

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

The Langham Hotel
Boston, Massachusetts
November 8, 2011
Approve February 2012

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1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of March 24, 2011 by consent** (Page 1).
3. **Move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend that the ISFMP Policy Board determine the appropriate response to the actions taken by Rhode Island, Connecticut and New York for their scup recreational fisheries. This recommendation is based on the plan review team's finding that Rhode Island, Connecticut and New York have implemented regulations that are not consistent with the FMP. The plan review team has also stated that regulations are not likely to result in the recreational harvest limit or the overall scup total allowable landings to be exceeded. There are no provisions in the FMP or Charter authorizing states or groups of states to unilaterally liberalize their regulations or transfer quota between commercial and recreational sectors. This action taken by these three states has implications that extend beyond scup management and should be addressed by the policy board** (Page 4). Motion by Jack Travelstead; second by Louis Daniel. Motion carried (Page 10).
4. **Motion to adjourn by consent** (Page 10).

ATTENDANCE

Board Members

Paul Diodati, MA (AA)	John Clark, DE, proxy for D. Saveikis (AA)
David Pierce, MA Administrative Proxy	Roy Miller, DE (GA)
William Adler, MA (GA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Rep. Sarah Peake, MA (LA)	Tom O'Connell, MD (AA)
William McElroy, RI (GA)	Bill Goldsborough, MD (GA)
Robert Ballou, RI (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Rick Bellavance, RI, proxy for Rep. Martin (LA)	Steve Bowman, VA (AA)
David Simpson, CT (AA)	Jack Travelstead, VA, Administrative Proxy
Lance Stewart, CT (GA)	Catherine Davenport, VA (GA)
Rep. Craig Miner, CT (LA)	Jimmy Kellum, VA, proxy for Sen. Stuart (LA)
James Gilmore, NY (AA)	Louis Daniel, NC (AA)
Pat Augustine, NY (GA)	Bill Cole, NC (GA)
Byron Young, NY, proxy for Sen. Johnson (LA)	Mike Johnson, NC, proxy for Sen. Wainwright (LA)
Peter Himchak, NJ, proxy for D. Chanda (AC)	Bob Ross, NMFS
Thomas Fote, NJ (GA)	A.C. Carpenter, PRFC
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Jaime Geiger, USFWS

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

Ex-Officio Members

Staff

Robert Beal	Kate Taylor
Vince O'Shea	Geoff White
Laura Leach	Danielle Brzezinski
Tina Berger	Chris Vonderweidt
Toni Kerns	

Guests

Cherie Patterson, NH F&G	Russ Allen, NJ DFW
Peter Burns, NMFS	Chip Lynch, NOAA
Doug Grout, NH F&G	Mike Ruccio NOAA
Aaron Podey, FL FWC	Paul Caruso, MA DMF
Dennis Fleming, PRFC	Jeff Tinsman, DE DFW
Alison Fairbrother, Public Trust Project, DC	Robert Boyles, SC DNR
Raymond Kane, CHOIR	Jessica Coakley, MD FMC
Mark Alexander, CT DEP	Michelle Duval, NC DMF
Chris Moore, CBF	Candy Thomson, Baltimore Sun
Joe Grist, VMRC	Bob Bowes, PRFC
Nichola Meserve, MA DMF	Jennifer Stritzel-Thomson, MA DMF
Kyle Schick, PRFC	Tom Houdel, MA DMF

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Wilson Ballroom of the Langham Hotel, Boston, Massachusetts, November 8, 2011, and was called to order at 11:10 o'clock a.m. by Mr. Robert E. Beal.

CALL TO ORDER

MR. ROBERT E. BEAL: Let's go ahead and get started with the Summer Flounder Board. This is going to be a very quick meeting for I think an important issue.

APPROVAL OF AGENDA

MR. ROBERT E. BEAL: The first item on the agenda is approval of the agenda. It's pretty straightforward. Any objections to approving the agenda that was distributed in the briefing materials?

APPROVAL OF PROCEEDINGS

MR. ROBERT E. BEAL: Seeing none, the next item is approval of the proceedings from March 2011. Any objections or corrections to the approval of the minutes from March 2011? Seeing none, we'll move on.

PUBLIC COMMENT

MR. ROBERT E. BEAL: We're at the public comment portion of the meeting. Is there any public comment on items that are not on the agenda? Seeing none, we'll move on. The first presentation is the plan review team report on the 2011 Scup Recreational Fishery, and I'll ask Toni Kerns to do that.

PLAN REVIEW TEAM REPORT ON THE 2011 SCUP RECREATIONAL FISHERY

I should have mentioned this at the outset. David Simpson is the chairman of this board and David Pierce is the vice-chair of the board. They both asked that I staff this meeting and chair the meeting given that they wanted to participate in the discussions at the board level. That's the reason I'm chairing and they're in their regular seats and participating in the discussion. I just wanted to get that on the record. Toni.

