 of the handout that may be -- you may not be able to reference it that way but it's the one entitled, "Rebuilding Spawning Stock Biomass" where you have those different colored lines representing 1985 through '95 and then 2000 and 2005 and then rebuilt. Would you explain how you constructed the rebuilt curve?

DR. METHOT: Okay, this would be based upon calculating the numbers at age that we would expect to see on average if you were fishing at  $F_{max}$  and then multiplying those numbers at age by the spawning stock biomass per age that we were able to easily calculate from body weight and maturity information.

So it's an equilibrium calculation of the numbers at age based upon  $F_{max}$  in comparison to the observed numbers at age we've seen at previous times in the past.

DR. PIERCE: All right, thank you. And then 2005, recruitment in 2005 was extremely low, the second lowest in our time series that began in 1983. And that very low recruitment came

from the spawning stock biomass that is the high in our time series from 1983 through 2005.

How did your peer review panel react to that particular recruitment and that low current level? And did it influence your thinking in any way?

DR. METHOT: Well, that recruitment level is just about on par with what I believe is the 1988 level. And you know certainly, we would certainly expect to see fluctuations in recruitment from year-to-year. In fact, this stock shows remarkably low levels of fluctuation in recruitment compared to some.

So the fact that we've seen a particular all-low recruitment observation in 2005 is not out of expectation. It's unfortunate because it does, you know, cause a slight slowdown in the pace of the rebuilding but it's not out of the expectations for what we get to see in the future.

As the calculations for rebuilding from this point on are made they take into account the low level in 2005 and they take into account the possibility that low levels like 2005 will occur in the future as well as higher levels like occurred in the early 1980's. The rebuilding calculations used that full range of recruitments that they perceived.

DR. PIERCE: Did your review can conclude that the was no stock recruitment?

MS. KERNS: You've got to give me time.

CHAIRMAN GIBSON: You've got to give us a chance to relay the questions here, Dave.

DR. PIERCE: Oh, sorry.

CHAIRMAN GIBSON: Go ahead, Dave.

DR. PIERCE: Okay, all right, thank you. Did your review panel conclude that there was no stock recruitment relationship with fluke?

DR. METHOT: What we concluded is that we don't see a number of, a range in spawning stock biomass yet to estimate how the spawning stock relationship is curved so we don't see that at this point we're able to estimate anything other than an average recruitment level which is actually a very robust spawning-recruit relationship because it's flat.

It would be quite different if we saw recruitment continuously declining as the spawning stock biomass that produced the recruits was also declining. That would be a, that would produce a very pessimistic recruitment forecast into the future.

But what we see is basically a flat relationship, one that we can't see the curvature in yet. And we wouldn't expect that you would be able to see such curvature until the stock has been rebuilt and we are able to observe recruitments for several years from a rebuilt stock and then compare it back to what we see from the lower stock levels today.

DR. PIERCE: All right, thank you. One more question Mr. Chairman.

CHAIRMAN GIBSON: One more question, Dave? Okay.

DR. PIERCE: And this is, I seek a clarification. In one of your slides you noted surveys of Age 4 fish and you say that the current level of catch of older fish is hindering further rebuilding.

My interpretation of that is that you've concluded that rebuilding is hindered because fishing mortality is around 0.41, the most recent estimate. So isn't that the point you're making, that mortality is just too high, it's 0.41 instead of a lower number?

DR. METHOT: That's correct. I mean the assessment today is saying that the mortality that we're seeing are on the order of 0.41 rather than the target of about 0.28. And so this level of Age 4 animals that we are seeing is, you know,

fluctuating but no trend upwards here in the early 2000's.

And is this basically coming into stability with this high level of fishing mortality rather than continuing to increase which we would expect from a lower fishing mortality.

CHAIRMAN GIBSON: Other questions from the board? Seeing that there are none, I have one. You've already addressed it Dr. Methot, a little bit in your response to Dave Pierce on the recruitment question but it looks to me in the interview that the panel has at least implicitly rejected the hypothesis of over compensation, that is that there is some declining recruitment now below the median and the average value.

And I wondered what the panel thought about looking at the practice of looking at longer-term survey data in the form of recruits and proxy for SSB in the long-term surveys which go back before the VPA calculations and in fact show that there was another period in time when the Maryland juvenile index declined dramatically when survey abundance in the federal surveys reached their highest values.

So in my first look there seemed to be some repeatability of this pattern of declining recruitment in association with high abundance. It appears that the, at least implicitly this review panel has rejected that possibility and could you comment more on that?

DR. METHOT: The material we had to review did not present that particular hypothesis. We did entertain some discussion of whether or not there was enough information to extend patterns far back further in time.

And we know that in looking at the Northeast Center's surveys that do extend back further in time that they were at a much lower level prior to the early 1980's and that the stock had already increased some before the decrease that occurred later.

So, yes, there have been some changes in the past. But what we don't have in order to interpret those changes are some, you know, hard information on the exact total levels of catch that occurred, including any of the foreign removals.

So in order to put the past changes in context we would need an extensive effort to reproduce what the levels of catch were as well as looking at whatever survey information was available. But, you know, in particular trying to look at long-term fluctuations in recruitment extending back further in time, we were not able to look into such a question. But it certainly is relevant to try to do that. But the information is not yet available in order to accomplish it.

CHAIRMAN GIBSON: Thank you. Anyone else on the board wish to ante up a question at this time? Seeing none, then I guess we'll move on to the next agenda item. Thank you for your participation. Gordon Colvin and then Eric -- Eric.

MR. ERIC SMITH: Well, as we get ready to go into the next part of the agenda we got some information very late last week and I'm not sure everybody had it available so I'm wondering if we can somehow have that projected, the most recent marine rec survey data.

CHAIRMAN GIBSON: Yes, I neglected to mention that in the agenda setting that Toni had some updated information. She will brief us on it now. Thank you, Eric.

MS. KERNS: On Friday I e-mailed out to the board the most recent recreational estimates from MRFSS for summer flounder. Up on this slide you can see in blue is the 2006 harvest target for each state. States that are under their harvest target as of Wave 4 are in green and states that over the harvest target are in red.

We have four states that are currently over their harvest target, Rhode Island, New York, New Jersey, and Virginia. And in those states New

Jersey, Virginia, and I believe Rhode Island are all still open through the rest of the year. New York has closed their recreational fishery.

MR. GORDON C. COLVIN: As of September 7th.

MS. KERNS: Does anyone have any questions?

CHAIRMAN GIBSON: Questions for Toni on that? Tom McCloy.

MR. TOM MCCOY: Just for clarification, New Jersey closed on Columbus Day.

MS. KERNS: Thank you, Tom. Sorry about that.

CHAIRMAN GIBSON: Any more questions for Toni on this updated information? Toni, perhaps you don't have that information but what is the percent average contribution from Wave 5 for some of the states? Do you know? You said Rhode Island is still open. New York is closed. How about New Jersey?

MS. KERNS: New Jersey is closed soon but you will have a little bit into Wave 5 and I'm trying to -- it's not a significant numbers normally for Wave 5 for New Jersey. Rhode Island has some landings. And I think in Virginia we slow down through Wave 5 as well.

CHAIRMAN GIBSON: Dave Pierce, do you want to comment or a question?

DR. PIERCE: Yes, just a question. New York closed when? September?

MR. COLVIN: Seventh.

DR. PIERCE: Seventh, okay, so seven days into Wave 5, therefore -- and was that closure done in accordance with the schedule that was established at the beginning of the year? Okay, so despite the fact that you did what needed to be done there is a New York overage projected based on MRFSS of --

MR. COLVIN: I think it's worse than that.

DR. PIERCE: You think it's worse than that. Pardon me?

MR. COLVIN: You know if you want to talk about how weird the numbers are, New York's Wave 3 landings this year were only one-third of what they were last year which was substantially lower than Wave 3, substantially lower than Wave 3 in the preceding year.

So at the end of Wave 3 everything looked really wonderful and along comes Wave 4 and it's just a smack down. So, you know, I've said it before; it's a black box. We don't know what's going to happen. Any of us who thinks we do are crazy.

#### **Set 2007 TAL for Summer Flounder**

CHAIRMAN GIBSON: Any other comments or questions for Toni on the Wave 4 numbers at this point? Okay, the next agenda item is the, set the 2007 total allowable landings for summer flounder. Toni.

MS. KERNS: At the joint meeting in August the board decided to delay setting their specifications for the 2007 summer flounder total allowable landings so we need to go ahead and go through that today.

The Mid-Atlantic Council recommended to National Marine Fisheries Service to set the TAL at 19.9 million pounds and a proposed rule was filed yesterday through National Marine Fisheries Service and I'm going to let Pat speak to the numbers that were filed in the proposed rule as well as I'm going to ask Pat to speak to how federal permits work if someone were to want to drop their federal permit for the year.

CHAIRMAN GIBSON: Thank you. Pat.

MS. PATRICIA KURKUL: Okay, sorry. Yes, we were able to file the proposed specifications yesterday afternoon, just made it. They will be

published on Friday. There are proposed specifications for summer flounder, scup and black sea bass.

On the summer flounder we did choose to propose the 75 percent probability of achieving the F rebuild as Rick described it which results in a TAL of 12.98 million pounds. And I think he has gone through all the information on that and I'm not going to repeat it.

For both scup and black sea bass we're proposing the monitoring committee recommendations. For scup that would be a TAC of 13.97 million pounds and a TAL of 12 million pounds. And the, quickly because I know you're not here to discuss scup and black sea bass but to provide you a little bit of background or rationale for that, as most of you probably know the surveys for scup for 2004 and 2005 are indicating that the year classes are poor.

The biomass on scup right at this point is only about, it actually less than one-quarter of the BMSY. Using the current TAC/TAL strategy the stock doesn't rebuild in ten years and there is a rebuilding program under development for scup at this point but you'd have to go to about half of the assumed F level to rebuild within the ten years.

The four out of the five options in the rebuilding plan that's under development, Amendment 14, would set the TAL lower in 2007 than what was proposed by the council and the board. And with the exception of 2003 catch levels from '93 through 2005 were lower than the recommended TAL so it would actually allow an expansion in this fishery.

And if you look at just the commercial side, the catch levels haven't been as high as was recommended since 1992. For black sea bass we again are recommending the monitoring committee recommendation. That's a TAL of 5 million pounds.

It's really difficult to tell the status of black sea bass because the recent assessment for that stock rejected the biological reference points. But using the old reference points, which is what the recommendation is in the interim until we develop new ones, the stock is in fact overfished still.

It's in the seventh year of its ten-year rebuilding program, very much like summer flounder. And it's estimated right now the F is estimated to be close to Fmax so considering the uncertainty in the estimates, questions about the tagging, reporting rates, the caution from the monitoring committee and the assessment was in fact there is the, even using the old biological reference points the estimates may result in an underestimation of the exploitation rights.

And at this point discards haven't been considered in those. And it's similar to scup in that the monitoring committee recommendation, the 5 million pounds, really represent, although they represent a reduction in the TAL from last year of 8 million pounds, landings in the last couple of years have been around 5 million pounds. So it again about caps it at its current level.

And part of the rationale provided for both scup and black sea bass in rejecting the monitoring committee recommendations and going with the higher TALs was that it would accommodate some shift in effort from the summer flounder fishery.

And these are not two stocks the can in fact accommodate any shift in effort. So we went with the monitoring committee recommendations for those two. And the last question had to do with permits in charter/party. I'm sorry.

MS. KERNS: Permits for charter/party as well as permits for commercial vessels in terms of if the commission were to have a different TAL than what is set by the service how would those people with federal permits that had state and

federal permits and they wanted to drop their federal permit how would that work.

MS. KURKUL: Okay. This is a limited-access fishery and so the, if someone gives up there limited-access permit they would be permanently relinquishing it. There is no provision to allow once you give up your limited-access permit to allow you to get that permit back.

The charter/party permit is not a limited-access permit. It's an open-access permit; however, many charter/party vessels have the limited-access permit. If you remember the qualification criteria we think was one fish or one pound -- I'm not sure which -- so many of the charter/party vessels also got the limited-access permit.

So if someone gave up their permit to fish in state waters only they would be permanently giving up their right to fish in federal waters.

CHAIRMAN GIBSON: Thank you, Pat. It was my intention to take this issue up of the discrepancy between the board-approved TALs and those that are going to come out in this rule after the FMP review for scup and sea bass and move into the summer flounder 2007 TAL setting. But if there is a burning question for Pat or a clarification needed we could take that. Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I think this is the right time ask this so soon after we had the scientific presentation. And this is a question I think for this service. I assume that the review panel in the report we got from Dr. Methot assumed that 2006 recreational harvest would be within the target that was established for the fishery.

We just had a presentation a few minutes ago suggesting that we are almost a half a million pounds over with some states still open for fishing and I suspect the potential to go over more than that is pretty likely.

So my question is, what is the relationship of that overage and the proposed rule for 12.98 that was filed yesterday for summer flounder?

MS. KURKUL: Sorry for getting ahead on the agenda on you. And in response to Vince's question I believe that's the case, the 2006 assumed the TAL that was set for 2006 and it doesn't have any implication for the proposed 12.98. As you know the way we've handled the recreational measures is we've got basically a one-year lag in responding to overages.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: Yes, a question for you, Pat. You indicated that when someone gives up their limited-access permit it's gone. True. I knew that. When does the federal permit holder have to renew their federal permit? What's the date?

MS. KURKUL: Well, this is of course something we've been dealing with in the ground fish fishery and working with Massachusetts on, and you don't have to renew the permit right now until, I want to say it's 30 days before the end of the fishing gear, something like that.

It's quite late in the fishing year. However, as you also know, we're working on regulations that would in fact change that. And I expect they will be effective sometime in 2007.

DR. PIERCE: Well, that's good because with regard to ground fish we have been working with you to fix that problem which has been a significant problem for us in Massachusetts with regard to ground fish.

But as it stands right now a fisherman would be able to not renew their federal permit, fish under their state permit, obviously just in state waters, and wait until the last moment and then renew their permit.

CHAIRMAN GIBSON: Okay, I had Gordon next. Was that on a question for Pat or moving into summer flounder?

MR. COLVIN: Well, it's actually both.

CHAIRMAN GIBSON: It sounds like Pat needs to respond again.

MS. KURKUL: Could I just clarify something on that last point? But remember the permits are not on a calendar year basis so they are also on the May schedule which means that most people would already have their 2006-2007 permit that will be effective through April 30. It won't be until May 2007 that this becomes an issue.

CHAIRMAN GIBSON: A follow up to that Dave.

DR. PIERCE: Well, just to thank you for that clarification, Pat. You mentioned that there will be some new rules proposed to deal with this issue sometime in 2007. Do you have any timetable that we can refer to? The end of 2007?

MS. KURKUL: I'm not sure. I haven't -- I'll have to check with staff. Sorry.

CHAIRMAN GIBSON: Gordon Colvin.

MR. COLVIN: Thanks, Mr. Chairman. I think what I want to do is pause a hypothetical scenario and ask Pat for a reaction to it. And I think it might move us into the fluke discussion.

As I understand the report that we heard this morning which we also had the benefit of hearing, some of us, at the Mid-Atlantic Council few weeks ago, the outcome of the review of the reference points in the peer review of that review is, includes a recommendation for a change in the basis of the biomass reference point from total biomass to spawning stock biomass which will require an underlying change in the fishery management plan itself, both the federal fishery management plan and

presumably the interstate fishery management plan counterpart.

And it is under consideration to undertake that change at the federal level expeditiously by folding it into Amendment 14. In addition, the recommendation at the present time is to base the current fluke TALs on an F rebuild which is calculated at 0.15 using the spawning stock biomass as the basis of it and a 2010 rebuilt target from a prior amendment, the SFA amendment, that was jointly adopted both by the council and the commission.

And we've been told that 2010 is a statutory obligation. So it would seem that perhaps the first thing that confronts us is the need to address whether this Board will support and go along with the notion that we will accept the underlying analysis that is presented to us and its basis as using this F rebuild procedure based on spawning stock biomass and a 75 percent probability to yield a TAL of 12.98.

And I'm inclined to support that up to a point. And we'll debate that later. But to continue to build the scenario the other question that occurs to me this morning is that again that F rebuild of 0.15 is based on a final rebuilt the date of 2010.

And it has been laid out in this extensive debate both in the, you know, outside the walls of our meeting rooms and inside them, that 2010 is it and that to reconsider, re-evaluate that would require an act of Congress.

And there are those who have been talking to Congress about doing that very thing. And that discussion continues and presumably will continue when the congressional session resumes after the election.

But in the meantime, on the table before us this morning is a letter signed by the two senators and one congressman from the state of New Jersey to the director the National Marine Fisheries Service.

And that letter, among other things, asserts that the National Marine Fisheries Service has flexibility under the SFA and Congress intended to grant that flexibility under the SFA to modify rebuilding schedules beyond the ten-year period and further that the National Marine Fisheries Service must have recognized that that flexibility existed because it proposed at one time specifications in the Federal Register that provided such flexibility.

Now that letter is on the record. It's in front of all of us. It has been published all over the place. And I must think that the National Marine Fisheries Service must have a reaction to it because it seems to me that -- and here comes the scenario now -- if in fact that flexibility exists under the SFA, we know that the flexibility exists under the interstate fishery management program of the Atlantic States Marine Fisheries Commission. We know that.

That it would seem that both bodies could agree to also undertake in amendment 14 some change to the rebuilding schedule since that expeditious possibility has been raised to address the conversion to spawning stock biomass.

And I think we need to address that this morning as part of this because if I understand things correctly if one did extend the date for rebuilding the F rebuild would increase proportionate to the length of that extension. And the TAL would increase proportionate to the increase in F rebuilt.

Now, I don't know what that all needs to be but I think that we do need to hear from the service on the issue of the senators' and congressman's letter and the assertions it makes with respect to our ability to address this. And that's why I said, Mr. Chairman, this is both a segue into the discussion as well as a question for the regional administrator. Thank you.

