

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

**Crowne Plaza Hotel Old Town  
Alexandria, Virginia  
February 7, 2008**

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## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1)
2. **Approval of proceedings of October 2006 by consent.** (Page 1)
3. **Move to approve the various state proposals** (Page 9). Motion by Bill Adler; second by Red Munden. Motion carried (Page 12).
4. **Move to reconsider the coast-wide default and to adopt the default recommended by the technical committee** (Page 12). Motion by David Pierce; second by Pat Augustine. Motion carried (Page 13).
5. **Move that the Board adopt this northern regional approach as identified in the handout distributed today** (Page 15). Motion by Eric Smith; second by Jim Gilmore. Motion carried (Page 15).
6. **Move to close the Winter I Period on April 28<sup>th</sup> with the understanding that no landings or possession of scup would occur until May 1<sup>st</sup>, the beginning of the summer period** (Page 18). Motion by Pat Augustine; second by Pat Kurkul. Motion carried (Page 19).
7. **Move that the summer period overages that incurred in 2007 will be applied over two years.** Any underages in the 2008 summer period quota would reduce the reduction in 2009 by that same amount (Page 19). Motion made by Pat Augustine; second by Gil Pope. Motion carried (Page 20).
8. **Move to amend the Summer Flounder, Scup, Black Sea Bass FMP to incorporate mandatory regional management as a tool and remove the optional language for the summer flounder recreational fishery** (Page 23). Perfected on page 31. Motion failed (Page 31).
9. **Motion to adjourn by consent.** (Page 31)

## ATTENDANCE

### Board Members

David Pierce, MA, proxy for P. Diodati (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
William Adler, MA (GA)	Bill Goldsborough, MD (GA)
Najih Lazar, RI, proxy for M. Gibson, RI (AA)	Jack Travelstead, proxy for Bowman VA (AA)
Gil Pope, RI, proxy for Rep. Naughton (LA)	Catherine Davenport, VA (GA)
Eric Smith, CT (AA)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
James Gilmore, NY (AA)	Fentress Munden, NC, proxy for L. Daniel (AA)
Pat Augustine, NY (GA)	Damon Tatem, NC (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
Peter Himchak, NJ, proxy for Chanda (AC)	Pat Kurkul, NMFS
Erling Berg, NJ (GA)	Harry Mears, NMFS
Roy Miller, DE, proxy for P. Emory (AA)	Jaime Geiger, USFWS
Bernard Pankowski, DE, proxy for Sen. Venables	A.C. Carpenter, PRFC
Harley Speir, MD (AA)	

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

### Ex-Officio Members

Rich Wong, Technical Committee Liaison

### Staff

Vince O'Shea	Erika Robbins
Robert Beal	Toni Kerns

### Guests

Bill Archambault, USFWS	Sean H. Kerney, NMFS
Shaun Gehan, Kelley, Drye & Warren, D.C.	Christopher Hayes, NMFS
Allison Luettel, MD DNR	David Simpson, CT DEP
Wilson Laney, USFWS	George Lapointe, ME DMR
Arnold Leo, Baymen's Assn.	Pat White, ME
Tom Fote, JCAA	Frank Cozzo, PA
Michael Luisi MD DNR	Gregory DiDomenico, NJ GSSA
Tom McCloy, NJ DFW	Chip Lynch, NOAA
Jessica Coakley, MA FMC	Bob Ross, NMFS
Dick Brame, CCA	

The Summer Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, February 7, 2008, and was called to order at 8:00 o'clock a.m. by Chairman Jack Travelstead.

### **CALL TO ORDER**

CHAIRMAN JACK TRAVELSTEAD: Good morning, everyone. The staff tells me we have a quorum so we're going to go ahead and get started.

### **APPROVAL OF AGENDA**

CHAIRMAN JACK TRAVELSTEAD: Are there any changes to the agenda; any suggested changes? We do have one change to the agenda under other business. There will be a discussion or an update on Amendment 15, if you want to add that to your agendas. Seeing no further changes, the agenda is approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN JACK TRAVELSTEAD: Is there a motion to approve the proceedings of the August 14<sup>th</sup> minutes? Moved by Bill Adler; seconded by Roy Miller. Is there any objection or any changes? Seeing none, the minutes are approved.

### **PUBLIC COMMENT**

CHAIRMAN JACK TRAVELSTEAD: All right, at this time we'll take public comment. Is there any public comment at this point? Bill.

MR. WILLIAM A. ADLER: Was that the agenda and the proceedings?

CHAIRMAN TRAVELSTEAD: Yes, both approved.