MS. TONI KERNS: The 2011 scup recreational regulations were approved in December at the joint meeting in 2010. For the states of New York through Massachusetts we had status quo measures that are

consistent with the regional approach that we have taken for the scup recreational fishery.

In September Connecticut requested an emergency conference call to extend the 2011 scup recreational seasons based on projections that neither the recreational harvest limit nor the commercial quota would be reached in 2011. The commission leadership deemed that the request was not an emergency action and therefore no call was held.

In late September the states of Connecticut, Rhode Island and New York extended their 2011 scup recreational season beyond the approved dates. The plan review team for scup was tasked with reviewing the actions of Connecticut, New York and Rhode Island, describing any impact the regulations may have had on the conservation of the fishery and reviewed the information provided by Connecticut and any other information on a year to date and projected harvest data.

Looking at the consistency of the regulations that were put in place and whether or not they're consistent with the fishery management plan, the plan review team found that the regulations are not consistent with the board-approved measures. The approved closure dates for the three states for the private mode was on September 27th and for the for-hire mode on October 12th.

The new measures implemented by the three states for both of their for-hire and private mode, their fisheries would close on December 31st. That is not being consistent with those approved by the board. The three states provided several reasons for justification on why they extended their recreational season, and one of those was that the commercial quota would not be fully utilized.

The fishery management plan for scup does not allow for the transfer of quota from one sector to the other, so therefore the PRT deemed that this was also not consistent with the regulations in the FMP for the justification of why the season was extended. In looking at the recreational data, the plan review team had data that was available from the Marine Recreational Survey in Waves 1 through 4.

The team projected the harvest for Waves 5 and 6 and found that it's not likely that the recreational harvest limit would be exceeded in 2011. Using the projected numbers, we found that it's likely there would be an underage of 2.5 million pounds for the recreational harvest limit in 2011.

In reviewing the commercial data, the PRT first looked at the summer period harvest. They concluded that it was not likely that the summer period quota would be reached. The plan review team memo has a different set of numbers, but I looked at the quota monitoring report to have them as up-to-date information, and we have harvest for the summer period through October 29th as of today on the quota monitoring report in the NMFS website.

It's estimated that there will be a 1.6 million pound underage for the summer period quota for the scup fishery. Looking at the Winter 1 Fishery, the Winter 1 underage this year was 3.36 million pounds. This underage is rolled over into the Winter 2 quota as is listed in the FMP. The new Winter 2 quota is now listed at 6.6 million pounds; and because there was that rollover, the trip limit gets increased and that new trip limit is 8,000 pounds.

We did not have any models available to us at the time of the PRT review to predict fleet behavior patterns, so the PRT did not project the Winter 2 harvest. We did not feel we would be able to give the board an accurate projection of what we thought the Winter 2 harvest would be. Recent years' trip limits have been significantly lower than 8,000 pounds with the exception of 2005 where the trip limit was 6,500 pounds.

Because we cannot reasonably project the Winter 2 harvest, there cannot be a projection of the total commercial harvest for 2011, but the PRT has concluded that it would not be likely that the full commercial quota would be utilized and that management triggers that are already in the FMP would prevent any gross overages if any were to occur.

It's likely that underage for the commercial quota will be at least a minimum of 1.6 million pounds, which is based off of the underage that we're already seeing from the summer period. The PRT also concluded that the current scup market dynamics would likely prevent any gross overage of the commercial TAL. In 2011 we had a significant increase in the TAL and we have seen a lag in market development because of that large increase.

The Winter 2 Fishery the harvest is often dependent on the price per pound; so any significant increases in the trip limit will likely impact the price per pound and would likely affect the landings' patterns. In conclusion, the PRT found that the TAL would not likely be exceeded. The scup is considered rebuilt at the time of the PRT review.

If the TAL is not exceeded, then the stock status would not be appreciably changed from those previously projected relative to the biological reference points. The regulations put in place by Connecticut, New York and Rhode Island are not consistent with those approved by the board.

MR. BEAL: Thanks, Toni. Any questions on the plan review team report?

DR. JAIME GEIGER: Mr. Chairman, help me understand, if I can, the ability to approve an emergency call. Are those procedures well laid out in the ISFMP Charter?

MR. BEAL: The procedures are included in the commission's rules and regulations on how calls are granted or not granted, and, frankly, when board meetings are called to order. I think that agenda item is going to be on the executive committee meeting tomorrow morning since that is an issue that's bigger than summer flounder, scup and black sea bass. It goes across all the species that the commission manages.