CHAIRMAN GIBSON: Thank you, Gordon, as always for framing that issue very nicely. Pat, did you want to respond to that or give us some

insight into the service's position on this? Thank you.

MS. KURKUL: Yes, thanks. We have looked into the issue of flexibility on the rebuilding time line required by the Magnuson Act. We don't see that the summer flounder situation falls into any of the provisions within the Act that would allow for that flexibility.

So it's our position that the 2010 is not something that we could under the provisions of the Magnuson Act change this, the statutory deadline on.

CHAIRMAN GIBSON: Gordon, a follow-up?

MR. COLVIN: And, Pat, I presume that that means that there is a letter on its way to Senator Lautenberg, Menendez and Congressman Pallone that specifies the service's reasoning and rationale for that.

The reason I ask is that, again, as I said, this letter is out there. It makes assertions. And it suggests that those of us who have an interest in this matter cease nipping at the heels of Congress when they resume their session and go to the National Marine Fisheries Service.

We need to know where to go. And some of us are headed in another direction I'm afraid on this whole issue if we can't get some resolution. And I believe that it's incumbent on the service to respond on the record and lay their reasoning out.

CHAIRMAN GIBSON: Do you want to respond to that in any way?

MS. KURKUL: Yes, there is a letter working its way through the system. And I hope it will be signed and sent shortly.

CHAIRMAN GIBSON: Thank you. Board discussion on Gordon's issue the way he's laid it out for us? Is there someone who has a motion



to put on the table to get this started? Everett Petronio.

MR. EVERETT A. PETRONIO, Jr.: I'm going to **move that the board adopt a TAL consistent with the Mid-Atlantic Fisheries Management Council recommendation of 19.9 million pounds.**

CHAIRMAN GIBSON: Thank you, Everett. Everett's motion is to adopt a TAL consistent with that established by the Mid-Atlantic Fishery Management Council. Is there a second to that? Seconded by Bill Adler. Board discussion on the motion. Eric Smith.

MR. SMITH: I came down here probably like everybody else, traveling along distances, fretting over what to do on this issue. And for most of the way I thought it would be the responsible thing to do -- well, I thought I was going to lean towards this approach because I didn't quite understand the logic of the service in presenting the lower number that they have.

But having heard the peer review it answered a couple of questions that I had at least in part. The one thing -- so I'm leaning a lot more towards either the revised F rebuild of 49 million pounds or the F rebuild at 75 percent probability of about 13.

And the reason is that the thing that I thought the council when we were in the joint session in August I thought the council's vote for 19.9, there was a flaw there. And my view of the flaw was if we know there is this retrospective pattern where we are underestimating real F, we know approximately how large that deviation is, that, you know, it's responsible for us to account for it.

I didn't, when I heard about this 75 percent level, you know, I couldn't understand the rationale for it. But now it seems like it's, even though it's not using 30 percent it's accounting for the fact that we know there is this retrospective pattern and it's a proxy-way of trying to deal with that.

And for now I'm leaving aside all of the socioeconomic implications of going with a far lower number. I understand those things are out there and I have to wrestle with those, too, when I finally cast a vote.

But I think the responsible thing to do is acknowledge that there is that retrospective pattern and therefore I was coming to the conclusion that we had to go with one of those two lower numbers or at least I would support one of those two lower numbers.

But in the peer review it turns out, and all three of the individual reports are consistent on this point, that you can say there is a 30 percent deviation in the retrospective pattern on F but it's not 30 percent every year.

Some years there has been an underestimation of F; other years there has been an overestimation of F. And in the most recent year there wasn't much deviation at all. And I kind of wish I had thought to ask Dr. Methot this question and I didn't think in that context.

It would have been really instructive to know whether there is some reason other than random chance that, are we beginning to converge on a point where there is not much deviation in what we think is F and what it actually turns out to be or whether last year was just random chance and next year could be off a lot either way.

So I guess I'm trying to seed the debate with the fact that at some level I think this board, a responsible way for us to act would be to somehow account for that the retrospective pattern if in fact we think or individuals think that over time the pattern is that we underestimate real F and it might be as much as 30 percent, which has been the long-term average. If so, I think we have an obligation to account for that somehow. And I think that's what the service number tries to do.

All that aside, there are huge, there is bad implications to go to 20 million pounds from the 24. To drop down to 14 is just, or 12, is almost impossible to contemplate when you think of the impact that's going to have on fishing opportunities of all sorts and business opportunities that support those fishing opportunities.

So my plea is let's not just quickly do the 19.9 because I think there is a flaw there that we should not ignore. What we do with that retrospective pattern has to almost be, you know, what people around the table decide how much weight they think they ought to give to it.

The service obviously had a way to deal with that and that is simply accept what the peer review said and then apply the probability, range of probabilities around that and pick one that they thought in a proxy way kind of accounted for it. We can do that also or we can decide to do something different. Thank you.

CHAIRMAN GIBSON: Thank you. Toni wanted to clarify something on the retrospective pattern. Toni, please.

MS. KERNS: Eric, I just wanted to make sure that you understood that the retrospective pattern, the 30 percent is the average from the last five years and that we've seen different, so right now we're overestimating F.

But there has been -- I mean we're underestimating F now and in previous years we've actually overestimated so it has fluctuated over time and then that 30 percent is just the past five years, and not the long-term.

CHAIRMAN GIBSON: Before I go to Vito I wanted to, just a question for Gordon based on the, you know, the segue remarks you had made. Was it your -- were you suggesting that to consider either of those, the two lesser numbers which have come about as relative to the peer review, that we wouldn't be able to do that without a prior decision on adding the SSB

currency into Amendment 14? Is that what I was hearing there?

MR. COLVIN: Mr. Chairman, I think it is. Let us state it this way. The difficulty I have with this motion is that the basis for 19.9 is not evident.

Even the basis in which the Mid-Atlantic Council chose it was the outcome of an analysis based on the old reference points, which was a biomass-based reference point. And as a consequence it's just a number at this point in time, assuming we do convert to the spawning stock biomass reference point.

On the other hand, if we were to proceed directly to propose, if we -- I mean the commission -- were to proceed in a direction through Amendment 14 or some other means to change the rebuilding schedule such that it was put at a point in time out a couple of years, however many that would be, that would bring F rebuild such that it would come in the neighborhood of 19.9, then I could support this number because the basis would be in the revised rebuilding date. And I think it's doable but unfortunately the basis of all this isn't stated.

If the board were to go along with a quota in this arena, if a motion of 19.9 or something in that vicinity were passed I would suggest that we consider, again, a commission amendment in 14 to develop a rebuilding schedule that is consistent with an action of that nature. Otherwise, I don't know where our number comes from.

CHAIRMAN GIBSON: Thank you, Gordon. I have Vito next. Oh, Eric.

MR. SMITH: Could I ask your indulgence for a moment? Based on the clarification to my comments Toni offered I do have a question that might help the rest of the group in dealing with how they feel about that retrospective pattern.

Either Jessica or Toni, do you know offhand what the long-term, over the course of the quota management program what the degree of retrospective deviation was?

MS. KERNS: We haven't looked at the long-term average. We've only done the short-term average.

MR. SMITH: Is there some way to figure out that answer while you listen to the rest of us flap our gums? Because that sure would be an interesting number to know.

MS. KERNS: We would have to run the analysis and pull too many years and so it can't be done now.

CHAIRMAN GIBSON: Vito, you're up next.

MR. VITO CALOMO: Thank you, Mr. Chairman. I believe that we have a real problem here because in my case I am concerned about the social and economic impact. I am concerned that we seem to, every fishing community seems to be getting destroyed.

We have the opportunity in this case to extend the rebuilding. Yes, absolutely, I'm concerned about rebuilding all stocks, whether it be summer flounder or codfish up in my district because without the rebuilding we have nothing.

But if rebuilding is taking place and we can extend it to keep fishing communities going, like in point North Carolina, that I went to this special board meeting for and I heard the same outcries that I've heard for the past 12 years up and down the coast, I think it's an obligation on our part to extend the rebuilding.

You need to balance. It's very difficult to balance. It's easy to say no or it's easy to say yes. The balancing it in the middle is a feat that most people cannot do. I don't like the idea that we're all in a vessel that has oars and we're all

out-of-tune rowing that boat where we're doing 360s. And it seems that way from time-to-time.

We are at a critical stage in our careers here and our lives that we're looking for any escape to keep fishing going. And I think there is this opportunity. And I listened to, well, I read this letter that we have a congressman and two Senators that give us an avenue so I'm in favor of going back to 19.9 million pounds. Thank you.

CHAIRMAN GIBSON: Thank you, Vito. Other board comments on this motion. David Pierce.

DR. PIERCE: Unfortunately, I didn't bring with me the documents that were made available to us at the last meeting, the joint meeting between the board and the committee. Therefore, I can't recall the rationale that the council used at the time to go with the 19.9 million pounds.

But I assume this must have been discussed by the Mid-Atlantic Council at its last meeting held prior to this meeting here today. This review was provided to the Mid-Atlantic Council. The Mid-Atlantic Council obviously was not inclined at its meeting to change the 19.9 million pounds.

So you know I not being at that Mid-Atlantic Council meeting I'm at a bit of a disadvantage not knowing why the Mid-Atlantic Council was not convinced based upon this review that it needed to change.

I mean here we are today as scheduled you know going to set the TAL for the next year. But I'm not sure how to react now to that Mid-Atlantic position which has not varied despite the presentation.

So it confuses me as to why they did not react at that meeting to make a change. So I would appreciate someone at this table -- there are many members I think of the Mid-Atlantic Council here that are also section members,

board members of course -- I'd appreciate their perspective on that.

And I would appreciate a reminder as to why the 19.9 million pounds was picked. Did that correspond to a fishing mortality rate, 50 percent probability, of the FMSY value of 0.2 -- I can't think -- well, anyways, the FMSY value?

But that's my recollection but I need to make sure that indeed I've got that correct. Okay. So the question is, why didn't the Mid-Atlantic Council address this at its meeting, was it last week or two weeks ago? Why didn't they address it and change this TAL?

CHAIRMAN GIBSON: Pat wanted to comment. I don't know if she's prepared to answer those questions but Pat go ahead.

MS. KURKUL: To answer those questions first, yes, the 19.9 is consistent with the 50 percent probability of achieving the Fmax. And it was the monitoring committee recommendation prior to the council's discussion on needing to achieve rebuilding by the end of the 2010, by the end of the 2009 rebuilding program.

And the Mid-Atlantic Council, I don't know whether they -- I can't speak to the issue of whether they would have taken a different action on not. But I know that they did not have that option.

This report became available only the week before and the agenda was already set so they could not take a council action at that meeting. And I had a couple of comments if that's okay.

CHAIRMAN GIBSON: Please.

MS. KURKUL: Okay. To the issue of the retrospective pattern, we had a lot of internal discussions over that. And the panel was quite clear on two points: 1, that they did not have the time to conduct the analyses that would be necessary to try to quantify that to provide managers with a number, a set number.

And then the second point was but it was important given the history in this fishery that the managers do to take that retrospective pattern into consideration.

And so we did and I think Dr. Methot tried to make the point very clearly in his presentation that the choosing the 75 percent probability isn't an adjustment for the retrospective pattern but it does provide some buffer acknowledging the retrospective pattern.

And in fact we've of course argued consistently that we should be choosing probabilities above the 50 percent level anyway because the 50 percent level is half of the time you fail and half of the time you succeed. So it seemed like in some ways it took those two issues into consideration.

And then finally I wanted to comment on the motion directly. Of course the 19.9 from our perspective is too high to achieve the goals of the fishery management plan. We've not discussed, we've had the situation before where the commission has set a different TAL than the agency has. We have not discussed whether or not we could continue to support the 12.98 if the commission chose a higher level of TAL.

And I just remind the commission that the end, something that has weighed into this in the past is the fact that when we set different TALS, if there were two different TALs between the two, that in fact benefits the recreational sector over the commercial sector because for the most part the commercial vessels, well, the commercial vessels have the limited-access permit, don't have the option of fishing in state waters and in some cases the recreational sector does. And so it does create a serious inequity.

CHAIRMAN GIBSON: Thank you, Pat. I was going to ask, before I go on to more questions, Toni to make some process-related comments. We seem to have some process problems regardless of what numbers we're contemplating.

If this, as Gordon has suggested, the 19.9 doesn't seem to be rooted in the most current information we have available and for the commission to embrace it seems to require some extension of the rebuilding timeline in order to make the numbers line up.

The new numbers seem to have some arguably better scientific basis. You may disagree with it they're more current and they seem to be rooted in SSB currency which requires a fundamental change in our management plan as well. So I was going to ask Toni to address the process questions here.

MS. KERNS: If it is the will of the board to accept the new spawning stock biomass reference points then there are two options that you have to accept those reference points.

One is we could join in with the Mid-Atlantic Council's Amendment 14 where they have already approved to move forward with setting those new reference points into Amendment 14. And so we would have a same document to get, a joint document together as we normally do when we do amendments.

The other option that we have through the flexibility of Amendment 12 is to set those reference points for an addendum. And that would be at a different timeline than the Amendment 14 would be set.

CHAIRMAN GIBSON: So, Jack Travelstead and Dave Pierce.

MR. JACK TRAVELSTEAD: I just want to add to some of Pat Kurkul's comments about how this motion would advantage the recreational fishery over the commercial fishery. And it may also advantage the northern states over the southern states.

I'm not entirely familiar with how the fishery functions in the north but in the southern sector 95 percent of our commercial harvest comes

from federal waters. And probably 99 percent of our recreational harvest comes from state waters.

So if this motion were to pass, the federal waters would close as soon as we hit the 12.98, shutting down the commercial fishery. And we've heard they can't give up the permits and then fish in state waters because they would lose the permits permanently.

So you'd have a situation where the recreational fishery could continue to operate in Virginia while the commercial fishery is shut down. I don't know if that scenario applies to the northern states and not, but if it doesn't then you've created yet another reallocation of the resource to the north if their commercial fishery can continue to operate in state waters.

So it just creates a scenario that just would not work for the southern states. Not only that, it creates a situation where you know eventually we're going to have to pay for it.

That means next year we will be sitting here looking at yet a smaller TAL from the feds for federal waters. So the commercial fishery will have paid for the benefits we're trying to give to the recreational fishery. It's just going to snowball on us.

The other thing I think, you know this motion does is it, in that sense it violates one of the allocations scenarios in the management plan and that is the 60/40 allocation of commercial versus recreational.

And I'm not, it's almost to me like the motion is out of order because it violates one of the very premises that the management plan is built on, the 60/40 allocation.

CHAIRMAN GIBSON: Dave Pierce. Dave Pierce passes. Everett Petronio.

MR. PETRONIO: I think as the maker of the motion I want to clarify an important point, that the motion was not made looking to favor

recreational fishermen over commercial fishermen. Nor is it an attempt to reallocate between the north, the northern and the southern states. But I would ask that the board consider what the result upon all of those fisheries are should we adopt the much lower quota being proposed.

CHAIRMAN GIBSON: Preston Pate.

MR. PATE: Thank you, Mr. Chairman. I recall at the council meeting where the council took its action on the 19.9 million pounds there was considerable discussion about the flexibility that the service had in extending the rebuilding period.

I actually asked the question and got the response back then from Joel McDonald that that flexibility was not there. I think many, as I was holding out hope that further and more detailed analysis of that question would result in a different answer, that the service would find the justification for another two or three years added to the rebuilding period.

And apparently they've come to the conclusion that that's not the case. I'm not arguing that they're wrong in that case, just pointing out the reality that we find ourselves in a partnership with an agency that does not have the flexibility that we do.

That doesn't make them wrong. That's just recognizes the difference in our management approach. And that is unfortunate because it puts us at the mercy, if you will, to the position that the service takes. And you've heard me speak on that issue several times before.

And for reasons that Jack Travelstead very adequately and accurately and concisely identified I can't support the motion. And the motion may not have had the intent of the reallocation inconsistent with the plan between the commercial and recreational sectors but it certainly has that effect.

And in all due recognition of the needs of our commercial fishing industry to maintain some semblance of community and economic viability in this fishery, this motion will not give it to them.

Our fishermen will be greatly disadvantaged by the requirement to give up their permits if they choose to fish in state waters after the EEZ is closed. And not many of them are going to choose to do that.

I would dare say none of them would. It's just too much of a big step for them to take. So without the extension of the rebuilding period to give some legal basis and clearer justification for the 19.9 million pounds I cannot support it.

CHAIRMAN GIBSON: Thank you, Pres. Anyone else on the board want to weigh in on this motion? I'm going to need some audience comments, obviously. Roy Miller and then Howard.

MR. ROY MILLER: Thank you, Mr. Chairman. Just for my clarification and voting purposes for this motion, perhaps I could request that Jessica give me a little history in terms of what F level would result from this particular motion, even recognizing the limitations of that now outdated estimate. What was it based on?

CHAIRMAN GIBSON: Can you answer that, Jessica?

MS. JESSICA COAKLEY: Yes, the F rate associated with the 19.9 million pounds was the F rate that was in the rebuilding plan which was F equals 0.276. But this was based on all of the previous reference point information and projections before this update was conducted.

And I don't know how many actually have Rick Methot's, the report the science center had turned out from the reference point review, but if you do look in that the rate associated with Fmax in that report on Page -- let's see on Page

14 where the projections are done there shows that that new Fmax estimate of 0.280 has a TAL value for 2007 associated with that Fmax there which is about 25 million pounds.

So those reference point updates and given the new information that 19.9 would no longer be associated with the Fmax rate based on the new information. Does that -- did that cause more confusion or did that clarify? I'm not sure which I managed to do.

MR. MILLER: I'm still somewhat confused but I think it clarified in my mind that the 19.9 million is no longer grounded in the best information that we have available to us. So from that standpoint you helped me.

CHAIRMAN GIBSON: Howard King.