MR. PATRICK AUGUSTINE: Point of information, Mr. Chairman. As you may recall, I had a brief conversation with you about the possibility of having a discussion concerning the tools that we have in our toolbox. Mr. Chairman, it was just a matter of having a discussion that might possibly lead to an addendum to put another tool in our toolbox when we decide what method we're going to use for managing summer flounder. Would that come up under other business or where would we put that in?

CHAIRMAN TRAVELSTEAD: If you want it under other business, we'll put it there.

MR. AUGUSTINE: Please, that would be fine. Thank you, Mr. Chairman.

## **STATE SUMMER FLOUNDER RECREATIONAL CONSERVATION EQUIVALENCY PROPOSALS**

CHAIRMAN TRAVELSTEAD: Okay, then the agenda really is now approved. That is going to bring us to Item 4, Approval of the State Summer Flounder Recreational Conservation Equivalency Proposals. Toni, you're going to take us through a presentation.

MS. TONI KERNS: We're going to first go through and look at conservation equivalency and the four factors that the Board and Council asked the technical committee to address in the motion from the joint December meeting, and then I'll take you through each of the states' proposals and the TC review of those proposals. I'm going to give it to Rich Wong, our TC Chair.

MR. RICH WONG: To give you a little background, at the end of the third quarter last year, it had become pretty apparent or has become apparent that the recreational harvest is going to exceed or grossly exceed the 2007 quota. This realization instigated quite a bit of concern from the National Marine Fisheries Service, the Commission and the individual states that manage their individual fisheries.

The concern instigated a flurry of activity, and it ultimately ended in this review and this presentation that we're going to discuss this morning by the technical committee. Specifically, the management board had requested that the technical committee look at four specific factors that could cause overages or cause states to exceed their quotas; that being effort, availability, uncertainty in the harvest estimates and compliance or non-compliance.

In the end the technical committee ending up reviewing the entire relatively short history of conservation equivalency and examining all the factors that we thought could affect overages by states. We put this document together very quickly, but despite the short turnaround time this analysis contains discussions at the technical committee level that had been ongoing for years.

The thought behind this is certainly more substantial than the one month that we produced this document. When we looked at the data, before conservation equivalency began in 2001, the coast-wide quota was exceeded in six of eight years – and this is in weight

– by an average of 35 percent. In 2001, once the state-by-state management began, the quota in weight, again, was exceeded in five of seven years by an average of 16 percent.

However, when you look at the quota performance coastwide from a numbers-based perspective, the coast-wide harvest exceeded the quota by only 6.9 percent on average in numbers and 4 percent cumulatively. Why the difference; why is there 16 percent overage in weight versus the 7 percent overage in numbers? That's because it's due to the artifact of converting the TAL, which originates in weight, and converting that to numbers.

A simplistic illustration or explanation for what happens here is when we have to convert that TAL into numbers for quota management and we essentially divide that TAL by an expected mean weight of harvest for the upcoming year. As you can see here in this table, sometimes that expected mean weight harvest is different than what is observed in that year of harvest.

So the fact there is some discrepancy in mean weights fairly explains the reason why we have a 16 percent overage in weight versus a 6.9 percent overage in numbers. Now, we did address this in this document and at the monitoring committee level by using a larger mean weight for 2008. This will result in hopefully better quota management with respect to weight.

For 2008 we used a mean weight of over three pounds, and this is going to result in a lower quota in numbers and hopefully keep us under the quota with respect to weight. This is not necessarily a trivial exercise. It ends up being over 200,000 less fish available to harvest in 2008. Okay, when the look at the state-by-state performance over this 2001 to 2007 period, the performances varied specific to individual states, ranging from an average underage of 19 percent to an average overage of 34 percent. Again, the coast-wide average is 6.9 percent. Each year the recreational harvest is exceeded by 6.9 percent on average.

The worrisome year, of course, is 2007. This is certainly an unusual year. I don't necessarily give too much weight to that 2001 overage since it was relatively lone time ago, but there were some slightly different methodologies in that year in that they used a three-year average to reduce the – the states were required to reduce their harvest based on their previous three-year average.

In any case, in 2007 we saw a 32 percent overage, and univocally these conservation equivalency measures did not constrain the harvest to under the quota. Like I said, that was the instigation for this report. Specifically, in 2007 seven of the nine states in the management unit exceeded their targets by an average of 32 percent. What tended to stick out, I guess, in our mind is that what was unusual about 2007 is that obviously it was just generally a very low quota.

When we looked at the data, the greatest overages occurred in the years when there was the lowest quota. Here we see a graph of the quotas through time, this is the lowest quota we've ever had in 2007. The point of the slide was that in 2008 we're entering somewhat uncharted waters because this is the lowest coast-wide quota historically that we've faced so far.