DR. GEIGER: Mr. Chairman, I appreciate that, but again if it indeed comes before the executive committee, you know, again, as a member of the Fish and Wildlife Service on this particular management board as well as on the policy board, I am not part of the executive committee. Again, I would hope that in the policy board discussion, if this issue does come up, that we have a little more transparency and a little more understanding about what comes out and what about these rules and processes that are clearly laid out so everybody understands what the rules are and how these calls can be initiated, how they can be approved or is it by best professional judgment or whatever. Thank you, Mr. Chairman.

MR. PETER HIMCHAK: I had a question on the underage of the commercial quota. You had the Winter 1 period, which is coastwide, and then you have the summer period – the summer quotas. They were not exceeded either as a totality or just for the affected states of Connecticut, New York and Rhode Island because I thought typically they did reach their summer state-specific quotas. I'm trying to figure out which underage occurred. Could you qualify that a little bit, and then I have a further comment on the Winter 2 period.

MS. KERNS: The Winter 1 period is a coast-wide period for the quota, and that was not exceeded and we did have an underage of 3.6 million pounds, but that is rolled over into the Winter 2 period. The

summer period quota, in the past we have come very close to reaching it. The commission divides that quota into state shares, but as a totality it was not achieved, and the underage as estimated from the most recent quota monitoring report is 1.6 million pounds at this time. There are usually late landings, et cetera, that might come in later.

MR. BEAL: Pete, you said you had a followup?

MR. HIMCHAK: Yes, I did. The states that increased their recreational seasons; did they exceed their summer scup commercial allocations?

MS. KERNS: Not at the time of the review. I haven't looked at individual states this morning when I looked at the quota monitoring report, but it's not likely that they did. In the plan that we have for scup if there is not a coast-wide overage, no individual state has to pay back any quota from any summer period individual state overage because we didn't reach the entire coast-wide quota.

MR. HIMCHAK: Yes, I realize that but the summer quota – New Jersey, we don't harvest anything so it is just thrown into a pool to cover any other states so that doesn't seem problematic to me. But the Winter 2 now, just to give everybody an appraisal of what happened at the Mid-Atlantic Council meeting in August for the Winter 1 scup commercial fishery we did increase or we voted to recommend an increase to 50,000 pounds with no limit on the number of days of harvest during the season.

That was something that industry was pushing because of the development of new markets. Again, I don't think – and, boy, they're all over in China right now. You try calling the docks in New Jersey, they're all in China. I mean, the pattern of underage, I just wanted to point that out that Winter 2 is not really a big fishery for us; but given the current system of exploring new markets, what is rolled over from Winter 1 may be significant to them. That's all.

MR. BEAL: Tom Fote and then Louis Daniel. Try to focus on questions of the PRT and then we'll get into the discussion of where the board wants to go next.

MR. THOMAS FOTE: I was just trying to figure out – so we're going to talk about what went on and the rules and the guidelines at the executive committee but not at the policy board?

MR. BEAL: Well, what comes out of this board and is forwarded to the policy board I think is something

that clearly this group needs to discuss, so that's unclear. Louis.

DR. LOUIS DANIEL: I'll wait; I didn't have a question. I've got a bigger question.

MR. BEAL: Fair enough. Any other questions of the PRT report? Seeing none, I think where we are is we've got three states that have implemented regulations that are not consistent with the FMP. The plan review team has indicated that the process they used to implement those was not consistent with the FMP as well.

However, it doesn't look like those actions by those three states will result in a recreational overage this year, so I think this board is kind of in a very unique spot that probably needs to be talked through. I think people have talked offline, and obviously there are implications here that may be a lot bigger than just for scup so just keep that in mind as you move forward. Dr. Daniel.

DR. DANIEL: I think this is a big issue. Some impression that I'm getting is that as long as it doesn't have an impact on the stock it's okay to do something contrary to a plan. I don't think that's right. We've tried to get corrections made to striped bass overages and underages. If we go over our quota and it doesn't result in overfishing or overfished status, is that okay? I mean that's word I'm getting is that if I can prove that I didn't cause harm to the stock that I can do pretty much whatever I want to unilaterally. North Carolina would be very happy with that outcome.

I think this is a serious issue and one that there needs to be some retribution for doing this type of thing. You can't just call an emergency meeting at any time. Now, I'm not going to say that three states calling for an emergency meeting was maybe not a reasonable reason to have an emergency meeting as opposed to just one state, but the fact that it went forward; and we're talking about it didn't have an impact is what I'm hearing, that shouldn't even play into this discussion in my opinion.

MR. JACK TRAVELSTEAD: I share a lot of Dr. Daniel's concerns. There have been I'm sure many times over the years where every state has been in a situation where they would have liked to be able to change their management regulations in season but were not able to do so because there are no provisions in most of our management plans for in-season adjustments.