MR. HOWARD KING: Yes, I was prepared to vote for this motion when the discussion started and my heart still is with the 19.9 million pounds. None of the quotas in the ensuing years of the build out period are very attractive so to me it's a question of what quotas are we looking at over that time period, not just what we're looking at in 2007.

Our minds seem to be going to the 50 percent probability or 75 percent. But I do appreciate the motion by Everett. The value in that is that it's an incremental reduction to the fishery and not the extreme disruption that 14 or 13 will cause. So I was going to vote for it but at this point I can't support it.

CHAIRMAN GIBSON: Other board comments. Tom McCloy.

MR. MCCLOY: Thank you, Mr. Chairman. I would call the board's attention to a letter from our Governor Jon Corzine to the Secretary of Commerce and just to point out that that letter was submitted prior to the summer flounder review that was conducted when the proposed quota was in the neighborhood of 5.2 million pounds, I believe.

I just think that I should make it clear that New Jersey's position has not changed. We would still support the 19.9 million pound quota because of the fact of the severe -- and I say severe, other people have already recognized that -- economic and social impacts that this is going to have on all of our fishermen.

CHAIRMAN GIBSON: Brian Culhane.

MR. BRIAN CULHANE: I have to speak in support of the 19.9 million pounds. You know I understand the technical arguments here but I'm, you know, I'm just looking at our industry. That's what I'm sent here to do. And even at 19.9 million pounds we're going to be looking at cuts. It's not going to be easy. But hopefully the cuts won't be fatal.

CHAIRMAN GIBSON: All right, Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I'm also torn between the comments that were made by Mr. Travelstead and some of the other folks around the table, including Preston Pate and so on.

But again we've gone from something in the area of 30.9 million pounds to twenty-five-point-whatever, to 23.9 and the economic impact is severe. And you know I usually vote my heart. I vote my people we represent.

Often I'm chastised for taking the high road. In this one I have to take the high rode. I have to support that 19.9 even though it has, it will have a deleterious effect on where we go. It's just awful difficult to keep being beat up over and over and over again.

The conversation hasn't really developed and been laid out yet as to what is going to happen to, for instance, the state of Virginia who now has -- what are you, 150 percent over your quota already without the latest report being in.

And I can see Jack and his folks sitting out there in the audience and pouring their hearts out to this board to help us next year have a season. That's reality. That's reality. I know we have a fiduciary responsibility and we have a responsibility to the fisheries.

But it's just awful scary when you get to a point in time where the system totally is driving the economic impact that it's having on our folks up and down the coast. Another case in point where we're being faced with another fishery, the horseshoe crab.

And we're being driven by a lot of emotion from a couple of organizations. Here we're being driven by real, a real fact. And the fact is the economic impact is going to be so severe. We're not only going to affect some communities a little bit, we're going to affect the entire industry a whole lot.

So with those comments I would support the 19.9, although it's difficult to support that number. Had I had my way I'd go at 23.9 but I'd be laughed out of the room by some folks. But I think the people in the audience would stand up and cheer.

But that's not defensible to a point where I would look ridiculous in changing that quota. But I would support the 19.9 until we come up with a better number. Thank you.

CHAIRMAN GIBSON: Dave Pierce and then I need to move to some audience comments.

DR. PIERCE: Yes, I would be very hesitant to go with a 19.9 million if it equated to the  $F_{max}$  value of 0.28. And as we discussed before that was the assumption when last we met, that that was the way it equated, 0.28, the  $F_{max}$  value equals 19.9. But that's not the case now.

We've had the review, new reference points recommended, and the table that is on Page 8 of our handout, the PowerPoint presentation, shows

that now its 24.9 million pounds TAL 2007 equating to 0.28.

The 19.9, therefore, equates to an  $F$  value -- well, I haven't calculated it but it's probably around 0.22, something like that, which is a very low value of fishing mortality. The kind of mortality rates we always try to achieve in the context of rebuilding.

Obviously in this particular case 0.15 is considered to be the  $F$  rebuild the value. And therefore now we as a Board have a difficult decision of course and that is weighing the obvious tremendous socioeconomic impact that will occur by our dropping down from where we are right now 23 million pounds to 14 or in the case of what has been recommended by the service about 13 million pounds, the  $F$  rebuild at 75 percent probability.

So, the 19.9 is not as onerous as one might at first think it would be. Yes, I recognize that we have the federal requirement for building by 2010. And that's a requirement that's this firm and fast, apparently, affecting the Mid-Atlantic Council. But it, you know, does not affect ASMFC. So I just wanted to make that as a point that, you know, 19.9 is not as onerous as it at first seems.

CHAIRMAN GIBSON: Thank you, Dave. Gordon Colvin.

MR. COLVIN: Mr. Chairman, if I recall, Dr. Methot's Slide Number 13 spoken in terms of projection on hitting the spawning stock biomass  $SSB_{max}$  proposed target and projected hitting that target at about the Year 2020 I believe he said at  $F_{max}$  and then at 2010 at  $F$  rebuild equals 0.15. Thank you.

And what is intriguing to me is looking at his Slide Number 15 which indicates that  $F$  rebuild at 0.15 and  $F_{max}$  at 0.28 result in '07 TALs respectively of 14.5 and 24.86. And the midpoint between them is pretty close to 19.9.



And that's a coincidence. I mean that's not as a result of any relationship between the prior analysis and this one. It's a coincidence. But it also suggests to me that somewhere about the midpoint between 2010 and 2020 is when a midpoint, you would here would get us there.

And I continued to believe that the most appropriate course of action for this board today is to essentially envision a two-step process in which initially we adopt a TAL for 2007 that is based on what the service is publishing and at the same time engage a full-court press in terms of: Number 1, initiating our own process to extend our rebuilding schedule by five years; and, secondly, urging both the U.S. Secretary of Commerce and the appropriate members of Congress to provide the basis for extending the rebuilding schedule similarly under the federal plan in whatever process works.

And I think that that would enable us to take a second step once we had support from our federal partners to do that that would move us pretty close to that midway point of around, you know, plus-or-minus 20 million pounds.

So that's kind of where I'm coming out on it. I think I'm in a little bit different position than my partners on my immediate left and right but I think at the end of the day we can get to the same place if we get support from our federal partners. And I think that's what we need to do.

CHAIRMAN GIBSON: Thank you, Gordon. Okay, I'm going to go to the audience on this one. Are there members of the audience wishing to speak to this motion? Yes, Tom Fote.

MR. THOMAS FOTE: Tom Fote representing Jersey Coast Anglers Association. This is very difficult situation for us all to be in. I understand the problems, the council, the commission, the National Marine Fisheries Service, all of them basically have experienced over this, you know, onerous possibility of going to a quota.

I mean, when NMFS briefed the congressional staff they asked what the quota would be under the scenario for 2008-2009 and then what would it be in 2010. And they said, well, by 2010 if we go to the 12.8 and we basically go to 15 million next year and 17 million the year after we can get to 40-something million in 2010.

Well, I think anyone of us sitting around here, even if we went to 12 million pounds and we went to 15 next year and 18 the next year don't see a 47 million pound quota in 2010. I mean it really disturbs me that's what they've said in their document.

The other problem here is when the Mid-Atlantic Council basically met they asked for a review and they asked for a review of the target. And they asked for an outside, basically was asked and we asked for an outside review.

That's what -- I maybe misunderstood the council but in reading the minutes I don't think I'm far off that people basically said that we should really look at it and it should be more than just NMFS looking at the targets and everything else.

It should be an outsider. Well, the review was conducted. You see who sat on the view. It was not the states. It was not the commission. And it was not any member of the public. It was basically done internally at NMFS, the same people that are reviewing the targets over the years.

And that's, you know, NMFS prerogative to do that except it would have probably had more transparency if other people were brought into the process. It's interesting, I just received a letter from NRDC, environmental defense, this morning.

And I'm sorry. I didn't print, I got one copy printed and I can pass that around. But they are basically the same position as Jersey Coast and a lot of other organizations are. We are looking for an outside review of all the targets, of all the

information because we think there's something seriously wrong in basically trying to rebuild to this target by 2010.

It reminds me of the old scenario we had bluefish in '94 when we basically were in a position in '94 where we said, well, we need to cut the fishery down to two fish and basically to rebuild the stocks. And we did that. We rebuilt the stocks.

The question was really asked of the scientists at that point, if you shut the fishery down completely would it make a difference? They said, well, we're not sure. And we didn't shut the fishery down. We let the fishery go.

As a matter of fact, there is a whole lot of unused recreational quota every year that gets transferred over to the commercial stocks. But it was not be onerous regulations that would have put in for the party/charter boats, recreational fishing industry if we had gone for the two fish bag limit at that time and really cut the commercial fishery down to 6 million pounds needlessly where they were being able to harvest at 11 million pounds over the years.

This is not a minor change. At 13 million pounds it basically hurts the recreational fishery. And I would imagine it's from Virginia to Massachusetts. It affects the commercial fishery from North Carolina, north. I mean, it's just going to have tremendous complications. Plus, it also loses credibility in the process.

The fisherman don't understand that, you know, there's going to be 2010 and 2003 and 2004. What they understand is the fact that we are catching less fish -- and I understand that. We are catching less fish now than we were in 1993.

We are catching less fish when we had a biomass of 48 million pounds and a spawning stock biomass of 23 million pounds than we are when we're at a biomass of 104 or 110, depending on where you look at the figures, and 68 million pounds spawning stock biomass.

CHAIRMAN GIBSON: Tom, it's not clear to me whether you are advocating support for this motion or not. You're talking about different numbers that are not in the motion.

MR. FOTE: Well, what I'm supporting is -- actually Jersey Coast supported status quo at 23.6 but we know that's not realistic. We know that's not going to happen. So what we're supporting is 19.9. And we also are supporting that an outside peer review take care, be come in to basically look at the targets, look at the rebuilding time. Again, two thousand --

CHAIRMAN GIBSON: Tom, the peer review has already taken place so that's done. I just wanted to get -- I got from you what I wanted you to say. You're supporting the motion for 19 million.

MR. FOTE: I mean, Mark, the peer review what we understand at the Mid-Atlantic Council was going to be an outside peer review open to the process of the commission and the council. It was not done by the commission.

So it's asking NMFS to review itself. And as a matter of fact Pat Kurkul said on the record at that time that it should be inclusive with the commission and the council. Maybe there wasn't time for enough to take place. I know, Mark, you would like me to get down and sit down but this is really important to New Jersey, really important to New York.

And, you know, the decision you make here will cost hundreds of millions of dollars along the coast recreationally and tens of millions of dollars commercially. I mean and we're asking for a few minutes of your time and your indulgence. And I'll make it short, as short as I possibly can.

CHAIRMAN GIBSON: I just want to make sure -- there are other speakers. I'm already a half-hour behind and I'm sure there are other people that want to speak to this issue. I have a

three-hour meeting and another board after this. I don't have any latitude.

MR. FOTE: Well, then I'll just get off the microphone. I guess I'm getting cut short and that's -- I appreciate the time. Thank you.

CHAIRMAN GIBSON: Thank you, Tom. I had Jimmy Rule next.

MR. JAMES RULE: Thank you, Mr. Chairman. I'm Jim Rule, Mid-Atlantic Council member, but I'm speaking here today as a commercial fisherman from North Carolina. I want to clarify some action. The motion for the 19.9 Mid-Atlantic made was actually my motion so I'm very familiar with it.

There seems to be a piece of this that's missing and that is in fact that was a two-part motion that was split. And part of that motion was tabled. The motion was made for 19.9 with the expectations that there would be some relief to the ten-year rebuilding time frame.

That was the intent of the motion at that time. We got guidance from general counsel at that point that said it may not be possible but there are other avenues besides recommendations, the existing status of the plan, in other words if a congressional act was to come along and somehow or other by any way short of a miracle buy us two or three years, the 19.9 is in fact doable.

The motion did have another part to it and I think Dr. Pierce's comments, that's the reason that I took the time and ask to be recognized, Mr. Chairman.

I would support this motion with the caveat and something along the lines that Gordon Colvin mentioned that if for some reason by December 31st there is not some relief in the form of an extension for the ten-year rebuilding which will almost have to come through Congress or a reinterpretation of the existing regulations, that the commission support exactly what is being

recommended by the service, whether it be the, I believe it's the 12.9 or the 13.9 depending on the 50/75 percent probability, one of the two. I was just made aware of the proposed rule. That way both groups would be consistent in their recommendations.

The 19.9 did not come out of thin air, gentleman. And you've got to recognize from a commercial fisherman's viewpoint as well as recreational we had interpretations and business plans established for the 2000 fishing year on summer flounder that were in the range of 20 million to 22-24 million pounds.

A reduction of this kind of level, we were at 23.5 last year with such short notice would be very detrimental. If in fact we do not get an extension to the time frame and you're allowed approximately a 13 million quota for three years, what's the difference in taking 19 million one year and 7 the next? At least make people aware of what is going to happen.

Having been a member of the Mid-Atlantic for seven years I'm very disappointed that the recommendations we made got us to this point. I'm very concerned that the science that we're generating it from is flawed.

I don't see this kind of a reduction in the abundance of these fish. I just don't. I'm not comfortable with any of it at this point, sir. But I would recommend if this motion was to go forward that there be a caveat added that would provide the commission with the flexibility to match what the intention of the Mid-Atlantic was. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Jim. I had Jim Fletcher next. Is he still here?

MR. JAMES FLETCHER: James Fletcher, United National Fisherman's Association. First to the history, in 1968 a group I represented put forth a 5.5 inch -- no, a 5 inch tail bag and the scientists jacked it to 5.5 inch.

Since that time the science has basically been wrong. But to come to the 19.9, that is what we're going to allow to be landed. The science in '68 said we could kill 44 million pounds of fish and not affect the stock.

Now for Jessica or Toni, the question is, how many pounds of fish between 1993 and 2006 have been killed each year to reach the total amount of landings? What this commission needs to look at is a way to turn bycatch mortality and death into harvest.

This 19.9 million does not address the number of fish that are going to die as bycatch on either sector. So if somebody was bright enough around this table to support the 19.9 million pounds with rather than trying to find a way around it and turn all the bycatch into landings, both sectors would be much better off.

And I think there should be somebody around this table with enough intelligence to figure out how to do that. But I would support this. Thank you.

CHAIRMAN GIBSON: Thank you, Jim. The answer to one question you've asked was how many discards have taken place since 1993. They don't have that information at their fingertips. Frank Almeida.

MR. FRANK ALMEIDA. I'm Frank Almeida, Northeast Fishery Science Center. I just want to make some brief comments about the review. The notion that the review was an internal review is in fact partly true. And that was partly because of the timing.

We chose to use the reviewers that we did that are outside the region. These folks actually have not reviewed the biology or the assessment of fluke in the past so we thought it was at least a fresh review.

The reviewers are very highly skilled -- that's one of the main things we were looking for -- and had very strong reputations in the field of

assessment biology. Their charge at the review was to look at the timeframe of recruitment that went into the rebuilding target.

The issue that they took up because they had an interest in the assessment and in the results they did in fact go beyond a little bit on what we actually asked them to do in their terms of reference and we really appreciate that.

If people look carefully at Dr. Methot's report there are actually a number of issues that he raises for future research and issues to be examined in the fluke assessments in the future.

But I just wanted to make it clear that the terms of reference were narrow and that we understand that the review wasn't totally outside. We appreciate that. But that had to do primarily with timing. Thank you very much.

CHAIRMAN GIBSON: Thank you, Frank. I'm going to go to Tony Bogan and then we need to come back to the board. Tony. Did I get your name wrong? My assistants failed me on that one.

MR. PHIL KERSIO: Thank you, Mr. Chairman. I wish I could speak like Tony Bogan but. My name is Phil Kersio. I represent the United Boatmen, New York Fishing Tackle Trade Association, and the Recreational Fishing Alliance.

I would like to express reluctant support for this motion. And when I say "reluctant," we would support status quo. But of course as Mr. Fote pointed out that is not a possibility here. I would like to remind the commission of several points with regard to this motion and regard to the summer flounder fishery in general.

First of all, I think most of us know in our hearts if, even if we're not going to put it on the record that the target biomass the we're looking at of 204 million pounds is very likely a fantasy. Okay?

It is based on an ecosystem that existed in 1930 but yet no account has been taken of any ecosystem changes over the last 70 years. And I have to ask, does this make sense? Okay? The target date is totally arbitrary. It was a legislative convenience with no basis in science. All right.

So to hold a naturally fluctuating ecosystem to a legislative convenience is ridiculous. I would also like to point out, as I know you are all aware but I just want to put it on the record, the summer flounder stocks are currently at the highest levels that have ever been observed.

And yet to have to explain to fishermen there we're looking at a possible moratorium in New York State for next year, you know I just make that point to the New York delegation to have to go back to explain to people in New York that even though there are more summer flounder around than we've ever seen before yet we have to shut down the fishery. The difficulties are obvious.

The economic impacts of a cut like this that is being suggested by the service have never been accurately assessed. Rough estimates, no hard numbers. I can tell you that it's already devastating.

I worked at Cab Tree this past summer as a captain. I saw the decrease in carriage even this year under the 23.9 million pound quota that we were laboring under. And any further cuts are going to result in further economic devastation and very likely will gut the industry on Long island.

You are pulling out the rug from under the tackle and partyboat industry as well as the marina industry. I'd like to point out, also, that many authorities have suggested that the recruitment pattern that we're seeing over the past several years -- and this is generally speaking, not necessarily pointed at the summer flounder stock but generally, flat recruitment the way we've seen over the last of years would tend

to indicate that the biomass has very likely peaked and that we may even be looking at a decline over the next several years regardless of what gets done, which, by the way, may fit into this situation that the Magnuson Act envisions with regard to changes in reference points that would allow flexibility to be built in.

Along with the fact that ecosystem changes have not been considered there also has been no consideration of interspecies interactions. The dogfish overpopulation which nobody seems to want to recognize but yet it's there. It's a practical reality.