Going into the four items that the management board requested that the technical committee examine, the first one we'll go over today is the uncertainty in the harvest estimates. The annual harvest or any harvest from the Marine Recreational Fisheries Statistics Survey from which we get our harvest total is an estimate. It's a statistical estimate that has recognized variability in the estimate, and that's expressed in the percent standard error, PSE.

When we looked at the coast-wide PSE, the summer flounder harvest estimate was actually very good. It was low; it was only 4.1 percent since 1993. For states individually that PSE ranged quite a bit, up to 20 percent since 2001. Now, the technical committee looked at some methods that applied an upper – well, with those PSE values which states the variability expressing PSE – we have an upper and lower confidence around – confidence limit around the estimate.

So the technical committee looked at using perhaps this upper confidence limit of the harvest as a way to over – well, as a way of, yes, I guess building in for the error associated with the harvest estimate. However, when we looked at this there were some states that had such high PSE values that it was not going to work.

There was too much variability in some of these state estimates, and these states in particular were penalized, I don't want to say unfairly, but they were penalized more than other states that had lower PSE values. Anecdotally, the states said that they had tried to lower their PSE values by increasing their MRFSS sampling, and the amount of improvement

that they got in their estimate – in their PSE was certainly not worth the money that was being spent to improve that PSE. They didn't see the improvement they needed or wanted, so that was not an option to try to improve the harvest estimate PSE values.

The other issue that the management board asked us to look at was how availability may be influencing these overages. Certainly, since the nineties we see an increase in exploitable stock, an increase in abundance of older ages, and perhaps this could have influenced overages in some states. And that is true, there is increasing – since the nineties there is increasing abundance for older age classes.

In the past we have tried to account for this by projecting what the exploitable stock would be in the year that the quotas take place. This might work for states that have their harvest occurring mostly in coastal offshore waters or for states that might be in the core distribution of the species. It certainly doesn't work for any of the specific states that perhaps have most of their harvest occurring in inland bay areas or in the northern and southern fringes of the distribution.

Also, it's really difficult or nearly impossible to relate abundance and availability. They're not directly related because there are obvious factors such as movements or migratory behaviors and different habitat availability across the management unit. Therefore, the distribution of stock is certainly heterogeneous. The availability factor really affects states quite differently across the unit.

Okay, availability also is sort of accounted for when the TAL is calculated for each year, the total allowable landings. The TAL is directly produced from the most updated stock assessment. However, we're entering a period now, like I said earlier, where the quota is being reduced disproportionately or not necessarily in step with abundance to secure other management objectives such as rebuilding the stock.

So, we still have relatively high abundance with a declining quota. This makes it difficult – I think this makes it more difficult for states to constrain the harvest below this quota. Here is an illustration of what I'm talking about here. Essentially we can look at availability – a proxy for availability is catch-per-unit effort or harvest per trip. Well, harvest per trip through time or at least since 2001 has kind of remained steady, but the quota certainly has declined.

The availability seems to be remaining stable through time and yet the quota has been declining. This

graph merely shows the ratio of those two variables, catch-per-unit effort divided by quota. It sort of explains to me or it correlates with when the coast-wide overages have occurred. In 2001 we had a 30 percent overage. In 2007 we had an over 30 percent overage. This ratio shows – you know, it mirrors that.

What is going to happen in 2008? Well, if availability or harvest per trip stays the same as it was, say, in 2007 and the quota is being reduced by 20 percent – I don't know the exact figure – this ratio is going to be higher than we've ever seen at least since 2001. We expect, of course, that the size and bag measures that we implement for 2008 should reduce the harvest per trip.

However, if we use the same 2007 harvest per trip and we divide it by the quota, it's well above this average line that I put there in red. Because of this, there is concern for some states that have shown to be affected by this relationship. There are a few states there. However, those states were not – their average overage wasn't really that – most of them had actually average underages. There is concern for 2008 because the quota is lower than we've ever seen it before and perhaps we're entering uncharted waters here.

The other issue was non-compliance. It's hard to measure all the non-compliance that occurs in the year. We used the percent of undersized fish per year as the proxy for all the non-compliance – or the proxy for non-compliance, basically. Here we see that each of these lines represents the states' non-compliance rate through time. As you can see, they're all over the place. But, really, the only issue with respect to overages is when this line is increasing through time.

If the non-compliance rate increases through time, then the effectiveness of your size-and-bag regulations will be less than expected. You're not going to get the expected reduction from your size-and-bag management suite. If the non-compliance rate stays stable or there is random variability from year to year, then the non-compliance is not an issue, because the Mid-Atlantic Fishery Management Council creates the size-and-bag tables used for the reduction analyses, by removing these non-compliant fish from their analysis.