I'll give you one example. Last year Virginia was 70 percent under its recreational striped bass quota. I would have loved to have been able to raise the bag limit to three fish. We probably even then would not have been able to hit our quota, but there are no provisions in the management plan that allow for that. I tell that to our anglers.

That's not going to work now because they have seen other states take action in season and potentially get away with it. While I understand New York and Connecticut and Rhode Island's attempts at what they were trying to do, I think it puts all of the other states sort of in a box when it comes to dealing with our fishermen.

God knows this job is hard enough to do when everything is going your way, but something like this makes it that much more difficult. I think this issue, as you just said, Bob, has a lot more implications than just to scup. I think it deserves a lot more discussion by the policy board. I don't think we have time here in the next 20 or 30 minutes to get through this. I think it should be sent on to the policy board for further debate.

In fact, I would like to offer a motion to move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend that the ISFMP Policy Board determine the appropriate response to the actions taken by Rhode Island, Connecticut and New York for their scup recreational fisheries.

I would say that this response could include a finding of non-compliance. It's not solely limited to that finding. **The motion is based on the plan review team's findings that the three states have implemented regulations that are not consistent with the FMP. The PRT has also stated that regulations are not likely to result in the recreational harvest limit or the overall scup total landings to be exceeded.**

There are no provisions in the FMP or Charter authorizing states or a group of states to unilaterally liberalize their regulations or transfer quota between commercial and recreational sectors. This action taken by these three states has implications that extend beyond scup management and should be addressed by the policy board.

DR. DANIEL: Second.

MR. BEAL: Second by Dr. Daniel. Any comments on the motion? David Simpson.

MR. DAVID SIMPSON: This is relevant to the recommendation. First, in my read of the guidelines, the Charter, all the commission proceedings, there is no such thing as an emergency conference call. The process, if you'd like to meet as a board, is to contact the executive director, who under the guidelines of the commission is to serve as the executive secretary of this group to facilitate dialogue, discussion, debate and decision-making of the commission.

That's what I did. I contacted the commission and asked to meet with you folks to discuss a situation and the facts of the case as I saw them developing and what was becoming clearly an underutilization of the scup TAL, because it was clear that the commercial fishery is unable to handle – there is no market for all the fish they were allocated this year.

If you remember last year, in December we made an adjustment to the overall TAL – the National Marine Fisheries Service did – to prevent a further restriction in the scup season in state waters. I remind you all that 98 percent of scup harvest does occur in state waters. The fact of the plan, the way the allocation occurs, for every two fish we were trying to give the recreational fishery we had to give the commercial fishery eight more, and they simply have no place to sell it.

As evidence of that, the most recent prices coming out through ACCSP indicates that mediums are going for seventeen cents a pound, large scup are going for twenty-five cents a pound, and jumbo scup are going for forty-nine cents a pound. We had a dealer ship several thousand pounds of scup to New York.

The price that came back was a quarter a pound, which meant that he lost about \$3,000 just getting them there, so this is the loser. Needless to say, that kind of market response to a glut of scup in the marketplace says don't land anymore. Hence, my firm belief that the quota won't be caught.

In addition to the obligations and the function of the executive director, if you look at the emergency regulation-making process of the commission, it says that under the ISFMP Charter, Section C 10, emergencies, management boards may, without regard to other provisions of Section 6 C, the normal regulation-making process, authorize or require any emergency action that is not covered by a fishery management plan or is an exception or a change to any provision in an FMP.

So it would be up to the management board to make that call, and so what I was looking for was the opportunity to discuss with you the situation as it had developed, unique, unforeseen circumstances in the eyes of the commission – I could see from a mile away that the commercial fishery would not be able to utilize its quota.

The unforeseen part in my eyes was that the recreational also would not in the face of a stock that is at 200 percent of target biomass, unprecedented stock size. We simply wanted the opportunity to talk to you about this potential to suspend our season for a few more weeks, which is in all, in practical terms it is, because the scup have left our waters now. And this week's weather notwithstanding, it's not conducive to the families that go out in 17-foot boats, five of them at clip, wearing their life jackets, which is your typical urban scup family outing kind of thing, they don't do that in November and December. They don't 25-foot boats and go out in the ocean. They own small boats or they fish from shore.

I wanted that opportunity to try to persuade you that an emergency action was justified. Emergencies can be called to authorize, which to me is allow latitude; not restrict but authorize. It was your call to make; no one else's. I can assure you that Connecticut, for one, would not have gone out of compliance if you folks weighed in – it would require a two-thirds majority, eight out of twelve of you – to say, yes, we agree, under the circumstances you can have your ten-fish limit for the rest of the season, as long as the fish are stills around.

There is no way on earth I could have forwarded that through our government and gotten an overt non-compliance. However, when the commission turned its back on us, this went through pretty quickly when I said, hey, we have this urgent concern. I did a whole lot of work to document the conditions, make the argument, worked through the practical steps in taking emergency action.