Also, striped bass are at a very high level right now. Both of those species exhibit predation on all sorts of juvenile fish, summer flounder undoubtedly included in that. And I would just remind everybody about their Ecology 101 class. If we remember the analogy of the bobcat and the snowshoe hare.

There is no way that you can have populations of all fish at the highest levels at the same time. Predators are going to go up. Other forage species are going to go down. And you're talking about a dynamic system. And we're trying to put a stamp that says everything should be at the highest levels at the same time. It's just an impossibility.

Another issue that I haven't heard discussed around the table and maybe it's just because we want to turn a blind eye to it is the fact that increasing regulations, increasingly strict regulations, result in less compliance every year.

I saw it myself and I have heard anecdotal information that less and less anglers have any faith in this system whatsoever and they act more on their own moral conscience than they do with regard anything that is considered to be a regulation. In conclusion --

CHAIRMAN GIBSON: Phil, I've got to get back to the board now.

MR. KERSIO: Yes, in conclusion, I just want to put out that all the data that we're looking at, including the MRFSS which is fatally flawed and not suitable for management decisions, all these data are highly questionable.

So the question is what to do. I say use common sense and use your moral values rather than looking at these numbers when making this decision. Again, we support the 19.9 million pounds. Thank you very much.

CHAIRMAN GIBSON: Thank you, Phil, and my apologies for messing up your name. There was my doing, not the staff. Back to the board. It is a need for -- Preston Pate, or Vince, do you need to comment? I had Pres Pate first if it's okay.

MR. PATE: There was a line used several times in the movie "Oh Brother Where Art Thou" that went like this, "Dam, we're in a tight spot." In listening to Gordon's last comments I thought I was witnessing the birth of a substitute motion.

And I was wondering if he was, had any thoughts about advancing the ideas that he expressed in that regard just so I can more clearly understand, Gordon, what, exactly what you were hoping to achieve by your suggestion.

CHAIRMAN GIBSON: Gordon, did you want to respond to that before I go to Vince?

MR. COLVIN: Well, I guess a substitute motion or an alternative motion should this one not make it is a possibility. But I'll lay out the scenario again and see what others feel, that, again, I envisioned a two-step process in which the board would initially adopt a TAL of 12.98 and immediately proceed in the direction of an amendment or addendum -- I'm not sure which we would have to do -- but if an amendment that would be tied into Amendment 14 to extend the rebuilding schedule by approximately five years and enlist the support of the Secretary of Congress -- Commerce, I said before -- and Commerce as well as the leadership of Congress

to assist and facilitate incorporation of that same provision in the Federal Amendment 14.

And in the event that we secured that support take Step 2 which would be to increase the TAL for 2007 consistent with the extension of the rebuilding schedule and the concomitant increase in F rebuild.

MR. PATE: Thank you.

MR. COLVIN: Now, if you want, I'll offer that as a substitute, Mr. Chairman. I'll be happy to second it but don't ask me to repeat it. My voice is shot and it's not because of yelling yesterday at Mitchell. I think I came down with a cold overnight.

CHAIRMAN GIBSON: Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, if you would, I'd let you to pursue the current discussion and just ask you to recognize me before you vote. Thank you.

CHAIRMAN GIBSON: Thank you. Eric Smith.

MR. SMITH: I agree with Pres that I think you know we're on the cusp of an alternative that tries to move us away from something in this -- I appreciate Everett putting this motion up. It got the ball rolling. I think I've heard enough people express discomfort from different points of view that I'm leaning towards some alternative, too.

And I have to begin by saying with all due respect to those who have spoken eloquently on the social and economic impacts, which will be huge, we still have an issue where disparate quotas, when the disparity is huge is a real problem.

And we understand, I mean Pat has very fairly telegraphed you know it' in the published proposed rule so we know where they're leaning. And obviously they're out for comment on this but that's their first cut at this.

The decision for us needs to be do we intend to deviate from what we think the service is going to publish as a quota? And if we feel comfortable in deviating, then the question is how much.

I like the logic, the form of what Gordon was suggesting in the sense of a long-term try at a solution to find a rational way out of this in the sense of amending the plan and enlisting congress.

The only difference I have with what he talked about was -- and this is why I said "large deviation" or a "small deviation" -- the one thing in the proposed rule that I think it is open to scrutiny and it's even, it's subjective on the part of the service is the use of the 75 percent level of confidence, if you will, which is a choice to be made.

And I think we ought to weigh in on that as well. And, you know, maybe I'm just feeling brazen but I'll offer the motion. I think we ought to go with the F rebuild at 50 percent level.

I think we need to be conscious that the Magnuson Act, even though we're not a council, you know, we're a partner and we need to be conscious of rebuilding. But using a 50 percent probability or a 75 percent probability is clearly in the realm of how far we decide we want to go.

So I would move to substitute that the TAL for 2007 be 14.156 million pounds which is an F rebuild of 0.15 at a 50 percent probability of achieving it. And if I get a second to that then I'll offer a little bit of rationale, if I may.

CHAIRMAN GIBSON: So you're not going to specify anything here about the process that Gordon was speaking to?

MR. SMITH: I believe that would clutter the motion for now. But I think it's appropriate maybe we take that up as a second.

CHAIRMAN GIBSON: Okay, is there a second to Eric's motion? Roy Miller. Does everybody understand what the substitute is? It's the 75 percentile or the 50 percentile -- sorry. A discussion on Eric's motion. Pat Augustine.

MR. AUGUSTINE: Thank you, Dr. Gibson. The question is, if the MSA were to be passed that would accommodate the restructuring of the rebuild, would it be possible to change or if we rebuilt out to -- let's say it was extended five years as Mr. Colvin had suggested -- is there any indication, can we get an indication as to what that would do in terms of the 14.15 versus the 19.9? Or is it possible the 19.9 could be greater that?

The reason for the question, and I need to put this on the record, the reason for the question is if I understand it correctly if we were to accept, if we were to accept or set a quota within 60 days of the time that the law could possibly be changed, my understanding is that the number that we had selected as a quota could not be changed for the following year.

And if I'm right with that, then it would seem to me -- and I'm not sure I am but I think I am because that's what I read -- it would seem to me that if we went with anything less than 19.9 or the possibility of the motion including flexibility to go to a higher number based on the F target that we would have to deal with to still have a rebuilt now instead of being 2010 to be 2015?

I don't know how to break that apart, Mr. Chairman, but it seems to me we need answer to one or two of those questions before we just, I don't want to use the expression "cave in" but go along with what our recommendation is from our scientific community of going with the 14.5. Could we try to adjust that, please?

CHAIRMAN GIBSON: Toni, can you speak to that?

MS. KERNS: I'm going to do my best, Pat. The 19.9 million pounds was based on the old information and so I --

MR. AUGUSTINE: I understand that.

MS. KERNS: I know you understand that. And so, therefore, based on any of the new information even if we, you know, we went with Fmax we still altered some of the data that we put in and that's why we have a different TAL.

And so we haven't done any, we would have to go back and calculate projections with 19.9. That has not been done under Fmax. And 19.9 is not under F rebuild. We would have to go through and do those calculations to tell you what would happen in five years from there. But those calculations have not been done as of today.

MR. AUGUSTINE: Just a follow on. That was very good, Toni. Thank you very much. Now, what I'm getting at is if we go with the short-term projection for TAL 2007 on Chart 15, as I think Gordon or someone pointed out, that if you had a larger number -- we're not talking about going Fmax which would give us a 24.868 TAL for 2007, but if we were allowed flexibility, meaning a one-to-five year extension of the 2010, it's possible that the rebuild schedule might call for something greater than 0.15.

And so instead of locking in at 14.159 there may be a more acceptable number, maybe not 19.9, maybe it's 17.6 or maybe it's 21.5 but a number between the 14.156 and 24.868. So I'm just wondering, I guess I need a legal question answered, one, is what I read correct about if we lock in a quota now will we be stuck with it for 2007?

Is that a 60-day window? So if we get that answered, and the answer is yes, then I guess I would like to pursue this other option. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: I don't know that the commission is in a position to ask the legal ramifications of our actions at this time.

MR. AUGUSTINE: All right, then I would like to amend the motion.

CHAIRMAN GIBSON: Okay, you have an amendment?

MR. AUGUSTINE: Yes, another amendment. And would amend to extend the first motion -- and I'm not sure how do that easily. It would just -- here is what I would add: move that the board adopt the summer flounder TAL of 19.9 million pounds for 2007 based on the likelihood the MSA will be changed to accommodate extending the rebuild schedule beyond 2010 or - - I'd better keep it clean.

Based on the likelihood the MSA will be changed to accommodate extending the rebuild schedule beyond 2010. And that encompasses the comments that Mr. Rule made. And I recall him having made that motion and having given the support of information that he presented here at this meeting today at the council meeting. Thank you, Mr. Chairman. If I get a second on that we'll go further.

MR. PATE: A point of order, Mr. Chairman.

CHAIRMAN GIBSON: Excuse me. Go ahead, Pres.

MR. PATE: Yes, I'm not sure we can have a motion to amend and a substitute motion on the table at the same time. We need to dispense with the substitute motion first.

CHAIRMAN GIBSON: We can't amend the substitute motion?

MR. PATE: I thought heard Mr. Augustine suggesting he was amending the original motion.

CHAIRMAN GIBSON: No, I think he is amending the substitute motion.



MR. PATE: Okay.

CHAIRMAN GIBSON: No?

MR. AUGUSTINE: Whichever is better. And quite frankly thank you for that, Pres. I would amend the substitute motion.

CHAIRMAN GIBSON: I think Pres is correct. You have to deal with the substitute motion. You're asking to amend that? Pat, which is it?

MR. AUGUSTINE: Well, it's obvious I think our illustrious chairman pointed the way to do this so I would like to amend the substitute motion. Thank you. That would be quicker and clearer, as opposed to voting down one or voting up one and then starting all over again. If I have a second to that we'll move forward; if not, it will die on the vine. Thank you.

CHAIRMAN GIBSON: Is your motion written correctly at this point? Is there a second to Mr. Augustine's amendment? Howard King, are you seconding? Okay, Eric Smith.

MR. SMITH: I'm sure we're going to do a lot of wrestling in the next 45 minutes or less trying to figure out how we can have a quota that is 19.9 because I'd love to have that, too, but I don't see how we can do it in the context of the joint nature of this management plan.

I don't understand what the motion to amend means when it says, "based on the likelihood that the Magnuson Act will be changed to accommodate the extension." Does that mean it's 19.9 if the; law gets changed?

Or is it 19.9 and we're going to ask someone to see if we can amend the law? So that's the same as the original motion. It's 19.9 because all of the rest of that happens later. So I just need some clarification on what the intent is.

CHAIRMAN GIBSON: Some clarification, Pat.

MR. AUGUSTINE: I can do that. The idea is to get the possibility that the Magnuson-Stevens Act will be changed in 2006. As you know, there have been I guess thousands if not hundreds of thousands of letters sent to various congressmen, senators and so on imploring or asking them to move forward to support the Palmo Bill or whichever bill goes forward.

And all of those letters and support primarily are being based on the fact of the economic issues that we're, that the fishermen are being faced with. A case in point is the letter that Mr. Colvin referred to earlier.

And it just seems to me that if we don't have some language in there that allows for flexibility the number 19.9 could be changed to something else. Do you want it 25.7? That number is not the number.

What I'm trying to do is I'm trying to ask the board to consider if that is changed so that we have flexibility to go from 2010 to 2015, whatever that number is, that we can come back to our technical committee and Toni indicated she doesn't have the information -- I'm sure Jessica doesn't either -- as to is there an in-between number between the F rebuild of 0.0.15 of 14.156 pounds and an Fmax of 0.028 at 24.868 that it would give, we would have some flexibility to change that 19.9 number accordingly?

It doesn't matter what the number is. It could be 21-22. It could be 17. It could be something more than 14 million pounds but as this has been presented to us less than 24. And that is the rationale for that. Thank you.

CHAIRMAN GIBSON: Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Yes, thanks, Mr. Chairman. You know, as of a week ago the information that we've kind of gotten speaking up on the Hill is I would give the reauthorization of the Magnuson Act, period, a low probability of happening in this Congress.

In addition to that, the probability of an adjustment to the rebuilding thing would be generous to estimate it at 5 percent happening. So I think folks need to keep that in mind of want, imbedded in this motion what you're betting on is something that probably has even less than a 5 percent probability of even happening. Thank you.

CHAIRMAN GIBSON: Thank you. George Lapointe.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. I'm going to follow up on what Vince said. I mean to have the management board basing its actions on a legislative proposal -- and it is just that right now -- I think is, well, a waste of time at this point.

And so I would encourage the board to call the question or the maker of the motion to withdraw it because, you know, as Vince said the Magnuson Act hasn't passed. It has been going to be, you know -- well, how many times have we heard in the last number of years that it's going to pass any day and it hasn't. So I just think this is a diversion from the tough question you have to address.

CHAIRMAN GIBSON: You want to respond to that, pat?

MR. AUGUSTINE: Thank you, Mr. Chairman. Based on the last two comments there is no question that this appears to be a frivolous motion at this point in time. And, Vince, I appreciate your input and Mr. Lapointe, yours also. So if the seconder will agree I will withdraw the motion.

CHAIRMAN GIBSON: Does the seconder agree? Okay, the motion is withdrawn. We're back to Mr. Smith's substitute motion. Vito Calomo. Sorry for the delay but you're at the top of my list now.

MR. CALOMO: I don't mind being at the top of your list. Although you went by me several times I still love you, you know. As you know, Mr. Chairman, my voice is not weak. I have not had a problem since last night and I still can speak very clearly.

Listening to my good friend Jack Travelstead, he hit a homerun on what he was speaking about. But in retrospect, knowing that I come from the commercial sector, I do not support his thoughts of commercial versus recreational.

I think there is a much bigger picture here, Mr. Chairman. And the bigger picture here is the social and economic impact. Instead of taking a third place or a fourth place it needs to be brought forward at this time.

I don't mean to be redundant but up and down the coast from Maine to Florida people are suffering because of harsh management. The National Marine Fisheries Service has an opportunity again to extend the rebuilding in order to help be it recreational or commercial.

The bigger picture is here is working together. I feel very strongly today that we must put aside differences, if there are any, because, believe me, we're all in the same barrel and we're not being preserved in that barrel. So, I beg you to look at the bigger picture and support the 19.9. Thank you.

CHAIRMAN GIBSON: Thank you, Vito. We've had a lot of board comment and we've had public comment. I think it's pretty clear what they think about 19.9 and any numbers before that. Is there need for any more board comments? Tom McCloy.

MR. MCCOY: Thank you for indulging me, Mr. Chairman. The only thing I would say about the substitute motion, with all due respect to Eric, I don't see that it provides any incentive, quite frankly, to extend the time frame or to adjust the quota accordingly.

I think if that motion is passed that is what we're going to have. I'm sure there is going to be some I guess other discussion over another million pounds but I don't see it, any opening the door for a higher quota. Thank you.

CHAIRMAN GIBSON: Yes, Pat Kurkul.

MS. KURKUL: Quickly, again the National Marine Fisheries Service does not have the option of extending the timeframe. That's not something that's on the table right now. To this motion, I think there are two things that largely got us to the point we're at right now.

One of those is consistently choosing the 50 percent probability and taking the risk associated with that. And the second one is ignoring the retrospective pattern. And both of these -- and this motion continues those mistakes on both of those issues.

So, although I'm going to support it as a substitute motion because it's clearly better than the 19.9 I'm not going to be able to support the main motion. Thank you.

CHAIRMAN GIBSON: Thank you, Pat. I had Jack Travelstead.

MR. TRAVELSTEAD: Thank you, Mr. Chairman. Several of you have spoken about the desire that I guess there be an act of Congress to extend the rebuilding period and I assume that's the only way it could be done.

But who among us can speak to the level of that probability? Does anybody know that there is even a smidgen of likelihood that that is going happen between now and the start of the fishing season next year? Vince, can you speak to that? Have you had any contacts with members of Congress?

CHAIRMAN GIBSON: Vince, do you want to respond?

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I outlined a few minutes ago what my contact was and it was limited. I would point out in the letter that was referenced from the delegation from New Jersey which we know has very strong and passionate feelings about that, imbedded in their letter is the assertion that they believe the Secretary has flexibility to deal with the problem.

I think that's a signal as to whether or not they think that they need to deal with the problem. In the words, I don't think -- that doesn't give confidence to me that they think there is a problem that they need to fix it. Thank you.

CHAIRMAN GIBSON: Eric Smith.

MR. SMITH: Thank you, Mr. Chairman. I'm going to withdraw my motion with the indulgence of the seconder because I think a more effective alternative has been surfacing.

CHAIRMAN GIBSON: Okay, who is seconder? Roy, do you concur?

MR. MILLER: I'm sorry, Mr. Chairman, would Eric please repeat that?

MR. SMITH: Yes, I was going to withdraw my motion if you agree because there is a more effective alternative that has been crafted in the meantime.

MR. MILLER: The reason I seconded your motion is I had the feeling that there was another shoe to drop, that both you and Gordon were discussing something so that's why I agreed to the motion to at least get the discussion started. So if you wish me to drop my second, I will.

CHAIRMAN GIBSON: Thank you. Gordon Colvin. That motion is withdrawn.

MR. COLVIN: Mr. Chairman, I have a shoe to go hand to Brad if you don't mind. I'll offer as a substitute motion to the main motion what Brad

is going to put on the screen now, Mr. Chairman.

CHAIRMAN GIBSON: So it's clear, the Smith-Miller motion has been withdrawn and this is a substitute for the original, a new substitute. Thank you. Okay, Gordon, could you read that for the record?

MR. COLVIN: Thank you, Mr. Chairman. I move the following substitute motion. I move that the Board take the following actions: 1, adopt, effective today, a 2007 summer flounder TAL of 12.98 million pounds; 2, initiate immediately incorporation of a five-year extension of the rebuilding period in Amendment 14; 3, simultaneously request the Secretary of Commerce and the Congress to take such actions as are necessary to revise the federal rebuilding schedule consistent with the ASMFC amendment; 4, upon initiation of federal action to extend the rebuilding schedule, revise the 2007 TAL at that time consistent with the F rebuild the results from such action.