So the non-compliance is being accounted for the way we implement or analyze our reductions based on size and bag. Like I said, the important point is if this non-compliance rate is increasing then the

effectiveness of your regulations – intended regulations for 2008 will be less effective than expected. From a coast-wide perspective, we didn't see an increasing trend in non-compliance rates since 2001. We leave it to the individual states to look at this issue when they write up their proposals for 2008.

The last issue that the Board asked us to look at was effort. Certainly, we see an increasing trend in effort from a long-term perspective, since 1981. It looks like it's a steady general climb in effort. This is from Maine to North Carolina. It's increasing, but the point here is that since 1981 we see a slow and steady increase, but ultimately it's 15 million more trips occurring over the management unit since the eighties. That's a lot of effort.

When we looked at directed trips – these are trips solely directed for catching summer flounder –there is also an increase. Again, it looks like a slow increase or benign increase, but this is over a million more trips solely for summer flounder across the coast since 1991. The effort is increasing.

When we looked at effort specifically just from the northern half of the distribution, Maine to New York, we see a much more pronounced increase in effort. This is where most of the million more trips is occurring in the northern half of the range, more than a million trips. When we looked at the summer flounder directed trips from New Jersey to North Carolina, there is no increase. It's steady.

So, again, the effort issue affects all the states differently; in particular the handful of states where their average increase in directed trips since 2001 was almost 40 percent for three or four states. The rest of the states didn't have any increase in directed effort over this period. It's a very state-specific issue or problem.

Here is a graph that shows the directed trips in relation to the RHL, which is the coast-wide quota. The point of this is that -- you know there is a line there that's not really significant, so disregard the line – the point here is that the directed trips don't seem to go down as the quota goes down. As the quota goes down, ostensibly there are more restrictive measures.

These more restrictive measures don't affect the effort. Okay, it doesn't reduce fishing effort. The effort is something that we need to consider when we're trying to predict our harvest for the next year. Like I said, in particular in some states, like from Massachusetts, Rhode Island, New York and North

Carolina, there was almost a 40 percent increase in directed trips from 2001 to 2006. We don't have the 2007 directed trips data.

At least there is some talk from the technical committee that the directed trips probably went down last year. Nonetheless, they see an increase in directed trips for summer flounder, particularly in the northern half of the distribution. When we looked at all of these factors, the main thing that stuck out was that they affect every state differently, so it was impossible to dream up an approach that would work for everybody across the management unit.

So what the technical committee – well, the first bullet says the origin for overages were independent among states, and it couldn't identify a common cause across the whole management unit for overages. So what the technical committee decided was a good method to ensure that the states stay under their intended quota for 2008 was to look at their performance history.

Here we are in 2008 and now we have seven years of a history of conservation equivalency to examine. So when we did that, you know, there were some states that had a tendency to exceed their overage across this time period. Rhode Island, Connecticut, New York, New Jersey and Virginia had exceeded their quotas over this time period. For whatever factors had caused those overages, they were varied, of course, but with this approach you don't need to know the exact causes for the overages. The numbers are what they are; it is what it is.

When we examined each state separately – let's see if we have a table here – this table shows what the extra – well, let's go back. So we based an extra reduction based on the performance history from that state. We recalled the performance factor. So, if a state had typically gone over their quota by theoretically 10 percent every year, they would have to reduce or take a further reduction to account for that average performance.

So here are all the states. The harvest in 2007, the 2008 target, this is the quota that has not been adjusted and the standard reduction. The first three columns are the typical approach, the default approach that we use every year for conservation equivalency. The performance factor, which is simply the average overage or underage that occurred every year since 2001, is an additional reduction.

This reduction was taken from – or adjusts their target for 2008, and then you have the last column



which is the overall required reduction. This approach theoretically should account for all the factors that have caused overages in the past, at least since 2001. When we looked at this approach retrospectively, we applied each of the states' performance factors to each state's harvest from 2001 to 2007. It certainly helps to reduce the magnitude of overages that occurred each year.

From a coast-wide perspective now, there were only overages in two out of seven years rather than five out of seven years. The average cumulative coastwide, there was a cumulative underage from the coast-wide perspective of 7 percent. The state-by-state annual harvests were within 5 percent of their quota 65 percent of the time. Last year, again an unusual year, there still would have been seven out of nine states that had exceed their quota, but it would be by a lower percentage.

The technical committee recommends that this performance factor be implemented or utilized when states decide their management measures for 2008 when they produce their state proposals for conservation equivalency. Now, if a state had an average underage over this time period, they're not allowed to increase their quota by that amount, and we recommend that they don't liberalize, but they should still examine those four factors when they do set up their regulations for 2008.