We're all very familiar as states with taking emergency actions. This board more than any other, Massachusetts through North Carolina, we have unique abilities in our states, Connecticut, to circumvent all of our normal rulemaking process to implement fisheries management measures. In our state government a definition of emergency is imminent threat to life or property, but now it has been amended to say or in the case of when you need to do something for fisheries management.

That's our definition of an emergency in the state of Connecticut. We have special declaration authority from the commissioner to allow unilateral decisions by the commissioner. No public hearings, no legislative review committee action, nothing, he signs a piece of paper and in ten days it's the law. We have done that 141 times since 2003, completely short-circuited our legal process in the interest of fisheries conservation and management.

So when I see emergency action, I think I see it with a little e and not a capital E, and I suspect you folks do, too; that in this world of not just fighting to rebuild the stock to that hundred percent target, but we have healthy rebuilt stocks providing opportunity when they exist. Those things need to swing both ways.

In fact, our guidelines and our Charter allows that, to authorize or require emergency action. It's there; it's available for use. Again, I'll reiterate we would not be here today if we had had the opportunity to bring it to you folks, you the responsible parties for declaring an emergency or not. We wouldn't be here today talking about this if you had said no. If seven of you had said yes and not eight, we wouldn't be here today.

It really is about process, it's about openness of process. It's not about e-mails coming in private. I have hundreds and thousands of pages that got sent out to us. I have three binders like this and that's only part of what got sent to us. I know you're all in the same boat, but no room for this in any of our documentation, a closed door meeting to discuss this. It's not the right way to do business. This is a collaboration.

States are giving up sovereign rights to self-government. There is a great letter in the binder under menhaden from the Attorney General of Maryland – I think it starts on Page 490 – going on about public trust resources, public trust responsibility, ownership of that resource in your state waters, and I think this board and this commission really has to reflect and think long and hard before they intrude on a state's rights.

Is it really necessary to achieve overall conservation and prevent detrimental effects to your states? There are times when we have to do that and we're willing to do that, but this was clearly a case, in our view, of no harm, no foul, and provide a little bit of opportunity and all that benefit it provides at ten fish, when we saw trip limits going – you know, our neighboring state, and very legitimately, going to

20,000 pounds a trip, 30,000 pounds a trip, 40,000 pounds a trip, and we're going to tell – and we were going from 200, which we normally have to have for our commercial fishery, to 2,000 pounds because we're only at 30 percent of our quota.

Two years ago we couldn't get through September. There is this overabundance, overallocation of fish that we're responding to. I try to do things very publicly in Connecticut, and we send letters out to everyone. We don't send commercial information just to commercial and recreational to recreational.

I was in the position on September 15th of having to tell the public, "Recreational guys, you guys are done, ten fish is too much, you can't have it. Commercial guys, we're going to increase your trip limit by tenfold." This does get back to the roots of the management. We follow whatever the Mid-Atlantic Council says except in certain cases; most notably the summer quota, which is illegal under federal rules.

It's a violation of Magnuson to allocate by state because it has been shown to be violation of National Standard 4. The commission went ahead and did it, anyway, so we certainly have plenty of precedent for deviating from the federal partnership. That allocation was based on waste in the federal waters fishery; much of it our fisheries.

This isn't fingerpointing. Some if it is the same boats but under federal management. During the allocation years the commercial fishery discarded dead 300 million fish in ten years. They have improved. In the last ten years they have only discarded a hundred million fish dead, but their allocation was based on a very messy fishery.

You simply reach a point where we think this needs to be addressed; and for a couple of weeks we thought, okay, emergency action, this will be 142 times for Connecticut. That was our perspective if you folks were willing. I never had that opportunity to bring that in front of you, and so we did take the action we did because our back was turned to us.

All of this information was communicated clearly to the commission leadership; it was communicated at the highest levels of NOAA Fisheries; do you have any concerns whatsoever. I didn't hear a single word, but it was communicated at the highest level of NOAA Fisheries because we did not want to do anything to undermine conservation. We certainly didn't want to put the commission in a difficult spot; but if you turn your back on us, you know,

unfortunate things can occur. That's my comment on the motion.

MR. JAMES GILMORE: Mr. Chairman, just to add a few things in terms of, Louis, your comment and Jack. First off, this decision was not done lightly or taken in any kind of a cavalier fashion. We understood the implications of it, and it was not the ends will justify the means. We understood this was going to open up a can of worms, but we found ourselves in a dilemma for a lot of reasons. First off, and I want to make sure it's clear that the scup fishery up here is a four-state region.

The first thing we did was the four states got together, and that was a unanimous decision to try and get an action from the board. Massachusetts, of course, didn't have the same latitude as the other three states in terms of emergency action. The three states that put those regulations forward were supported by a unanimous decision of the four states, so I want to make that is clear.