CHAIRMAN GIBSON: Okay, is there a second to the motion? Preston Pate seconds it. Thank you. Board discussion on it. Did everyone understand the motion? Board discussion on that. Eric Smith.

MR. SMITH: Mr. Chairman, I will move to amend in Point Number 1 to set the 2007 summer flounder TAL of 14.156 million pounds.

CHAIRMAN GIBSON: You're amending to change the 12.98 to 14 -- the 50 percent level. Is there a second to that? Pat Augustine. Okay, board discussion on the substitute motion as amended. Pres Pate and then Vince.

MR. PATE: To be consistent with the concerns that I had about the original motion of the 19.9 million I have to express the same concern about the 14 in being out of sync with what the service is undoubtedly going to go forward with next year.

And although the discrepancy between those two different quotas will be less than the original motion would have created it nonetheless creates the same problem of allocation and impact on North Carolina's commercial fishermen that I identified in my original comments. So with that change I cannot support the, with those thoughts I cannot support the motion to amend the substitute motion.

CHAIRMAN GIBSON: Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Yes, thanks, Mr. Chairman. I have a question for the service. And the question has to do with the proposed, the substitute TAL of 14.56 million adoption of the 50 percent probability.

And the service has already spoke about that so my question is this is for 2007; if we continue to fall behind on the rebuilding when we go to set the TAL in 2008 and 2009 what could be the worst-case scenario as we approach 2010?

CHAIRMAN GIBSON: Pat, can you response to that?

MS. KURKUL: Indirectly, I think. The, of course, anything that would cause us to exceed F rebuild in 2007 or 2008 does have repercussions throughout the rebuilding program and it's cumulative. So if we don't hit it again in 2007 we could likely be in a worse position than we are in today into 2008 and beyond.

CHAIRMAN GIBSON: Thank you. Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, and again, this is in -- some of the comments that we've gotten have been in response to folks not knowing what was in store in the future. And I guess my question is in 2009 is a moratorium possible in order to meet the rebuilding date of 2010?

MS. KURKUL: If a moratorium was necessary to achieve F rebuild or to come as close as we

possibly could to F rebuild in the last year of the rebuilding program, then, yes.

CHAIRMAN GIBSON: Other board comments or discussion on the motion. Eric Smith.

MR. SMITH: Yes, I've been asked to explain a little and I alluded to the fact that I would explain a little bit more about why I think the 14.1 is something inbounds for us to consider. I appreciate Pres' point and Jack Travelstead's point about what happens with the deviation.

That's why I didn't like the 19.9. It was too big and it had too many ramifications. But the fact is the 75 percent level is subjective. It's a choice to be made. I understand Pat's reasoning.

And I actually from her perspective where she sits I don't disagree with her. I just recalled that we're not a council; we're a commission and we have a bit of latitude to look at the underlying numbers and make a choice that is consistent with our program.

And I will point out that F rebuild under this number, the 14.15, F rebuild is a very conservative fishing mortality rate. Fmax is about 0.28. F rebuild is 0.15, just about half of that. So the difference between a 50 percent probability or a 75 percent probability is not as large as the difference in the F rebuild number itself relative to Fmax.

So the conservatism in the program is the fact that we're on the cusp of deciding on a quota, as hard as it will be to swallow for the socioeconomic impacts, that is very conservative and ought, with all good reason, to get us substantially towards where we have to be by federal law in 2010.

So, we need to decide -- well, I guess I would also make the point that you have to understand that even setting a TAL at the 75 percent level doesn't guarantee that we're going to meet our target in 2010.

We get two more years of poor recruitment; you have no choice under the law and the stock assessment at that time then to do something really draconian and this is bad enough. It really is. Is a million worth worrying about? That's the question.

Or do we simply do, do we simply track what the service has done in their proposed rule? And I'm trying to come away as much as possible in a defensible justification to minimize impacts. And that's that million in play.

I think that million difference isn't likely to cause an enormous shift in commercial/recreational opportunities or north-south opportunities. I think five or six million would have and I wouldn't have voted for 19. So the 14 I think is an accommodation such as we can make to the socioeconomic impacts and it still captures the very conservative 0.15 F rebuild target.

And that's the huge, if this passes, you know that's the huge victory in getting towards where Pat needs to be from her chair with the federal law. And the deviation of 50 or 75 percent probability level is relatively insignificant. Thank you.

CHAIRMAN GIBSON: Thank you, Eric. Okay, to the board on this amended motion. Any other comment? Any other comments? Are we ready to caucus on this? We've got a number of motion to get through if this is going to make its way to be the final one so 30 seconds to caucus on this.

Just so the public knows, I'm not going to take comment on substitute motions and amended motions. If this makes its way to be the final motion, I'll cross that bridge when I get to it. We're way behind schedule.

Okay, is the board ready to vote? Okay, on the motion to amend the substitute motion, all in favor please raise your right hand --

MR. COLVIN: Mr. Chairman.

CHAIRMAN GIBSON: Who called me? Yes, Gordon.

MR. PATE: A point of clarification Mr. Chairman, thank you for indulging me. I might have missed a segment that Pat made earlier. Pat, did you say you could support the 14.1?

MS. KURKUL: No, I said that I thought it suffered from the two main problems that we've had consistently with this management program and that is the we've chosen the 50 percent level and have not been successful in achieving our F target and that it ignores the retrospective pattern and that I couldn't support a number that continued to make those, where we continue to make those mistakes.

MR. PATE: Okay, thank you.

CHAIRMAN GIBSON: Pat, we've already caucused and -- to that point.

MR. AUGUSTINE: Thank you, Mr. Chairman. But a little bit later, Pat, not to correct you but you said if there was a choice between the 19.9 you couldn't support that but you could support the 14.156. And me being very level in my thought process I thought that was what you would support. Thank you.

CHAIRMAN GIBSON: Okay, we need to call the question here which I had already done. All those in favor of the motion to amend the substitute motion please raise your right hand; all opposed; abstentions; null votes. The motion fails. Okay, back to the substitute motion as originally made. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I have a question about the motion. And it's Item 3 which is simultaneously requests the Secretary of Commerce so-on-and-so-forth and this is to the maker of the motion, Mr. Chairman.

It seems to me that this sounds like ASMFC weighing in on National Standard 1 and an action by this board to speak or to encourage a position that the commission, itself, has not taken. And I was just wondering if the maker of the motion could speak to that appearance. Thank you.

CHAIRMAN GIBSON: Gordon, can you speak to Vince's question on Point 3 or Item 3 in that motion?

MR. COLVIN: Well, I'm thinking and, you know, it may be something that ought to go to the Policy Board later in the week but I can't think off the top of my head of a position that the commission has taken that would be inconsistent with maintaining its flexibility and the need for our partners to be similarly flexible in addressing the question of any specific rebuilding schedule, much less rebuilding schedules generally.

And I'm not sure that asking for such consistency on a ten-year rebuilding schedule, which is not part of National Standard 1, it's elsewhere in the Act, you know, is in fact a conflict with the commission's position.

If perhaps there is some thought that it might become I think we can address that tomorrow. But I'm kind of doubtful that we're in that position. I would find it very surprising that we would be acting accordingly.

I mean even let me say as far as I know the administration's reauthorization bill sought to add flexibility to the issue of rebuilding schedules. And that has been the service's position. So I can't imagine that as a matter of policy there is a problem here.

CHAIRMAN GIBSON: Everett Petronio.

MR. PETRONIO: Thank you, Mr. Chairman. I understand at this point procedurally if I understand the rules correctly I can do nothing

with my motion at the present time until the substitute motion is dealt with.

However, I would like to put on the table that if we do get back to the original motion I would be willing at that time to add Items 2 through 4 to that motion at that time. But I can't do it at the moment.

CHAIRMAN GIBSON: We have to deal with the substitute motion now. Are there other comments on the substitute motion? We've had a lot of discussion. Are we ready to call that? Bill Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. First of all, what it looks like here is we could have done this two hours ago by simply saying that whatever the National Marine Fisheries Service wants we'll just go. And that's what I'm, that 12.9.

I think that the other, the other numbers that we put up here are not going to destroy the fishery. The ASMFC does have the flexibility. I see this similar to the herring thing yesterday where we basically just did whatever the National Marine Fisheries Service wanted in terms of numbers.

I do like some of the other wording in there. But the 12.9, as far as I can see, will be socioeconomically disastrous. And I can't support this. But I could support the 19.9 along with the other wording that comes along later in this particular motion.

But as written because of the 12.9 I can't support this because I just think that we wasted our time if that comes to pass and we should have just two hours ago decided to go with whatever the National Marine Fisheries Service wants. Thank you.

CHAIRMAN GIBSON: Thank you, Bill. Is the board ready to caucus on this? Is there a need to caucus on this motion? I don't see anybody saying -- 30 seconds? Is the board ready to vote?

All in favor please signify by raising your right hand; all opposed; abstentions; null votes. The motion fails. Okay, so now we're back to the original motion of Everett Petronio. Everett.

MR. PETRONIO: Procedurally I think that Gordon was absolutely on the right track and at this point if it's agreeable to the seconder **I would like to amend the motion to add the verbiage of Points 2 through 4 in the prior motion that just failed.**

CHAIRMAN GIBSON: Mr. Adler?

MR. ADLER: Yes, I'll support that.

CHAIRMAN GIBSON: So it's just a substitution of the poundages?

MR. PETRONIO: Yes.

CHAIRMAN GIBSON: The motion to we defeated, we just essentially substitute 19.9 million into that.

MR. PETRONIO: Thank you, Mr. Chairman.

CHAIRMAN GIBSON: So is that an amendment to the original motion?

MR. PETRONIO: It is if you say it is.

CHAIRMAN GIBSON: We don't need to make a formal amendment there. Okay, does the board understand, does everyone understand what is being done here? Board comments on the original motion as adjusted to add the verbiage that Gordon came up with. Gordon Colvin.

MR. COLVIN: I just want to point out to the mover and seconder that it is not inconceivable that the outcome of Section 4 of the new motion could be that F rebuild at a five-year extension might actually be lower than 19.9. We don't know today what it will be. I suspect it will be

around there but I just want that to be on the record, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Gordon. Anyone else from the board want to weigh in on this? Okay, since this is the original motion I'm going to take just a couple of comments from the public. Greg DiDomenico, you haven't spoken yet.

MR. GREG DIDOMENICO: Thank you, Mr. Chairman. Greg DiDomenico, Garden State Seaford Association. I hope you will just, this is more of a question than a comment, Mr. Chairman. What occurs if in fact -- well, I should say does this motion allow for the likelihood of different quotas in the EEZ versus states' waters and gets to the issue that has been discussed here several times regarding the inequity of different quotas between state and federal waters?

The question is, what happens if Congress doesn't act? Does the commission have the time to implement a TAC consistent with the National Marine Fisheries Service avoiding the problem of two different quotas in federal waters and states' waters? Thank you.

CHAIRMAN GIBSON: I don't think that that's the intention of the motion but I think it's a possible outcome. The 19.9 million we've heard clear signaling from the service as to what their number is going to be in the proposal rule and what the implications would be to federal permit holders.

It's my understanding of the motion that there is, we're clearly stating an intent to try to find a way to bring these numbers together. But there is of very real, there is a possibility -- I wouldn't speculate as to how high a probability that is -- as to where we could end up.

MR. DIDOMENICO: Well, I'm going to have to explain to the commercial fishermen of certainly New Jersey and possibly several other

states the apparent inequity of two different TACs come 2007.

If you can remember that the quotas that were supposed to be for 2007 were approximately 30 million or 32 million pounds. The commercial fishermen took a significant hit when the 23.6 million pound TAC was implemented. And that was not, to my knowledge, the impact was not felt across both commercial and recreational industries the same.

And I think this sets up the same problem. And I'm going to have to explain that to all members. And unfortunately I think the commission is going to have to explain the same thing if in fact that happens. Thank you.

CHAIRMAN GIBSON: I'm going to take Sean McKeon as the final audience comment to this and then Pat Kurkul wants to speak.

MR. SEAN MCKEON: Sean McKeon, North Carolina Fisheries Association. I would just like to go on record as agreeing with Greg's comments. I don't see anything in here that prevents that from happening.

In the event that two through four do not become a reality, it's very troubling, to go to Pres' point before and also to Jimmy Rule's point earlier that this could set up that reallocation problem that we talked about.

So I would caution this may set up the very thing that we're trying to avoid. And it would be something very troubling to the North Carolina commercial industry to see that happen.

CHAIRMAN GIBSON: Thank you, Sean. Back to the board. Pat Kurkul.

MS. KURKUL: Thank you. I think under this motion there would be a real possibility that the quotas would be different in state and federal waters. And I want to reiterate something I said earlier with respect to the 19.9.



I think it would also cause us to go back and look at whether or not we could continue to support the 12.98 if the board went with the 19.9 which of course would exacerbate the situation even more.

CHAIRMAN GIBSON: Thanks, pat. On the original motion as adjusted to the board any further comments? We've had a lot of comments. Is the board ready to caucus on this one? Okay, 30 seconds to caucus, please. I'm sorry, Tom, I'm done with audience comment on this.

Is the board ready to vote? I don't see anybody objecting. I'm going to call the question. All those in favor of the motion please raise your right hand; all opposed; abstentions; null votes; one null vote. The motion passes. Okay, thank you for your efforts on the summer flounder TAL. Toni would like to speak.

MS. KERNS: Gordon, I have or I guess, no, not Gordon. Everett you were the maker of that motion. Is it your intention that then the commission breakaway from the Mid-Atlantic Council's Amendment 14 and we initiate our own Amendment 14 to include this language?

MR. PETRONIO: I think the motion stands as written. I'd like to have comment from the board as to whether or not that's the will of the board. But I think that the motion stands on its own to that point or not really addressing the point, and I'd like to hear what the board has to say about that.

CHAIRMAN GIBSON: Do the members of the board wish to add some clarity to Toni's question?

MR. COLVIN: I'm sorry, Mr. Chairman. I was postmorteming the last vote, the last two votes with the chairman of the commission. There will be a lost of the bill lot postmorteming going on on those votes the rest of the week, I'm sure. Could you ask me again? I beg your indulgence.

CHAIRMAN GIBSON: Toni, could you restate your question.

MS. KERNS: Is it the intention of the board for the commission to break away from been joint Amendment 14 with the council to include this five-year extension? That is not in the Mid-Atlantic Council's Amendment. And I would think that if we were to stick with the Mid-Atlantic Council's amendment we would need to ask Pat about the rebuilding, the timeline that that amendment is under because of the scup rebuilding and to kind of work that issue out --

MR. COLVIN: If that question being asked of me, Mr. Chairman, I can't answer it because my motion didn't pass. If my motion had passed I'd be pleased to answer the question because I think that it was clear with respect to that issue and my intent was clear. But I cannot answer that question with respect to the motion that did pass as I didn't offer it.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: Well, I would think we would have to wait now until the Mid-Atlantic Council meets and considers the actions that we have taken. Again, the Mid-Atlantic Council has not acted on the recommendations from the peer review panel.

They just received the results. They couldn't respond, not on the agenda. So now we've taken this position and we see what the Mid-Atlantic Council wants to do.

CHAIRMAN GIBSON: Are you all set, Toni?

MS. KERNS: The Mid-Atlantic Council has taken action on the peer review results and they have incorporated the F rebuild into Amendment 14. And they are doing so right now. And so in Amendment 14 they already have the F rebuild reference points in their. So they've already responded.

MS. COAKLEY: It was to incorporate the biomass. Thanks, Toni. Basically at the last council meeting, which was about two weeks ago, the council voted to include the definition change for the biomass reference point under the new peer reviewed reference point assessment to go from total stock biomass to spawning stock biomass because we had to incorporate that change through the FMP.

The council was aware of the new information that became available but the council, you know, last August had passed their motion, 19.9 million pounds. The specifications package that the council prepares had ready been submitted so the council won't be revisiting their recommendations for what the TAL is at any point.

CHAIRMAN GIBSON: Pat Kurkul.

MS. KURKUL: I think to get back to the question of Number 2 and Amendment 14 and Jessica knows the timing on Amendment 14 a lot better than I do but this certainly, it certainly isn't going to be in place in time to change anything for 2007, just so the council is aware of that. So it is I think a bit confusing how this all fits together.

CHAIRMAN GIBSON: Other board thoughts on that. Well, Toni needs direction to know whether we're going to take an independent action that breaks away from the Mid-Atlantic Council to follow the intent of this motion. What would be the vehicle for the commission to do that?

MS. KERNS: I just need to know if the board wants me to break us from the Mid-Atlantic Council's amendment because I will then draft an amendment for the board to bring to you to the next meeting.

CHAIRMAN GIBSON: Jack Travelstead.

MR. TRAVELSTEAD: While I, you know, didn't support the motion that passed I think it's

clear if you read Number 2 it's essentially directing staff to add that to Amendment 14. It doesn't say don't do it if the Mid-Atlantic Council doesn't agree; it says start amending 14. And if that means we go off on our own with a different 14, I don't read anything else in the motion.

CHAIRMAN GIBSON: I agree. I think that's what it says.

MS. KERNS: All right, we're breaking free from the Mid-Atlantic Council's amendment then and I will bring forward Amendment 14 to the board at the next meeting.

#### **Review Draft Amendment 14 for Public Comment**

CHAIRMAN GIBSON: Does everyone understand that? Okay, the next item on the agenda is Amendment 14. Toni Kerns, scup rebuilding.

MS. KERNS: I asked Jessica to come here to give the board a presentation on where we have worked together with the Mid-Atlantic Council on Amendment 14. I'm going to go ahead and have Jessica give that presentation to the board, knowing that now that we're breaking free anything with the GRAs will be taken out of our Amendment 14 since they are in federal waters and not in state waters and we would not have the authority to deal with that issue. Jessica.