Another point is that this performance factor adjustment is only to be used for 2008. The 2009 approach should be based on how the states fair in 2008 in terms of how they achieve their quota.

MS. KERNS: I just want to make sure that everyone is clear that for management purposes the 2008 adjusted target was only used to figure out what we needed to do for your state regulations. At the end of the year, when we look at your state's performance, we will use the unadjusted target to make sure that you have achieved the target.

We're not changing the poundage of such that you have received or were allocated at the beginning of the year. It's just that in order to figure out the reduction needed with the performance factor, you had to adjust the target first and then calculate the reduction. But your target itself does not change.

MR. WONG: So basically when you evaluate your state's performance, you evaluate it relative to Column 2 here at the end of 2008; not Column 3. Column 3 is just used for setting up your measures,

size, bag and season measures. Does that make sense?

CHAIRMAN TRAVELSTEAD: Are there questions of Rich at this point on the presentation? Pat.

MR. AUGUSTINE: Yes, excellent presentation, Rich. I'm a simple person so most of it was over my head, but Table 7 in the handout was rather intriguing and their approach to come up with a CSE was even more intriguing. I tried to recall and recollect what the liberalization was that each state had back as far as 2001 in terms of bag size and season as it related to the quota for each of those years.

It just seems to me using a performance factor adjustment as you have done, it somehow appears as though, in trying to come up with that number, some sort of, if you will, credit was given to that state. Now let me develop this and I'll try not to take too long. Let's use New York. In 2001 we were 33.5 percent under and then 40 percent over in 2002. We were very consistent.

Then we went to 40 percent, but then we were 29, 19 and so on. The bottom line is when you average them all together – and it is an average – the question is what did the state do the following year when they were under? Did they liberalize; did they stay the same. As I recall, no state in the past has ever been given credit for not having been under, and sometimes you want to say, "Shame on you for having not set your bag, size and season to use all of your quota."

On the other hand, they're to be complimented that they stayed within that. But I don't understand how we can literally end up coming up with an average of credit for underage, then averaging them all together not knowing fully what each of those states did the following year. Now in New York, because we are what we are, and you'll notice our trips were a million more in 2007 than they were in previous years.

So, there is another factor that counts into it, availability of fish; and most of the states, as you noted, Rich, have gone up in terms of trips. So, it just seems to me this business of averaging complicates the issue. I think you've done a yeoman's job – the technical committee did a great job in trying to resolve the issue, but I just don't know how it gets at the problem that every year we have used the previous year's underage or overage to determine what your bag, size and season is going to be for the next year.

Now all of a sudden we're now looking at seven of the nine states have gone over, and to the outside it would look like, oh, well, they're getting a free ride. They're not getting a free ride. You're trying to account for – but that's not how it comes across. It comes across that those states are being given credit because you're averaging the seven years. I don't know how to explain that to our constituents; so if you can try to enlighten me on that so it would be easier and more palatable for us to take that message back home, it would be helpful.

MR. WONG: Are you saying that when you have an occurrence of an underage in a year, you're not getting credit for that in the performance factor; is that what you're saying?

MR. AUGUSTINE: No, you are getting credit. You are and therein lies the problem because we've never, in the history of all the fishery management plans we've had, allowed for a credit to be carried over in any way, shape or manner to the next year unless you liberalized your program by either – a simple case would be if you're on 16.5 inch fish this year and you have a four-fish bag limit, you could have gone to a five-fish bag limit the following year for the same season.

In my mind that's liberalizing and taking credit, so I'm having difficulty understanding that. If you'd explain it, I would appreciate it. The take-home message is you're getting credit for something you already got credit for.

CHAIRMAN TRAVELSTEAD: David has a response.

MR. DAVID SIMPSON: I don't know if it will help but I'll try. Try not to think of it in terms of credit or penalty. We're just trying to figure out a state's, on average their ability to set rules and achieve a target that they were after. In some years the resulting harvest is a little above the target; some years it's a little below, and so we're just looking at the average performance.

So it isn't so much giving credit, but we certainly don't want to ignore years that a state established a set of rules and achieved their target -- they stayed under their target – and not acknowledge that or you would over-adjust a state's performance factor. I mean, it was high enough for New York and imagine if we took away the years that you actually stayed within your target.

The reason we went to this is so much of this is unpredictable. If you look for most states in 2001, most states exceeded their target. In 2002 most states were under their target. Something happened in terms of availability of fish and estimates of total harvest in 2001 that was beyond anything reasonable. When states made their adjustment based on an expectation the same thing would happen in 2002, it didn't happen so all the states were under.