I know we're going to talk about this a lot more probably tomorrow and at the policy board, but it's a process issue. There are pieces of this that were extremely frustrating because there were interpretations of emergencies, emergency actions, emergency phone calls, those types of things, and it was a little bit – as Jaime had indicated earlier, it was a little unclear as to what quantified or would certify us to do that.

I guess the concern that was raised with me first was that the statement was only maybe for negative things were emergencies but a positive thing couldn't be an emergency. I don't think that was clear anywhere in the rules. We've got a lot to talk about process because there is just a lot of unknowns with that.

We also looked at this from a resource perspective. I mean, we're sitting here with an overabundant resource and at the same time we're looking at a 53 percent reduction in black fish and trying to take pressure off of that. Again, it was those pieces of this that we were concerned about that we're trying to maybe help out another fishery in addition to making an economic benefit.

The other part of the process which I'll raise now and I think we need to talk about a little bit more is that beyond the emergency provisions of this, Article IX of the Charter also talks about not usurping state authority. Within New York and I think it's probably in many of the other states and I think the three states that are considered here, I was in a real dilemma

because my state law says if I have a healthy fishery and it's in the condition that we were talking about, I'm bound by state law to make that available for both recreational and business improvements.

So I'm sitting here with conflicting issues and the Charter pointblank says if that happens, that it can usurp what is going on in the state, so that's another thing I think we have to address besides emergency powers. I'll leave it at that other than to echo what Dave said; when I brought this up to the executive branches of the state of New York, this went through in record time because, again, we're in a bad economy. It was not about the end justifying the means.

It was about making a resource available in a poor economy. This thing I think broke a record in terms of how fast it went through the emergency procedures. In my state I have to go through the governor's office, my own commission and the Department of State and a bunch of attorneys. And, trust me, this is the first time I've ever seen nine attorneys involved that all agreed in five minutes. I'll leave it at that. Thank you.

MR. ADAM NOWALSKY: I hear comments from two different viewpoints I think from what we've heard before. Obviously, those states that went forward with this have expressed their support for it. The makers of the motion here have expressed their specific concerns. I have to start out by saying that I find that it's important to note that there is an indication here that fisheries management is now looking at yield for the fishermen.

We have in the ASMFC mission statement that we're restoring fisheries. As I've expressed before, as you've heard around here we're at a time and economic climate where we need to focus on jobs, tax revenue. I think in terms of when you look at this purely from that perspective, not sitting here around the table, I think most people would look at it and fishermen would say, hey, okay, this is a reasonable thing to contemplate doing.

I think the real devil here is in what are we defining as the thing. Did we go ahead – do these go ahead and utilize fish that weren't going to be utilized; was that the thing here or was the thing that happened that they went ahead and contemplated and promulgated a transfer from one sector to another, commercial to recreational, which is explicitly not allowed in the plan as it's currently written.

I think that's what we need to decide on this motion and any other action that we contemplate here today is what is it that we really have the concerns with? Is it specifically that was the problem, that they contemplated a transfer from the commercial to recreational that wasn't allowed? Is the problem that they wanted to go ahead and utilize yield?

That's what I'm contemplating in my mind as I look at this. I hear, though, that – and this is a concern shared by both sides that we've heard so far is that process is the problem. The two areas that I look at here as specific areas of concern with the process is, one, I think that this really highlights that we need more flexibility in the tools that we have available to us.

From a management board level I think that means we really need to look at the FMP as it exists. As we look at moving forward with addendums and amendments, I think we really need to look at the tools we have available to us. The second thing I think that would be relevant here is a formal response from the commission as to why the request for action was denied to these states so that we could all then have that in front of us and understand why the commission itself took the action they did in denying these states' request without giving us the opportunity to be part of that decision-making process.

MR. BEAL: Thank you, Adam. I think I've got eight or nine hands left and we've only got seven or eight minutes left, but keep in mind if this motion is passed and this issue goes forward to the policy board there will be obviously additional time there to discuss the issue. Hopefully, we can go through the remainder of these comments fairly quickly. Tom.

MR. FOTE: When I first read the e-mail that three states had unilaterally done this, I was very upset. Sitting here as a commissioner since 1990, on and off, I believe in the process and I believe in what we do. But I also believe that we're a compact of states and that we work together cooperatively.

I was reminded by myself thinking about this, that it's really those four states, Rhode Island, Massachusetts, Connecticut and New York, that make up the recreational scup fishery, and they've allowed indulgences in New Jersey over the years since we're the southern – as matter of fact, we have no closed season this year because they allowed us to do that, so I looked at that.