MS. COAKLEY: All right, well, for the sake of timeliness because we're going to be going through, I'm going to be going through this presentation very quickly. For those of you that have the Amendment 14 document in front of you there is a table -- it's the third page, Roman Numeral III -- and it's a summary table, an Executive Summary Table 1 that basically lists all the alternatives that are in the amendment.

And it gives just a brief mention of the status, whether it's a proposed alternative, and just a description column that describes that column so as I'm going to be moving through this very

quickly you might want to have that handy as I refer to these alternatives by their letter and number you can follow along.

So, there are two issues that are in this amendment document. The first is scup rebuilding because in August 2005 the council and commission received a letter that scup was overfished and that a plan needs to be developed.

The second is the federal scup GRAs that as we mentioned wouldn't be included in the commission Amendment 14 so I'm just going to brush over those briefly. But if anyone has any questions about those, the information they can't find in the document itself, you can always catch me at some point after. So I'm going to pretty much ignore those in my presentation here.

So, the scup rebuilding, the rebuilding timeline would start at the implementation of the amendment. And at this point it looks like the implementation would be in January of 2008. The timeline, the time period that we're working with would be a maximum time period of ten years to rebuild.

The rebuilding target is based on, it's built off of the minimum biomass threshold that is specified in the FMP. And that value is 2.77 kilograms per tow as a proxy for one-half BMSY. And if it is inferred that that's the one-half BMSY level then doubling that 2.77 to 5.54 kilograms per tow would be the rebuilding target that we're working with.

Now the way that target was initially derived at SAW 27, looking at historical catch rates and actually on the -- oh, we're not there. Looking at historical catch rates these are actually in metric tons. Going back into the '60s you had between 35,000 and 40,000 metric tons which would be about 80 million pounds of fishery catch being landed.

So it SAW 27 since we were working with index-based, survey-based values and did not

have an analytical assessment at the time for scup they looked at the time period when the catches were about one-half that value and looked to be somewhat sustainable.

So that second lower red line that I marked on the table shows about where that one-half level was compared to the historic catches. The peak index value three-year moving average index from the spring survey index was 2.77 kilograms per tow for that time period and that's how the minimum biomass threshold was derived and then doubling that value gives us our target.

So, based on work done at SAW 35 since we have no analytical model for scup the rebuilding projections were done doing a basic protection of the catch-at-age and assuming a constant recruitment -- excuse me -- a median recruitment value, an M, natural mortality rate of 0.2, and projecting the catch-at-age forward in time with different assumed fishing mortality rates to get an idea of how the stock may rebuild based on these three-year survey index values.

Now there is a series of alternatives for rebuilding that are proposed in this document. The first is that no action alternate. And this is the current F we use for management. It's an Fmax rate based on the yield-per-recruit model of 0.26.

Fishing at this rate over that ten-year rebuilding time period would not rebuild the stock to the target value of 5.54 kilograms per tow. Now the second option and constant fishing mortality option, Alternative 1B, would be at an F rate of about one-half the current F or an F of 0.136 over a ten-year rebuilding period. And it looks like that at that F rate the stock would be rebuilt to the target level.

Two more constant F alternatives, one over a period of seven years would be an F of about 0.1 which would be about 40 percent of the current Fmax rate. That is expected to rebuild within that seven-year time period to the target. Alternative 1D is about a quarter of the current F

rate and is projected to rebuild over a five-year time period to the rebuilding target.

Now there were two constant harvest alternatives that are mentioned in this document. There were considered but rejected from further analysis in the document. And the supporting analysis for those is in Appendix A in the back of the document.

One was a constant F equals zero, basically no fishing mortality, eliminating all sources of fishing mortality, landings, discards, catch-and-release mortality. That would rebuild the stock within that ten-year period but it was determined that that's unrealistic and the socioeconomic impacts would be significant.

Alternative 1F was rejected and that was a constant harvest alternate over a ten-year period of about 17.2 million pounds. This would rebuild in less than ten years under, if the stock rebuilds as projected.

But this alternative was rejected because of all the options in this document it resulted in the lowest gross cumulative revenues over the entire rebuilding period. So in August the council had voted to kick that to considered but rejected.

So, two additional proposed constant harvest alternatives, one over a seven-year period, a constant harvest rate of 12.84 million pounds and a second constant harvest alternative, Alternative 1H, over a five-year period at 8.74 million pounds. And both are projected to rebuild in those time periods.

So within the document there are a couple of tables and figures that show the actual projections themselves on Page 21 and 22 in the document. But the bottom line from those figures is that there are no F rates greater than 0.132 that will rebuild us in the maximum ten-year rebuilding time period.

So fishing at the current Fmax rate is not going to get us rebuilt in that time period. So, these

are the GRA alternatives. We'll skip over those. In terms of impacts of the alternatives, just for those commission and board members that aren't as familiar with the NEPA process that the council comes under where we have to do environmental assessments or environmental impact statements, we have to consider the impacts of these rebuilding alternatives relative to what we call our five VECs, our value ecosystem components.

So we have to consider the impacts of rebuilding the managed resources and how that will affect the protected and endangered resources, habitat, human communities, socioeconomic impacts, and impacts on non-target resources, bycatch, discards, those kinds of things.

So, there are several sections in the document that deal with the impacts of the alternatives. The executive summary should give you a very good overview of those impacts. And more intense discussion of that begins on Page 43 of the document.

Now the impacts on the managed resource, the scup resource, are from these alternatives. For all of the alternatives we're anticipating positive impacts. Alternates 1B, 1C, 1D, which are all constant F alternatives, and 1G and 1H, the constant harvest alternatives, are expected to rebuild to the target. So that's, we're rebuilding the stock. That's a positive impact.

Alternative 1A, which is the no action alternative, fishing at Fmax, as I pointed out, isn't going to get us there. So although the stock will increase under that F rate, you're not going to get the same level of positive impact from that.

These rebuilding alternatives are not anticipated to affect non-target species, EFH, or protected resources in any way that we haven't already considered relative to what we're doing at this point.

But each year we go through the annual specifications process which when we're

actually setting an individual TAL takes another look at the impacts of that TAL that is being set on all of these valued ecosystem components.

Now the meat of this in terms of the socioeconomic impacts of these alternatives, all of the alternatives when compared to the no action alternative, fishing at our current Fmax rate, are estimated to have lower gross cumulative revenues than continuing to do what we're doing now over the rebuilding time period.

But all of those action alternative exceed the no action at the end of the rebuilding period or once the stock is fully rebuilt. Now the no-action alternative results in the greatest cumulative discounted revenue stream by 2016; however, it's not going to get us to where we need to be.

The next alternative 1D, which is a five-year constant F strategy, produces the next highest cumulative gross revenue stream, followed then by a seven-year constant F strategy under Alternative 1C, a ten-year constant F strategy under 1B; and then the two constant harvest strategies under Alternative 1H and 1G actually rank the lowest in terms of gross cumulative revenues over that ten-year rebuilding time period.

Now in terms of recreational harvest limits, just looking at the year 2007, under the no action alternate, Alternative 1B, 1C, and 1G, recreational landings increases. In 2007 recreational landings could occur under those alternatives.

Under Alternative 1D, which is the five-year constant F strategy, and 1H, which was a five-year constant harvest strategy, those recreational harvest limits are expected to decrease in the year 2007, that first year of the rebuilding program.

But as those stocks rebuild under some of those alternatives those recreational harvest limits are going to increase proportionally as the

commercial quotas are going to increase over those time period.

So, bottom line, under the no-action alternative it could result in a short-term economic benefits but in the long-term we don't result in the rebuilding of the stock. And in the long-term it would have negative socioeconomic implications.

Alternate 1B, which is a ten-year constant F strategy does result in a short-term benefit because in the first year of rebuilding the TAL would be slightly higher than the 2005 landings level and it would also result in those longer-term benefits by rebuilding the stock.

And all of the remaining alternative that I've mentioned would have some negative short-term impacts in the first year of the rebuilding program but again result in long-term socioeconomic benefits as the stock is rebuilt over the time period.

So, in terms of the council action that was taken earlier this month, the council approved this draft Amendment 14 to go out for public hearings with the following additions. 1. They didn't indicate that they had any preferred alternatives, no preferred for the rebuilding programs or for the gear-restricted areas.

The requested that additional description be added to the document to talk about how the BMSY target was derived. And they also added that the fluke biological reference point change of going from total stock biomass to spawning stock biomass also be incorporated into the document and flexible language be added to the document to allow if new information becomes available to indicate that the scup target for the rebuilding program should be different than that indicated in this document that it be easy to incorporate that into this rebuilding program.

So those are the additions that they had requested be put into this document. And that's a list of the alternatives that are in here. I know

I moved through this very, very quickly. But if there are any questions about the specifics of the document and alternatives I can probably take them.

CHAIRMAN GIBSON: Question for just Jessica? Dave Pierce.

DR. PIERCE: Well, Mr. Chairman, I don't have any questions. I've heard much of this before. However, I do have some comments and concerns and a motion to make when it's appropriate.

CHAIRMAN GIBSON: Thank you. Is there any, were there any questions for Jessica? Seeing none, Toni, could you describe for us process-wise where we are, what action you are looking for from the board.

MS. KERNS: Today we will not require any action since we have decided to break free from the Mid-Atlantic Council's amendment and I will need to add the action that was just taken. So what I am looking for from the board is guidance if you want me to add any other alternatives to this scup rebuilding plan.

Right now unless there is no objection I will just continue with the rebuilding alternatives that Jessica has laid out and then move forward. And if the board has substitute alternatives then I would need to know those now so that I can further explore those and bring them back to the board when I come at the next, the February, January-February meeting.

CHAIRMAN GIBSON: Thank you. Dave.

DR. PIERCE: Okay, I've already expressed my concerns at a previous board and council meeting about this particular amendment and the scup rebuilding strategies, the rebuilding schedule specifically.

I appreciate the very hard work done by the staff. There is no criticism meant regarding the staff's initiative. I mean basically they did what

they were told and they had to work with straw and with sticks and not with bricks.

And that is the case because scup cannot be assessed. That is clearly the case. We know that's true. We've tried very hard to determine how to go about assessing scup in terms of its abundance as well as of course determining the fishing mortality rate.

But the emphasis has been on assessment of the stocks and we continue to fail. There is no way to do it. We rely totally on the bottom trawl survey done by the Northeast Fisheries Science Center and we rely totally, of course, because of a timeline that we're now proposing to adopt on pre- and post-trawl survey data that will be collected with the Bigelow once the Bigelow comes onboard and replaces the Albatross.

I'm already very concerned about the bottom trawl survey itself in terms of the indices that we use. I've said before and I will continue to say that the Albatross has not caught Age 2 and older fish.

They catch Age Zero and they catch Age 1 fish. On occasion they will catch Age 2 and older. And if one looks at the assessment and the pattern of catches, one will see that. The Bigelow may be a different story, a different net, a different vessel.

But a lot of important calibration work will be done and I'm not confident that that's going to occur. Now, I'm not going to be too big an impediment here and say that I would want to reject entirely you know that which is been offered up in this amendment, this proposed amendment to the public hearing and that is reject entirely all the alternatives.

I'm sure there are some people around this table who might like to bring those alternatives out for public comment. We're not taking final action. Therefore, I would like to propose perhaps a somewhat radical alternative to add to the list and I have given that alternative to staff.

And if you would, can you project it? Oh, you don't have it? I have to read it. I can't give it to you until I do. I thought you typed it in. All right, let me read it and then I will give it to staff.

And again this is consistent with my belief that we're not going to have any rebuilding schedule that we can rely, especially because if you notice in the document itself on Page 22, pay particular attention to this, on Page 22, Table 1, these are the sorts of SSB three-year index values, kilograms per tow under various constant fishing mortality scenarios.

We will be wedded to this table regardless of the alternative that we choose. And I challenge anyone to tell me that they feel comfortable with any one of these scenarios, knowing that every year you're going to have to wait for the spring bottom trawl survey to come in, do the three-year moving average, and then see where we are relative to these particular data points.

As I said, the Albatross doesn't catch scup at the older ages and that has been pretty much demonstrated and noted at previous council meetings and board meetings. So, **my motion is, do not adopt a scup rebuilding schedule at this time; instead, adopt the scup rebuilding schedule based on NEFSC spring bottom trawl survey data after it is demonstrated that substitution of the R/V Bigelow for the Albatross will not make use of the scup time series invalid for determining the extent of scup rebuilding relative to the target SSB established from Albatross survey indices.**

And that is the motion, Mr. Chairman. And, again, if it is seconded I will, I don't think I need to elaborate any more. My introductory remarks I think pretty much make the point that this is -- well, if someone seconds it I will add one little thing.

CHAIRMAN GIBSON: Just so I understand, this really is a motion to add an alternative?

DR. PIERCE: An alternative basically to take no action, to not adopt a scup rebuilding plan based on the survey indices. That is, not to adopt any of the alternatives shown in Table 1 on Page 22 of the proposed amendment.

CHAIRMAN GIBSON: Thank you. Is there a second to that motion? Gordon Colvin, was that -- do you want to comment?

MR. COLVIN: I do. I really appreciate --

CHAIRMAN GIBSON: Which one? I don't know whether you're seconding or commenting or both.

MR. COLVIN: I am seconding.

CHAIRMAN GIBSON: Thank you.

MR. COLVIN: Just because I think the issue that Dave has brought up merits discussion and appreciation because you know he probably had me if he had stopped right after "at this time" and put a period right there.

You know everything we've been through this morning you know to the tenth power now is going to hit us with scup. We're locking ourselves into a period of years.

We're locking ourselves into this 5.54 three-year average that none of us really believes is ever going to be hit, especially since he's absolutely right, we're going to bring in a new research vessel with a new net configuration that is going to be designed, frankly, to catch schooling off-bottom fish like scup differently than the past survey did.

And I'm not sure where all this is going to take us. You know we had some dialogue at the last Mid-Atlantic Council meeting about all this. There isn't an alternative in this amendment that I can support now with or without public comment because of the difficulties that we face.

But, here again, it's the same thing as we had with fluke. We're being forced down this road. We're being stuffed into this sausage by what is in the Magnuson Act and the limitations on the data that we have.

And, you know, he is absolutely right. This is no reflection on staff work. Staff has tried very hard. The council staff, our technical committee and a lot of people have tried very hard to come up with a different approach to assessing scup that would give us reference points that we believe in. And we haven't been able to find them.

So, you know, I'm very sympathetic to where this motion is coming from. I think the problem with it is, obviously if you go out to public hearing everybody is going to do just what I did. They're going to stop at the, you know, "do not adopt at this time" and that's, you know, that's going to be the unanimous reaction of the stakeholders at public hearing.

But nonetheless we need to have a dialogue on these issues and we need to increase public awareness of the predicament that we're in with scup. And I know that that was something we specifically talked about at the Mid-Atlantic Council meeting.

I know that the council staff is making adjustments to the presentation materials that will help elucidate the situation we're in and the limits that we have from the historic database and the index values. And that is going to be helpful. And I think that this motion, frankly, helps to elucidate it and that's why seconded it.

CHAIRMAN GIBSON: Thanks, Gordon. Other board comments on the motion. And I'm trying to see where this fits into the amendment. It's not a rebuilding alternative. It's actually an alternative to not set, not engage in the rebuilding process, conditioned on some other events happening.

So, any board discussion. Pat, were you raising your hand to speak? No, okay. Okay, to the audience. Is there any audience comments on this motion? Seeing none, does the Board need time to caucus?

Okay, as I understand what -- Dave, we want to make sure we understand what you're trying to do. You're not trying to add a rebuilding alternative because this is not.

You're asking to work into the Amendment 14 under scup rebuilding that there be an alternative for public consideration that there be no rebuilding program adopted at this time conditioned on, until such time as the information you've identified comes to fruition?

DR. PIERCE: That's correct.

CHAIRMAN GIBSON: Thank you. Toni, you have a question to clarify? You understand what he is trying to do here? Okay. I'm going to then call the question. All those in favor please signify, raise your right hand --

MR. PETRONIO: I'm sorry Mark. I need a minute.

CHAIRMAN GIBSON: You need a minute?

MR. PETRONIO: Yes. I'm sorry.

MR. SMITH: A clarification, Mr. Chairman. This is to add an additional alternative, not a substitute for everything else that has been done?

CHAIRMAN GIBSON: Yes. Everett, are you ready? Okay, all those in favor please raise your right hand; all opposed; abstentions; any null votes. The motion passes. Anything else on scup rebuilding?

MS. KERNS: That's all.



### **Amendment 15**

CHAIRMAN GIBSON: Okay, the next item on the agenda -- and I understand it's probably going to be the last one -- is Amendment 15 update, Toni Kerns.

MS. KERNS: Okay, I'm going to go through this very quickly. In your briefing CD materials I supplied you all with a list of options that the Mid-Atlantic Council chose to be considered in the draft Amendment 15 document as well as a list of supplemental materials for Amendment 15 on the feasibility of the 16 options that we had narrowed down at the joint Mid-Atlantic and commission meeting in August.

So the goal of today is to have the, this group narrow down the 16 options that we had before to a smaller number that is manageable for an amendment document. If the issues that this group narrows down are different than the issues that were narrowed down by the Mid-Atlantic Council, the staff suggests that we discuss that, the differences at the joint Mid-Atlantic Council meeting in December.

CHAIRMAN GIBSON: Questions. Gordon Colvin and then I have Pat.

MR. COLVIN: Mr. Chairman, if I may before we begin I need to raise an issue that I find in my mind to rise to the level of a substantive policy disagreement with how we're proceeding.

CHAIRMAN GIBSON: Yes.

MR. COLVIN: Whether one is operating in the NEPA context or in the context in this case of scoping the content of a major amendment or a new fishery management plan, the decision that is made by the body to include or not to include major content areas in the amendment, the scoping decision, if you will, is a very major, substantive decision.