So you do have to include the ups and downs; and when you take a step back and you look at the average performance of the recreational fishery, it isn't bad. You know, we're only over in numbers, which is what we're aiming at. I mean, that's what fishing mortality rates are based on; that's what our management actions are based on.

It was only over by 6.9 percent on average; and when you look at it and sum it up over all the years, it's 4 or 5 percent. That isn't too bad for a set-it and forget-it kind of regulation. This isn't commercial quotas where you can say, oh, we're reaching a seasonal limit, shut it off. So, I think it has done pretty well, but we have detected a pattern among states, when they go into their tables – and that's the point of the performance-adjusted target.

That's really just a number for the technical committee to go into their tables and figure out by their tables what they should aim at in order to hit their actual target. So it's nothing for the Board to worry about so much.

MR. AUGUSTINE: Thank you, and that helps me a great deal, but setting the quota in number of fish, when you do the conversion from weight to fish, the concern here is that if you look at what each of the states have done in performing, you're talking about 5 percent roughly is they're going over 5 percent.

But in terms of total numbers of fish, as we do that conversion, any one of these states can be picked out and say, well, we've squeezed, squeezed, squeezed, squeezed, squeezed, and almost every single state consistently has been – the number of fish that they harvest because of the conversion from pounds to fish, it shows that, yes, we're reducing the number of fish we're harvesting.

The argument that most fishermen have used relative to this is they fish for fish, they don't fish for pounds, so this whole conversion process in an average weight of 3.03 per fish could be a killer if it were off

by a tenth of a pound, assume it was for three-tenths of a point. So the only other question I have is when you make that conversion – it's related to this – when you make that conversion, how correct is that poundage that's selected to use as the average weight?

We've gone from 2.05 to – I guess in 2006 it was 2.97 and now we're at 3.03. I guess my question is where are those fish weighed? Is it through the MRFSS Survey? I have yet to see a MRFSS Survey person ever weigh a fish. It just raises some question. I think the work is excellent, it's clear, your definition and description as to how you got there is good, and I appreciate it. Thank you.

CHAIRMAN TRAVELSTEAD: Other questions of Rich or Dave? Tom, you had a question.

MR. TOM FOTE: No, a point. Since we're talking about 2002, I think the Board should remember what happened in 2002; that NMFS fired the contractor half way through the year, and a lot of the figures in 2002 were extrapolated and nobody told the Commission about that until two years later. I was a commissioner then.

We did the figures and so we based the figures on extrapolated figures, and we didn't know that. It should be one of those baseball figures where there is an asterisk on that year, because the figures really were true, and we based our decision – and nobody told us. NMFS somehow failed to communicate that basically they had done that with a contractor, if my memory is right. I remember that discussion pretty well.

CHAIRMAN TRAVELSTEAD: Thanks, Tom. We're going to move on and let Toni go through the presentation of state proposals and then we'll bring it back to you.

MS. KERNS: Thank you, Mr. Chairman. The staff passed out to you three documents at the start of the meeting. The first document was a memo from staff directing the states on how they would develop their conservation equivalency proposals. The second document, dated February 1<sup>st</sup>, is a summary of the state proposals and the TC recommendations. The third document, the thickest document, is the actual state proposals themselves lumped into a whole.

The states set up their regulations based on the direction from the Board through the motion at the December meeting to develop their proposals state by state and requiring each of those states to account for

the increased effort, stock size, percent standard error, as well as compliance rates when trying to achieve their reductions. So, therefore, those states used that performance factor in each of their proposals.

Once adjusting for the performance factor, the states followed the guidelines that are outlined in Framework 2. The Commonwealth of Massachusetts was actually under the harvest target in 2007. They did not have a performance factor adjustment and had no required reduction due to the underage in '07. They actually could have liberalized their regulations, but decided because of the lower TALs to stay status quo. Their proposed regulations are 17.5, five fish and open from June 10<sup>th</sup> through August 15<sup>th</sup>.

The State of Rhode Island was 60 percent over their 2007 harvest target. Their performance reduction was 51.6 percent. Their proposed regulations are listed up on the board. There is a series of regulations. The state asked that they possibly could adjust the start and end date of the season but keep the bag and size limits associated. Any state that does adjust their end or start date will send staff the new methods used to make sure that they are achieving their required reductions. The TC approved this proposal.

For the State of Connecticut, they were 18 percent over their 2007 harvest. They required a 30.1 percent reduction with the performance factor. Up on the screen you'll see their proposed regulations. There are five options, and, again, they also stated that they may alter the start and end date of the season after public hearings that they go through. The TC recommended approval of this.

The State of New York was 55 percent over their 2007 harvest. With the performance factor adjustment, they're required a reduction of 64 percent. They have a suite of ten options for proposals, and the TC recommended approval of these options.