And then I also looked at the fact at how we've changed rules and regulations. In the old days if we wanted to have a meeting to discuss something like this, we just made phone calls around and said how do you feel about this? I didn't receive an e-mail asking me how I felt about this as a commissioner, whether we should have a special meeting or not, and I don't agree with that.

This is a compact of a board that we should be basically polled on how we feel about having an emergency meeting. Maybe that's not what the guidelines say; so my part, when I look at this motion, unless it basically says something – and that is why I was going to look towards amend this – to say something that we should be looking at the guidelines so we can correct this type of problem.

I can't vote for this motion; so unless you want to include something to that effect, then I'll look at it. If we're going to address the problem, then we should address the whole problem, because I think that to me was the most serious part of this process when three states that make up a majority of this fishery come to the commission and ask them to have a meeting to basically discuss their problems and we refuse to do a meeting on that, I feel very upset over that.

DR. GEIGER: Certainly, the last sentence in this, "this action taken by these three states has implications that extend beyond scup management and should be addressed by the policy board"; certainly I think the first part of that statement is absolutely correct. I can look around every state in the commission and say but for the grace of God go I.

All right, each and every one of you has been in this position with one management species or another, but we stayed true to a process. That process is not perfect; it is not flawless. It is still in the process of being perfected, but it has served the commission, the member states and the federal agencies well in terms of sustainability of the fisheries.

I will state that I am uncomfortable kicking this can down the road. This is a management board problem. It should be fixed by the management board and not kicked down the road to the policy board. This is how we do business here. This is how we should do business here. I believe the implications and the intent of the ACMA Act and legislation basically demand and require that.

I am voting against this motion although I support the basic premises up here, but I do believe we need to fix the problem at the board level. Again, I am

continually being troubled by either the transparency or the lack of transparency that we've seen over the last year or two not only with this issue but other issues, but that in itself is a policy board discussion. Thank you, Mr. Chairman.

MR. TRAVELSTEAD: I just wanted to briefly speak to my intent in offering the motion. It was not to see that the three states are punished. That's not what this is about. This about having a dialogue about how we want to manage fisheries; and if there are problems in our management plans need to be fixed that allow states more flexibility for in-season adjustments, then let's fix them.

I think ultimately what this comes down to is perhaps it's a communication problem. We need to have a dialogue about how staff and how the hierarchy responds when they get questions of this nature or situations like this developing in the states. I think the policy board is the place to have that discussion.

DR. DANIEL: I think Dave did an excellent job outlining his concerns and issues; excellent job. I seconded the motion to do what the gentleman from New Jersey suggested that we do, and that is look at the ways to fix this. I go back to my original statement that it's not about the impact of the action. It's the precedent that it sets.

I don't know if punishment is the right word, retribution is the right word, but we've got to do something I think so that I'm not put in this position when I go home that, well, they did it in Connecticut with scup; why can't we do it in North Carolina with weakfish or bluefish or any of the other species of concern. I think that's the big question and I think it is a policy board issue, which would be transparent, which would address Jaime's concerns, I think, but this is an overall issue. It's not just a Scup Board issue in my opinion.

MR. ROY MILLER: Mr. Chairman, some might wonder why a state to the south of this is even weighing in on this issue, but we are being asked our opinion on this. Clearly, if it comes to a vote our vote will matter. I'd just like to remind the board that down our way we haven't had a recreational fishery on adult scup since the 1960s. Now why is that?

It's because perhaps the range has contracted. Therefore, I fail to see why a surplus or even the term was used "overabundant resource" constitutes an emergency. If it's an overabundant resource, perhaps its range will eventually extend and southern states will once again enjoy a fishable abundance of scup.

Process notwithstanding, I just don't see where it constitutes an emergency. Thank you.

DR. DAVID PIERCE: Jack Travelstead gave a very good explanation as to the reasons why he has made this motion. I agree with his rationale. When this issue came to the surface, when David Simpson in particular approached us and expressed his specific concerns, we expected that there would be some discussion with the full management board.

However, that did not happen, and David has already referenced the fact that if that discussion had occurred there might have been a different outcome. I read the e-mail as did other members of my staff read the e-mails going back and forth between David and between the leadership and the other states as well, Rhode Island and Connecticut and New York. Frankly, very compelling arguments were made by David and by the leadership of ASMFC as to what should or should not be done.

We decided to support the position of David and the other states to be on board with that; not to change our regulations but to support that position with an understanding that this is a big issue with that downsides already described by people like Louis, some downsides, and that this would work its way to the policy board for some further discussion since there needs to be some discussion about how requests from individual states or from group of states relative to action that should be taken relative to reallocation or other decisions of that sort should be speedily addressed by the full board.

That is my suggestion that indeed it passes, it goes on to the policy board. It is not kicking the can down the road, absolutely not. A decision by this board, for example, for a non-compliance ruling would accomplish absolutely nothing. It's a policy board issue that I hope will lead to some fruitful discussion and a resolution so we don't have a repeat of this situation in the future.