The interests of stakeholders are enormously affected by the decision about what we will include and what we will not include in the

content in the scope of the fishery management plan or the environmental impact statement and supporting planning document in another context.

Our process calls on us to work with industry advisors in the development of new fishery management plans and management plan amendments. And we are presently working towards revitalizing and essentially reconstituting a joint advisory panel with the Mid-Atlantic Council for the fluke, scup, and sea bass Amendment 15 process.

But we are not consulting with these advisers as we make decisions about what we will and will not include in this fishery management plan. And, Mr. Chairman, I find that wrong. I do not believe we should be making final scoping decisions to do such things as exclude from consideration the commercial/recreational allocation of the summer flounder quota without having consulted with advisors if in fact we're going to use advisors at all.

Now, it is conceivable that maybe we shouldn't be having an advisory panel if we're prepared to make these decisions without their input in the first place. But I want to put this issue out for some discussion.

And I gave the staff a heads-up that I intended to bring this matter up today because I find it of such a high level of concern that I hoped they would be prepared to address it when I did. I, for one, would be reluctant to even ask New York stakeholders to sit on an advisory panel after we have come to a decision to not include certain matters in the scope of Amendment 15.

I think it would be insulting to ask them to do that. And it would be offensive to the intent of our advisory panel process. Now, I'm sorry that I had to bring this up at this time. And I'm a little unhappy about the strength of the language that I'm using.

But please write some of that off to my medical condition at the moment and the strengths and stresses of this morning. But I do feel strongly about the issue, Mr. Chairman, and I thought we needed to discuss it before we went any further. Thank you.

CHAIRMAN GIBSON: Thank you for bringing that up and, frankly, Gordon, I agree with you. I looked at what was left and some of the issues and saw that there were some that people would feel very strongly about that they were in there, particularly allocation issues between the sectors.

Yes, so I agree with you entirely and I'm looking for some guidance as to how this process can either be slowed or adjusted to get that sort of input and inclusionary process. But I want to hear what staff and/or the commission has to say about this. So, they're discussing it and I hope we will get a -- Pat Augustine while we're waiting for them.

MR. AUGUSTINE: Thank you, Mr. Chairman. I, like Gordon, was at the meeting, the Mid-Atlantic Council meeting, and almost fell off my chair and we eliminated the discussion or the inclusion of the Number 1 item which was summer flounder commercial/recreational allocation.

And my recollection is that was the primary reason we were putting together Amendment 15 to be included with all of the others that we felt to be pertinent. And as you may all recall the list got bigger and bigger and bigger so we wanted to make sure we didn't miss any issues at all.

And I would hope that when the board reviews the remaining items -- you may have already looked at the Mid-Atlantic Fishery Management Council's list of seven or eight items -- that we go back to the 16 that we originally were cut down to from 28 and go through a similar, I hope, leave in/take out exercise that we can then

go back and agree or disagree with the Mid-Atlantic at our December meeting.

So I guess my question would be whether or not Jessica and Toni or just Toni is going to work with the original spreadsheet that we used. We're going to work with the original spreadsheet that we used at the Mid-Atlantic whereby we identified those 16 items?

Mr. Chairman, when you are ready to go forward I have identified 10 items within the 16 that I would like to highlight that we focus on and others around the table may decide there are others included, to be included in that ten. Whenever you're ready, Mr. Chairman.

CHAIRMAN GIBSON: Thank you, Pat. I was going to give Bob an opportunity to respond to what both Gordon and I said relative to the process to this point.

MR. ROBERT E. BEAL: Well, sure. With respect to the advisory panels, we're in the process of revitalizing the Summer Flounder, Scup and Black Sea Bass Advisory Panel. In the past we haven't gotten a whole lot of participation when those groups have met.

So I guess the question is do we want to try to pull together what we have now or do we want to finish the revitalization process of those groups and then pull them together and comment on this?

The advisory panel members that we had up to this point, you know, did receive the public information document. I don't think we received any comment back from those folks, which is probably an indication of their effectiveness or interest in participating in the commission process. So, you know, I guess we just need some guidance as to which group you want comment from.

CHAIRMAN GIBSON: Jack Travelstead then Gordon.

MR. TRAVELSTEAD: Somewhat related to Gordon's concerns and I expressed these at the Mid-Atlantic Council meeting was the fact that the council was sitting there alone making decisions about what to include and what not to include in the amendment and then that being done this group would meet here today and make their own decisions.

And it seemed to me that we were headed at that point for a situation where you end up, again, with two different amendments with different items and different options. And I'm still concerned that that is going to happen.

You know I always thought this was a joint management plan and that we should meet together when we consider any issues relative to how we amend that plan. And I certainly agree with Gordon that we need to include our advisers in that.

But I'm still concerned that we are headed now in different directions and that we ought to arrange for a joint meeting again to work these things out.

CHAIRMAN GIBSON: Thank you, Jack. Gordon.

MR. COLVIN: I really appreciate Jack bringing that up because he has raised a very good point. And he raises it from an important perspective of the new chair of the Mid-Atlantic Council committee that will be handling this matter as it goes forward.

And I particularly appreciate the sentiments he expressed from that perspective. In response to what I've heard I would recommend that, frankly, we discontinue as a board discussion and decision-making on scoping for Amendment 15 today, we complete the process that we initiated with some sense of urgency to revitalize our advisory panel, convene that panel, get their advice on scoping matters, and then meet, as Jack has suggested, jointly with his committee, and come back with a set of revised scoping

decisions that reflect the advice of our advisory panel members and the joint deliberations of the two bodies. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Okay, I think that's very, very sound advice. Is there anyone else who wants to comment on that? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. My concern is that, not so much in the essence of time but in the process of reconstituting the advisory panels and getting them back in sync with where we are, we basically have wasted several hours, I guess three hours or three-and-a-half hours at the Mid-Atlantic scoping down to 9, 10, or 11 out of 28 to 16.

We're looking at I'm guessing a possible delay of maybe two or three months more in the process. I was also under the impression we were going to have a joint meeting in December at which time we, the council and board members, would review the remaining line items that we would go forward with.

Now, it seems to me that the staff, having sent out to all of our existing advisors and having received no comments -- I think he said, Bob said no comments, not one comment but no comments or responses from our advisory panel -- we're now talking about going out to those advisory panel members that are in existence, trying to identify new advisory members, get them onboard with the system process and/or where we are in the process of this amendment.

And I guess the bottom line is beyond hearing the gnashing of teeth and specific concerns that individual sectors concerns are relative to their economic well-being or whatever the case may be go through another period of reviewing what they've said, and at the end of the day we're going to come back here and I think, if I may be right in this, to be about where we are right now.

I agree with Gordon and the major issue up there that I've seen that needed to be put back into this

would be one. But in regards to reconstituting the advisory panel I agree 100 percent.

I don't know what it's going to take to get these folks excited or people excited about participating in the process but I know the LGA has brought that up and Tina is working very hard to commit people, to get people to commit to these advisory panels.

So I'm not sure that by delaying this process for a new group to review other than I understand the process is important and we have input from our stakeholders but we're at a point in time now where do we want to stop the whole process in order to go back and have another group review it? So that's my concern. My concern is that I would suggest we go forward.

CHAIRMAN GIBSON: Thank you. Gordon.

MR. COLVIN: I'm going to do what some other folks have done here the last two days and reflect back on Monday afternoon's meeting with the North Carolina Marine Fisheries Commission. And one of the many points that was made in that discussion is that how this commission works with industry advisers through advisory panels and tends to incorporate that kind of advice into our management plan, we need to do that in a meaningful way.

And as I indicated earlier, a meaningful way doesn't mean bringing them in after you've scoped stuff out. And, yes, it's true, we may be putting the brakes on something that will require the Mid-Atlantic Council to reconsider some things.

And I think, frankly, at this point that ought to be done for a couple of reasons, one of which is that we need to have a meaningful consultation with advisers. Now, I'm going to just refer to the gentleman to my left who hasn't completely agreed with me on this matter this morning and reflect back to his history as a chairman of the Joint Fluke Advisory Panel for the Mid-Atlantic Council and ASMFC at a time when we were

facing some similar difficulties and at a time when we had an effective advisory panel where the members came and met and tried to work things out and did a heck of a job at it.

Now, I think we can get back to that point. And I'm not going to say we get back to that point by putting Pat back in charge of them.

MR. AUGUSTINE: Yes, I'll do it. I'll take it.

MR. COLVIN: But there are other people out there who are willing to be active and involved advisory panel members. We've talked to them and I'm sure all of you have and I think it's time to get them involved.

CHAIRMAN GIBSON: Toni wants to say a few words here and then I'm going to see if there is a consensus from the board to follow a Gordon-suggested course of action.

MS. KERNS: I just want to ask that the board members who have not responded to, the administrative commissioners who have not responded to Tina's e-mail about the advisory panel to please do so as soon as possible.

Until I have responses from or until we have responses from everyone we cannot take the next step in reconstituting this advisory panel.

CHAIRMAN GIBSON: Okay, Gordon.

MR. COLVIN: Yes, just on that point because I ended up getting a little confused on this myself. I interpreted Tina's e-mail originally to mean that we were looking for advisory panel nominations and then I realized what she is really I think looking for is for us to come to a consensus on the overall configuration of three advisory panels.

And, accordingly, she got my advice on that subject unfortunately all too recently and not as long ago as it might have happened. But I think it would be beneficial for us to have some discussion of that, how we resolve that question.

What should these three advisory panels be comprised of?

CHAIRMAN GIBSON: Okay, thanks. Is there -- I'm looking for a consensus on Gordon's suggestion course of action which was to reconstitute these panels, presumably after we have that discussion as to how that ought to be done, what the structure ought to be, then engage in a meaningful and joint dialogue with the Mid-Atlantic Council on these issues that ought to be included in Amendment 15.

Is there any objection from the board in pursuing that course of action? There doesn't seem to be any. Okay, so I guess the next order of discussion is then what the structure of these panels ought to look like. Are we prepared to -- Pat.

MR. AUGUSTINE: We're actually talking about the restructuring of the advisory panels?

CHAIRMAN GIBSON: Well, I think Gordon asked for a discussion on that. That's what Tina solicited, what the panels ought to look like, what sectors ought to be represented and so on.

MR. AUGUSTINE: Well, I was chairman of the first industry advisory joint panel meeting. And it was heavily spiced with those folks most likely to be affected. We had excellent participation by the commercial sector.

We had excellent representation actually from the recreational. But the issues we were dealing with then, a lot of the focus was on the impact on the commercial side. I think it would be a great idea.

And Gordon kiddingly said I can't go back and do that but if I needed to sit in that meeting to be, help it along, I would be more than welcome, I would be more than happy to do that.

I think we're going to have to reach out to processors, reach out to partyboat/charter boat people. There will be only usually a small

group, one or two, that will represent the recreational sector, not that they're not wanted but they just don't seem to, more than one or two want to participate. They represent a larger group.

It would be I think essential that we identify them as quick as possible, that we point up, head up two chairman or three chairman or one chairman. If we're going to have one collective panel I think it should include all three species of fish.

And the staff that we have would be both from the Mid-Atlantic and our Board so that it would be Jessica/Toni sitting in on staff. And I think it would work extremely well. But I would suggest we move on it quickly. Thank you.

CHAIRMAN GIBSON: Thank you, Pat. Toni has a thought as to how we come to closure quickly on the advisory panel structure.

MS. KERNS: I just spoke with Tina and we have a fairly good idea of what the states want the representation to look like. And as soon as we get that information from the last couple of states then we can quickly turn around and give an e-mail back to the board letting you know what you've indicated to us.

And I thought maybe it would be helpful if we could just have a small group of maybe two or three commissioners that could work with Tina and I to finalize numbers to be presented to the whole board in terms of the number of participants per species. And so maybe I'm looking for some volunteers to do so.

CHAIRMAN GIBSON: Gordon, do you want to speak to that before we solicit volunteers?

MR. COLVIN: Sure. I just think it's, obviously it's essential that we work with Jack Travelstead and Pete Jensen on that as well. And I'd be happy had to volunteer.

CHAIRMAN GIBSON: How many do you want? Jack and Gordon, and Pat. You have your volunteers. Great. What else do we need to accomplish Amendment 15? A.C.

MR. A.C. CARPENTER: Tina, can you give us a list of the states that have to reply?

MS. TINA BERGER: This is going by memory. I think Howard King I still need to hear from you. I've got New Jersey. Delaware I need to hear from, Massachusetts and I'm not sure I heard from North Carolina, either. No, I heard from Red. Red got back to me on that so, Maryland, Delaware, Massachusetts.

CHAIRMAN GIBSON: Thank you. Anything else? Is that to the panel structure, Dave, or are we moving?

DR. PIERCE: Well, Mr. Chairman, I just remind you we're 45 minutes over our deadline. I'm chair of the Tautog Board. We're scheduled for --

CHAIRMAN GIBSON: 10:45.

DR. PIERCE: Well, yes, we have the David Hart luncheon so I'm now at 45 minutes for my board meeting and I cannot move my board meeting to any other time so please be aware of that as you move forward with the rest of this meeting.

CHAIRMAN GIBSON: Thank you. Someone had a hand up down there. Roy Miller.

MR. MILLER: Thank you, very quickly, Mr. Chairman. Is there any guidance on how many members per state for each of those three committees?

CHAIRMAN GIBSON: Not at this time. I think what was solicited was the sectors that wanted or needed to be represented. I expect that this working group that has been developed is going to -- I think all you're asking to do now

is to identify the sectors that need to be represented on these panels.

MS. KERNS: Roy, we're just looking for how you're weighting, what kind of sectors you want. And then once we have that idea then we will determine the number of advisers per state as well as for the entire group.

CHAIRMAN GIBSON: Thank you. Amendment 15, are we done with that? Pat Augustine.

MR. AUGUSTINE: Then according to Gordon's suggestion we're going to move this off until, any further comment or conversation or discussion on this until our either December meeting or until after the advisory panel is reconstituted?

CHAIRMAN GIBSON: Yes.

MR. AUGUSTINE: Okay. Thank you.

#### **FMP Reviews**

CHAIRMAN GIBSON: I think staff has clear guidance as to how the board wants to proceed and will lay out the strategy and schedule to do that. We're not going to do FMP reviews. Yes, okay, Toni has a quick update on the situation with the black sea bass specifications.

#### **Black Sea Bass and Scup Specifications**

MS. KERNS: As Pat indicated earlier today, the specifications through the proposed rule that was filed yesterday for black sea bass was 5 million pounds. The board adopted along with the Mid-Atlantic Fishery Management Council a TAL of 6.5 million pounds.

And then for scup on the next slide we have, the service but in the proposed rule that was filed had a 12 million pound TAL. And the Mid-Atlantic Council and the commission had set a TAL of 16 million pounds. So we will have discrepancies between those two fisheries as well. And if the board wishes to take any action on this I need to know.

CHAIRMAN GIBSON: I mean we don't have time today to get all wrapped up around the axle on this. I guess the question to the board is do they want to address these discrepancies at some future time? Gordon Colvin.

MR. COLVIN: You know here again we have the press of time. We have the fact that this is new information and we have the fact that it is a proposed rule and not a final rule.

It seems to me that it would be appropriate for the board to submit comments for the record on the proposed rule affirming its and offering such justification as is appropriate from the context of the record of its deliberations on its action back in August and requesting the service to adopt our recommended TAL of 16.0 million pounds, and the same thing for black sea bass and then take up the matter at our next meeting in December.

CHAIRMAN GIBSON: Any objections from the board on that course of action? Does the staff have any questions or comments on that? Bob Beal.

MR. BEAL: Just to make sure we all or I know what we're asking, Gordon, you're suggesting that during the or at the Mid-Atlantic Council meeting in New York we set aside some or request setting aside some board-specific time to address both these issues or consider addressing them?

MR. COLVIN: I think as a practical matter that's when we have to do it. But in the meantime I do think we should state for the record that we stand by our recommendation and why.

CHAIRMAN GIBSON: Vince.

EXECUTIVE DIRECTOR O'SHEA: And the other question would be the letter would come from the chairman of the board, Mr. Chairman?

CHAIRMAN GIBSON: I'd be happy to do that with assistance from staff.

MS. KERNS: Sure.

CHAIRMAN GIBSON: Thank you. That takes care of -- are you all set, Toni, on the specification issue? Was there any other business to come before the board? Gordon Colvin.

### **Other Business**

MR. COLVIN: Yes, I wanted to, this discussion on scup and sea bass brings me, my mind back to the notion that we've acted today to set a final fluke TAL that's above that which the service has published as the proposed TAL.

And kind of towards the end of the debate Pat fairly quickly referred to some prospective impact of our decision on the final federal TAL.

And I thought that before we all went home today we ought to return to that issue briefly because it is such a weighty issue and just make sure that a record of our deliberations is clear with respect to the possible impact on the federal decision making.

And I wanted to ask Pat if she could elaborate on the comments she made earlier and perhaps be more specific about how the federal decision making might be actually modified by the action the board took.

CHAIRMAN GIBSON: I'm mindful of my colleague from Massachusetts and his need so we have to wrap this up as quickly as we can. Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I'm not sure that we're going to have enough time to deal with tautog before lunch anyway so, I mean, we can't move lunch at all so I would suggest that you try to deal with this issue.

CHAIRMAN GIBSON: Okay. Thank you. Pat, can you respond then I'll go to Dave.

MS. KURKUL: Yes, what I'd said earlier was that if the board adopted the 19.9 then we were left in a difficult situation because we still need to achieve F rebuild and clearly 12.98 if we set the TAL at 12.98, the commission sets it at 19.9, we're not going to achieve F rebuild for 2007.

And so that leaves us in the position of looking again at the 12.98 and considering whether or not, and I think it's very likely that we would have to reduce the 12.98 in an effort to take federal action that would still allow for achieving the F rebuild which is our obligation.

So, although we've put out the proposed rule at the 12.98, given the board's action we would have to reconsider that number in the final rule. It would likely be much lower than the 12.98 which, as I said, makes the situation much worse in terms of the commercial/recreational inequities that are created.