The State of New Jersey was 38 percent over their 2007 harvest target. The performance reduction is 41.8 percent. They have six proposed options. Again, they possibly could adjust their start and end date. The TC approved this methodology.

The State of Delaware was 43 percent over their harvest target. They did not have a performance factor adjustment. Their reduction was 41.3 percent. The following proposed regulations have five options, and the TC approved this proposal.

The State of Maryland and the Potomac River Fisheries Commission were 94 percent over their 2007 harvest target. This was the largest state overage. They did not have a performance factor adjustment. They're required to reach a 56.7 percent reduction. Up on the screen you'll see the proposed regulations. Options 6 and 7 have a split between the ocean and bay fishery that they had had in the past two years.

The Maryland Proposal used the bag and size tables that were developed using their Volunteer Angler Survey. Most states bag and size tables come from the MRFSS Survey that the Mid-Atlantic Council develops for each of the states. The Maryland Volunteer Survey is not stratified or designed to capture a complete picture of the Maryland Recreational Fisheries.

But, if you look at their adjustments that you received from the Volunteer Survey versus the Commission or Mid-Atlantic Council tables, they are similar. In some cases the Maryland tables are more restrictive and in some cases the Commission tables are more restrictive. There are no guidelines in Framework 2 on where the information from your tables come from, so while the TC had some reservations because it's not a stratified design, because there are similar reductions achieved between both tables, they approved the proposal.

The TC also has no guidelines to evaluate area splits. The Board in the past two years has approved the Maryland area splits, but the TC continues to support having guidelines to be set for states that do propose area splits in their regulations. The Law Enforcement Committee commented on the area splits for Maryland.

They generally do not recommend splits because it can be difficult to enforce the boundary lines, but because of the unique landmass that's between the ocean and bay, DELMARVA Peninsula, those concerns are not great. It's very difficult to run all the way around, and so, therefore, there are no law enforcement concerns except for their continued concern of different regulations between state boundary lines; but that is each state, whenever the Board chooses conservation equivalency.

The State of Virginia was the only other state that was under their harvest target in 2007. They required a 21.6 percent reduction based on the performance factor. They have a suite of five options for their proposed regulations. The TC recommended approval of these regulations.

North Carolina was 28 percent over their 2007 harvest target. They did not require a performance factor, and their reduction was 34.2 percent. They have a series of seven options for their proposals. In each of their proposed options they have an exempted area. You can see on the screen the slight light green lines, inland waters is a proposed 14-inch size limit and the ocean waters is a 15.5 inch size limit. In the southern portion of the state, the ocean waters are all 14 inches.

Again, the TC does not have guidance to evaluate proposals with area splits, and, therefore, they have concerns in evaluating those proposals. In the areas of the ocean where there is a 14-inch size limit in North Carolina, this is a liberalization from their regulations from 2007. The ocean waters were all 14.5 inches and the inland waters were 14 inches. Because of the way the split is set up, you can't factor how much of the liberalization that is.

The split is done because of the dynamics of the summer flounder fishery and the southern flounder fishery in North Carolina. There is a much higher incidence of summer flounder in those southern portions of the state, as well as in the inland creek waters of the state. The TC does not expect that the target would be exceeded for summer flounder because of that dynamic between the two species, as well as the fact that North Carolina increased their reduction by 13.4 percent to buffer for the inability to account for how much of a liberalization there would be from the ocean waters. The TC did recommend approval of their proposal.

The Law Enforcement Committee again does not generally recommend area splits because of the difficulty enforcing. The North Carolina Law Enforcement Committee representative looked at the proposal and found that the rules would be enforceable, and this is based on experience in previous years with similar area splits.

## **DISCUSSION OF PRECAUTIONARY DEFAULT**

The TC went back and because they were directed to set proposals based on the performance factor reevaluated the precautionary default measure that they had recommended to the Board and Council back in December. The precautionary default that was adopted is 20 inches, two fish from May 23<sup>rd</sup> through September 1<sup>st</sup>.

The Framework 2 regulations state that the precautionary default measures would achieve at

least the overall required reduction in landings for each state. The precautionary default that was set would not meet that rule based on the performance factor regulations proposed by all of the states. The TC would recommend setting the precautionary default to at least 20 inches, two fish, with the season from July 4<sup>th</sup> through September 1<sup>st</sup>. That is all I have. Does anyone have questions?

CHAIRMAN TRAVELSTEAD: Okay, all of the states have been recommended for approval by the technical committee, although there were some additional comments on the Maryland and North Carolina proposals. At this point does any state wish to speak to its proposals? Tom.