MR. PATRICK AUGUSTINE: Mine very quick is to table this motion until the issue is remanded to the policy board; also task the staff, after having talked to the four states and gleaned information as to recommendations – Mr. Nowalsky had some excellent ideas as to how we could approach this problem – to develop a white paper that suggests what we could do to change the FMP.

Relative to playing with commercial or recreational quota, that's an issue that has to be developed and looked at by the Mid-Atlantic Fishery Management

Council. It's a joint plan. In order to do that, we would have to come up with some way to make the quota transfers flexible, to be similar to what the bluefish FMP looks like.

I think we have on our radar screen this needs to either be tabled until further development of a white paper, reviewed by the policy board and go forward. I think in terms of finding out of compliance, that's ludicrous. That's my position. If someone would second that motion, we'll move forward, Mr. Chairman. Thank you.

MR. BEAL: Pat you're suggesting the policy board does not do anything at this meeting, but there is some work at the staff level to develop a white paper to address the issues that you had talked about?

MR. AUGUSTINE: Exactly, because I think we've heard some thoughts around the table. We've heard the discussion by Mr. Simpson and also followed up by Jim Gilmore and Dr. Pierce. They all did their action in good faith based on what they saw, what their fishermen were going through and what they saw.

One item that wasn't considered and should be considered is we need to look at what states seasons are open, of the species that are open during these periods of time when we set those schedules. For instance, in New York and Connecticut –

MR. BEAL: Well, let's not get into the details of a potential white paper just yet.

MR. AUGUSTINE: Yes, present a white paper and table this or kill it, whichever you want to do.

MR. BEAL: Is there a second to the idea of postponing this action? I see none so we'll move on. Bob Ross was the last speaker I had on the list and then we'll caucus and vote.

MR. BOB ROSS: Yes, I'll try to be quick here, but a lot of the talk around the table today has been on process as pointed out both by Connecticut and Fish and Wildlife Service. My concern with this process to date is two-sided. One, I think the majority can acknowledge the plan review team's determination that in fact those states did not comply with the FMP.

However, my concern is with some key words in this motion that include the reference to "this response could include a finding of non-compliance". My interpretation of the commission's charter on non-compliance indicates that it initiates at the board

level. In this case I would not support this measure with that sentence in the document. From my perspective, this board has to make the first decision and go forward from there to the policy board as the next step. Thank you.

MR. TRAVELSTEAD: Take it out.

MR. BEAL: The maker indicates that he is comfortable taking out the sentence referencing non-compliance. Dr. Daniel, are you okay with that. The seconder indicated willingness to take that phrase out. All right, that sentence is now removed. I'll read the motion into the record while the states are caucusing and then we'll vote: move that the Summer Flounder, Scup and Black Sea Bass Management Board recommend that the ISFMP Policy Board determine the appropriate response to the actions taken by Rhode Island, Connecticut and New York for their scup recreational fisheries.

This recommendation is based on the plan review team's finding that Rhode Island, Connecticut and New York have implemented regulations that are not consistent with the FMP. The plan review team has also stated that regulations are not likely to result in the recreational harvest limit or the overall scup total allowable landings to be exceeded. There are no provisions in the FMP or Charter authorizing states or groups of states to unilaterally liberalize their regulations or transfer quota between commercial and recreational sectors. This action taken by these three states has implications that extend beyond scup management and should be addressed by the policy board. Motion by Mr. Travelstead; second by Dr. Daniel.

Is there anymore caucusing needed? Seeing no indications, all those in favor of the motion please raise your right hand; those in opposition; abstentions; null votes. **The motion carries unanimously.**

This board should be prepared to go to the Mid-Atlantic Council at their December meeting in Williamsburg to talk about recreational specifications and also review the new summer flounder and scup stock assessments. I think this board also likely needs to be prepared to come to the Mid-Atlantic Council in February to review the results of the economic analysis that is being conducted on the scup fishery as well as the new results from the SARC for black sea bass. Those two things will be talked about in December. Toni has a specific announcement for the December meeting regarding hotel reservations.

MS. KERNS: The December meeting is going to be on December 14th. It will be a full day where we will likely start at 8:30 in the morning and go until all the business is conducted. There is a lot of business to be done there. Hotel room cut-offs I believe are at the end of next week so please be on the lookout for an e-mail from me to make your hotel reservations.

MR. ROBERT BALLOU: Bob, the issue we just voted on, will that be taken up by the policy board tomorrow or Thursday.

ADJOURNMENT

MR. BEAL: Tomorrow. Anything else before the Summer Flounder Board? Seeing none, we are adjourned.

(Whereupon, the meeting was adjourned at 12:10 o'clock p.m., November 8, 2011.)