CHAIRMAN GIBSON: Thank you, Pat. Dave, you wanted to speak I think to your needs and you may have a difference of opinion than Vince.

DR. PIERCE: I cannot be here this afternoon so it's either tautog now or the vice chair will have to take it over later on this afternoon if it can be rescheduled for this afternoon.

CHAIRMAN GIBSON: Thank you. Any thoughts or response to Pat's comments? I think it was -- we knew what we asked for and we got it. Gordon.

MR. COLVIN: I wonder if Pat could be more specific about the magnitude of the perspective effect.

MS. KURKUL: I couldn't. I mean I would be guessing. But the fact is that the board set the TAL at over 9 million pounds -- is that right? --

over 9 million, 7 million pounds more than what we think is appropriate to achieve the F rebuild.

And so I couldn't tell you exactly what the number is that might be necessary to achieve an F rebuild given the 19.9 set by the commission, rather, because I think we would have to make some assumptions about what would happen between the recreational and the commercial sector. But my initial reaction is I think it would be fairly significant.

MR. COLVIN: If I may, Mr. Chairman.

CHAIRMAN GIBSON: Yes, Gordon.

MR. COLVIN: Is worse-case essentially, Pat, that you subtract the difference from 12.98 and we end up with a worse-case of around 6?

MS. KURKUL: I'm not even sure that's worse-case.

MR. COLVIN: Thank you. Mr. Chairman, New York voted earlier today on the prevailing side of the motion to adopt the 19.9 TAL in which case I believe it makes it in order for New York to be able to offer a motion to reconsider.

And I'm not quite sure, because we're in the parliamentary woods here a little bit and forgive me if I err procedurally but I think that perhaps in light of the prospective significance of the regional administrator's worst-case scenario assessment and the gravity that it poses with respect to the positions that I heard some other states and board members take today that it wouldn't warrant reconsideration or a few moments to at least take up whether or not we should reconsider that earlier action.

So, with that in mind if it's in order **I would move to reconsider the board's action on the motion to adopt the 19.9 million pound TAL.**

CHAIRMAN GIBSON: Is there a second to that? Preston Pate. And I believe that motion to reconsider is in order. I just want to know what



would be the majority requirement for that to pass? It's a simple majority in this case? Okay, thank you. I was advised by the -- which is it?

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, this would be a motion to reconsider within the context of the same meeting and it would be a simple majority.

CHAIRMAN GIBSON: Thank you. So it's a simple majority to move to reconsider. As I understand it we don't have discussion on motions to reconsider? Does everyone understand what we're doing here? New York has moved to reconsider. It has been seconded. Does the board need time to caucus on the motion? I would suspect you do.

MR. PATE: Yes, I wasn't thinking that the opportunity to second.

CHAIRMAN GIBSON: I think you were on the opposition side so --

MR. PATE: But apparently --

MR. SMITH: I believe, Mr. Chairman, Robert's Rules requires the mover to be on the prevailing side but the seconder does not have to be. Vince may know better than I do.

MR. PATE: That's what I thought.

CHAIRMAN GIBSON: We're looking at that right now.

MR. PATE: If that's a problem, I will withdraw my second and deal with it some other way.

CHAIRMAN GIBSON: We're going to take a five-minute break here. The chair is running into biological problems and we need to review Roberts' Rules.

(Whereupon, a brief recess was taken at 11:35 o'clock, a.m.; the meeting reconvened at 11:38 o'clock, a.m.)

CHAIRMAN GIBSON: Okay, could the Board please reconvene. Reconvene. After consultation it seems that the seconder is fine so we have a motion to reconsider. It has been seconded. I don't think we need a lot of discussion on this motion. If it is approved there will be discussion when the motion comes back.

Are the states ready to vote on this? All those in favor of the motion to reconsider; any opposed; abstentions; null votes. The motion to reconsider passes. Okay, so bring that motion back to the table. Gordon Colvin.

MR. COLVIN: Mr. Chairman, I move to amend the motion to substitute 12.98 for 19.9.

CHAIRMAN GIBSON: Is there a second to the substituting? Roy Miller, seconding? Thank you. Discussion on the motion to substitute the 12.98 million for the 19.9 from our previous action. David Pierce.

DR. PIERCE: Well, again, we're going to return to some old discussion but I guess we have to since the motion is back on the board. The 12.98 represents the so-called 75 percent probability.

I have very little faith, by the way, in those calculations of probability. Nevertheless, they're given to us and we're obliged to use them or at least to consider them, not necessarily to use them.

We're already slashing the TAL from 23 million pounds, actually it went from 30 down to 23 and they bring it down to 12.98 I think as a group of states we just indicate to the industry that we indeed are not that concerned about their impact in terms of socio and economic impact.

If there is another alternative to select, the 50 percent probability, which of course we can use and we have used, then why not go with that since it's higher than the 12.98? Again, this is a proposed rule that Pat has put out.

And I just don't like -- well, I cannot support this particular option that would bring it down even lower and create even more social/economic impact. You know, the human in the equation is being completely removed. And I just think this is just, it's inappropriate.

CHAIRMAN GIBSON: Thank you. Roy Miller.

MR. MILLER: I withdraw my second.

CHAIRMAN GIBSON: It's been determined that Preston Pate was proper -- oh, I'm sorry. You're withdrawing your second for this motion.

MS. KURKUL: Second.

MR. PATE: Mr. Chairman, I will second it.

CHAIRMAN GIBSON: Okay, that's all I need is an alternative second. I think Pat Kurkul seconded it first. Tom McCloy.

MR. MCCLOY: I guess I need an education in parliamentary procedure, Mr. Chairman, so I hope you will indulge me. It is my impression that this essentially original, this motion was one of the original motions that was defeated previously today. and we can get back this original motion by reconsidering the existing motion? Is that correct?

CHAIRMAN GIBSON: Yes, that's what we've done.

MR. MCCLOY: Okay, Thank you.

CHAIRMAN GIBSON: Okay, a renewed second. Dave Pierce.

DR. PIERCE: If this passes I assume that the board is going to take the time to go to scup and to black sea bass and to adopt the proposed rule by the National Marine Fisheries Service because I see very little difference.

There is, as noted, the stock difference between what this commission has decided to adopt for scup and for black sea bass. It would seem incongruous for us to keep with those different values if we go to this low a number.

If the continue on the path that we have -- well, it's up for discussion now. If we go in a different direction from the National Marine Fisheries Service, we would then be consistent with the other two species.

Frankly, that will just lead to some more debate down the road, not too far down the road, regarding whose decision is the wisest. And from ASMFC's perspective, my perspective, specifically, I think the ASMFC position is wisest, certainly on scup and black sea bass. Fluke, of course we're still debating that.

CHAIRMAN GIBSON: It's my understanding the scup/sea bass issue, we're done with that for today. That's going to be taken up at the next meeting. I had Preston Pate and then Bill Adler.

MR. PATE: Thank you, Mr. Chairman, and I appreciate the board's indulgence for reconsideration of this motion. I was in favor of it because I did not think that from the earlier discussion on the original motions that the board had a full appreciation of the implications that the differing quotas may from the perspective of the next step the National Marine Fisheries Service would have to take in adjusting the 2007 TAL response to a higher quota than the one that they had already set.

And I hope that no one interprets the arguments that I've made against the previous motions or in favor of this motion in any way to indicate my lack of concern about the health of the industry.

I think it's just to the contrary. I think that we have to be considerate of their needs but also be considerate of the reality of the situation and not the wisdom of the commission and not versus the wisdom of the National Marine Fisheries Service.

We're in an unfortunate situation where the service is being guided by some very strong legal principles that puts their TAL in a very prominent position in this argument. And I appreciate that and I accept it as a matter of reality.

I don't think it's right but that's the hand that we've been dealt today and that's the hand that I'm willing to play. And to avoid the conflict that exists with a higher quota and one with potentially devastating consequences to the industry in North Carolina we need to adopt this motion. And I'm glad we have the opportunity to bring it back up. Thank you.

CHAIRMAN GIBSON: Thank you, Pres. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. We're back again where we were at 8:00 o'clock this morning. It would have been easier just to adopt the National Marine Fisheries Service quota and be done with it rather than waste my time. Is a motion to table this motion in order?

CHAIRMAN GIBSON: I'm sorry, we voted to reconsider in the affirmative. We have a motion to amend the motion that was brought back for reconsideration. If you table the amendment then we're left with the original motion? Vince, could you speak to that.

EXECUTIVE DIRECTOR O'SHEA: Well, Mr. Chairman, you know it's your rule but I mean it's your ruling here but you know you have a motion before you and I think there's good reason to deal with the motion, vote it up or vote it down.

MR. ADLER: But, Mr. Chairman, can the motion to amend to substitute the 12.98 million which is the motion that we're discussing, can that particular motion be tabled?

CHAIRMAN GIBSON: I would say no. I think we have to deal with this motion to amend given

the move to reconsider it. Any other comments on the motion to amend? We've had extensive board discussion.

We've had extensive public comment but given the magnitude of the issue I'm going to go to two, a couple of comments from the audience. First I would ask, is there anybody who hasn't spoken yet on this and would like to speak?

It's very clear where the public stands on 19.9. There is only lukewarm support for that. There hasn't been any support for numbers lower than this. Is there someone who hasn't spoken yet on this issue who would like to speak? Okay, I'll go to I think Tom Fote.

MR. FOTE: Tom Fote, Jersey Coast Anglers Association. I'm all confused of parliamentary procedure. I always thought, I've been told previously that we couldn't second motions and you've made rulings on this or you couldn't revisit without a two-thirds --

CHAIRMAN GIBSON: Tom, you need to speak to this motion not what I've decided at this point.

MR. FOTE: Right. But understand I thought the commission actually showed some guts for a change and basically said they were not going to be the followers. We come here to the commission because we expect that the commission could be the leaders in what goes on with fisheries.

Because you're locked into a joint plan you've been following the tail of the dog for the last couple of years and the consequences have been really decimating on the recreational and commercial sector.

And we wanted a new target. We asked for a new target. We asked for a realistic target to be done. And that wasn't accomplished. To now revisit and basically put us in this situation because if you go forward with a 12.98 million pounds that is what the quota is going to be this

next year because it doesn't force the Secretary of Commerce to actually do an outside peer review to look at what the real target should be and what, you know, revisit it.

You've already, you basically have bailed out the National Marine Fisheries Service because you basically rubber stamped this so they don't have to take any heat. It's the commission that will take the heat because you've made it a, you actually voted on what the quota should be before their proposed rule is actually finalized.

You could always revisit this in December or you could revisit this in January to basically change it at that point time. There was no sense of revisiting now. You basically stood your ground the same way the Council stood their ground and made a decision to say this is wrong and that's what we expect from you as the commission, to look independently and basically realize the socioeconomic impacts of this.

I understand that Pat Kurkul has the option of basically reducing this quota to 7 million pounds. I don't think that will happen the same way I didn't think 5 million pounds would basically stay in place.

But we're playing, we're pawns in a game here. And, boy, there is a lot of people's livelihoods at stake, both the commercial and recreational, with the game you're playing. And we're really tired of it. And also the compliance issue on this thing is going to be out of sight.

All of us are going to take a hit no matter what quota you basically come because we're not going for status quo. It's just how much pain do you want to suffer, more and more and more. Or how much are you really, do you really want totally out of business?

And this 13 million pounds will put a lot of boats and a lot of the tackle stores and a lot of freezers and I think a lot of commercial fishermen out of business. Thank you for your patience.

CHAIRMAN GIBSON: Thank you, tom. Phil, you're going to have the last comment from the public before I go to the board for this action.

MR. KERSIO: Phil Kersio, United Boatmen, Recreational Fishing Alliance, New York Fishing Tackle Trade Association. Before I asked you to vote your conscience on this thing. Obviously, we are adamantly opposed to the motion on the floor right now. And I once again implore you to vote your conscience.

Think about the people's livelihoods that are at stake here. You know I was very impressed to see the vote as it stood before and very disappointed to see where this motion originated. Thank you very much.

CHAIRMAN GIBSON: Thank you, Phil. For the board, do we need any further discussion here? Everett Petronio.

MR. PETRONIO: Just, I just wanted to ask for a roll call vote and then I think you should call the question.

CHAIRMAN GIBSON: You would like a roll call vote on the amended motion. Does the board need to caucus? Is the board ready? Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I think, just to be clear, you're voting to, on the motion to amend, to substitute 12.98 million.

CHAIRMAN GIBSON: Yes, the motion is the amendment to the motion that we brought back via the vote to reconsider and to substitute 12.98 for 19.9 million. Very good. Toni, could you please call the roll.

MS. KERNS: The commonwealth of Massachusetts.

MASSACHUSETTS: No.

MS. KERNS: The state of Rhode Island.

RHODE ISLAND: No.

MS. KERNS: The state of Connecticut.

CONNECTICUT: Null.

MS. KERNS: The state of New York.

NEW YORK: No.

MS. KERNS: The state of New Jersey.

NEW JERSEY: New Jersey votes no.

MS. KERNS: The state of Delaware.

DELAWARE: Yes.

MS. KERNS: The state of Maryland.

MARYLAND: No.

MS. KERNS: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Abstain.

MS. KERNS: The Commonwealth of Virginia.

VIRGINIA: Virginia votes aye.

MS. KERNS: The state of North Carolina.

NORTH CAROLINA: Yes.

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

U.S. FISH AND WILDLIFE SERVICE: Yes.

MS. KERNS: The National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN GIBSON: The motion fails via a tie. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I would like to use the same motion however substitute the 12.98 to 14.156 for 2007.

CHAIRMAN GIBSON: Just so it's clear that amendment failed via a tie vote. Now we have the original motion on the table again via reconsideration. And you're going to move to amend that with the 14.156 number.

MR. AUGUSTINE: Yes, Mr. Chairman.

CHAIRMAN GIBSON: Thank you. Is there a second to that motion? Eric Smith. Vince. Yes, a few moments for the board to caucus and then we're going to call the question on this one. This will be another roll call vote. Is the board ready? Toni, could you please call the roll again on this amendment.

MS. KERNS: The commonwealth of Massachusetts.

MASSACHUSETTS: No.

MS. KERNS: Rhode Island.

RHODE ISLAND: No.

MS. KERNS: Connecticut.

CONNECTICUT: Null.

MS. KERNS: New York.

NEW YORK: Lots of guts. Yes.

MS. KERNS: New Jersey.

NEW JERSEY: No.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland.

MARYLAND: No.

MS. KERNS: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. KERNS: Virginia.

VIRGINIA: Aye.

MS. KERNS: North Carolina.

NORTH CAROLINA: No.

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

U.S. FISH AND WILDLIFE SERVICE: Yes.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN GIBSON: That motion fails via a tie. Bill Adler.

MR. ADLER: Can I make a motion to adjourn? It has been seconded.

CHAIRMAN GIBSON: Both amendment attempts have failed. The main motion is back here again and we have to take that up. So we have the original motion that was brought back via reconsideration. Eric.

MR. SMITH: I'm not sure I heard your question.

CHAIRMAN GIBSON: It wasn't a question. It's my understanding that we have both attempts to amend the original motion brought back via reconsideration have failed so we have a motion before us for reconsideration.

It has to be dealt with. Okay, so we're going to vote on the original motion that has been brought back for us for reconsideration which contains the 19.9 million. And I have been asked for a roll call vote.

MS. KERNS: The commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Null.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: Yes.

MS. KERNS: Delaware.

DELAWARE: No.

MS. KERNS: Maryland.

MARYLAND: Yes.

MS. KERNS: The Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: No.

MS. KERNS: Virginia.

VIRGINIA: No.

MS. KERNS: North Carolina.

NORTH CAROLINA: No.

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

U.S. FISH AND WILDLIFE SERVICE: No.

MS. KERNS: The National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: No.

CHAIRMAN GIBSON: The motion fails so that we have no motion, no action at this point. Mr. Colvin.

MR. COLVIN: I don't have a constructive suggestion to offer at this point, Mr. Chairman, but it's evident that the underlying sentiment of this board is that the status of the resource and the status of the fishery demands that we find a way to get to a TAL of somewhere around 20 million pounds or more next year.

That's the intent of the board's, no matter what the process is and the legal impediments it seems to me, at least to this commissioner, that that's where we're coming from. Now, I have to bring up the notion that the only way I see to get us there -- and it's time we started talking seriously about this and not just for fluke but for scup and sea bass -- is to begin to think about disconnecting this management program from the Magnuson-Stevens Act and managing it under ACFCMA.

Now, we've hinted around at this for years but I think now it's time to put it out there front and center and began to debate it.

CHAIRMAN GIBSON: Thank you. Toni, did you want to? No. Other board thoughts? So we have no TAL set for summer flounder at this time. That's where we're going to end up today. We have a lunch to go to. Seeing nothing else from the board Toni has some final comments.

MS. KERNS: I just wanted to acknowledge that this is Mark's last meeting as chair and I wanted to thank him for all of his hard work. He has been great to work with and I am looking forward to Jack's chairmanship.

CHAIRMAN GIBSON: Dave Pierce.

DR. PIERCE: Yes, Mr. Chairman, tautog I assume will be rescheduled for sometime this afternoon. Vince will work on that and the chair will be Pat Augustine.

CHAIRMAN GIBSON: That's my understanding.

DR. PIERCE: Serving on my behalf.

CHAIRMAN GIBSON: Thank you. Any other business to come before this board? Vince O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Yes, Mr. Chairman, in response to that, tautog will start immediately after the luncheon. And we think that we will be able to make up time through the afternoon. So our intent is to keep the sequence as published in the schedule. So we'll do tautog, menhaden, and then weakfish this afternoon. Thank you, Mr. Chairman.

CHAIRMAN GIBSON: Is there any other business? Seeing none we stand adjourned. Thank you.

(Whereupon, the meeting adjourned at 12:00 o'clock p.m. on Wednesday, October 25, 2006.)

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