MR. THOMAS MCCLOY: Thank you, Mr. Chairman. We had another provision in our proposal which I believe the technical committee approved. If I may, I'll just highlight the Board for that. We have a Governor's Surf Fishing Tournament which occurs the first or second Sunday in October.

In the past, when the season has been closed, the season has been closed and people have not been allowed to take fish during that time period. I can't tell you what the governor may want to do when we get to October. However, we would like the ability to at least open the season for that one day for the state park in which the fishery occurs, which is Island Beach State Park, that one mile stretch of beach, to surf fishermen only.

There were numbers provided to the technical committee of the harvest during that time period on the years it was open. If I may, I'd just like to give everybody an idea of how many fish we're talking about. In 2007 the season was closed. In 2006 there were ten fish harvested. In 2005 it was three fish. In 2004 and 2003 it was four fish, and in 2002 it was closed. It's not a significant number of fish. I believe last year there was one legal-sized fish caught but released. We would like that ability should the governor want to proceed with that.

MS. KERNS: Tom, my apologies for leaving that out in my notes. The TC did review that and approved that as part of your proposal, and it's outlined in the actual memo that was given to the Board.

CHAIRMAN TRAVELSTEAD: Any other state wish to speak to its proposals? Any other questions about any of the state proposals? If not, can we get a motion to approve? Bill.

MR. WILLIAM A. ADLER: I make a motion to approve the various state proposals.

CHAIRMAN TRAVELSTEAD: Thank you, is there a second? Seconded by Red Munden. Any discussion on the motion? Jim.

MR. JAMES GILMORE: Before we get into the motion itself, I just wanted to have a little bit more discussion on maybe the overall topic. Let me preface this by saying what we just heard from the technical committee. I think you guys were charged with an impossible task, and I think you did a terrific job with trying to come up with pulling a rabbit out of the hat.

A lot of this is just more frustration with what we're all dealing with right now, so please take all these comments with that in mind. One of the concerns that we have with a lot of what was in that technical committee recommendations was – you know, there is a letter that we put in that talks about the seven-year averaging.

There are concerns about that because we're breaking new ground, and essentially the letter identifies New York takes the biggest hit on this, which is why we have ten different alternatives on this thing. We're trying to struggle with having to save something of a season for everybody. With that much of a reduction, it's almost an impossibility. But our concern with that is more the precedent.

I mean, we're all going to struggle with difficulties this year, but we're trying to look ahead. Essentially going with that seven-year average for a performance factor is sort of doing something new. Although you indicate that we're not going to do this past this year, it's sort of setting a precedent that maybe we'll be averaging again next year.

Based upon our reductions, the concern is that even if we stay under by taking our 64 percent reduction, we could be under and still have to take a significant reduction next year if we go back to something like this. So, that's a real big concern, especially when the report from your guys indicated that those traditional methods of bag-and-size reductions and season reductions, based upon places like New York and New Jersey where most of the fish seem to be, aren't going to work very well or there is a good chance they're not going to work very well, so that gives further concern to why this thing doesn't give a lot of confidence that any of this is going to work.

And then we're looking at our different scenarios, the ten we have don't really work. The mid-season closure, we've even looked at that and we're very concerned about if you do that, that essentially there is that opinion that opening the season up again, we're going to get so much effort when the gates open again; and if we really do have that much increasing effort, we're going to go over in a couple of weeks after the season opens up again, and we'll have to close it down and it will be even a shorter season.

Plus, the release mortality is probably going to go through the roof, and we're just going to kill a whole lot of fish, that these things really are not going to work too well. So, what we're really looking at is we can have more discussion about how to fix this maybe for this year, but we're getting more concerned about we need to do something now to start maybe saving it for the 2009 season.

I'd like to hear more discussion about if anybody has got some great ideas on that, but from our opinion right now we haven't come up with any solutions to it, so that's again why we're complimenting you guys. I mean, I hate to sit here and tear your thing apart without any kind of a solution to it, but there is nothing that we can do. So, in any event, I'd like to hear further discussion, but when get to the point of passing that, Mr. Chairman, I'd like to put a motion on the table for maybe looking at what we can do down the road. Thank you.

MR. AUGUSTINE: Thank you, Mr. Chairman. And a follow-on to that is if you all look at the restrictions we're putting on ourselves in New York again this year, we even show one possibility is having a 30-day season. I would assure you with an increase of a million anglers last year, in 30 days I think we could – unfortunately, because while the fish are being there, we could harvest our quota 100 percent again.

So, I think Jim is right, no matter what option we put on the table, even if we don't fish, we had no quota whatsoever, I submit that New York is going to have a significant hit. And the reason for it – if you don't mind, Mr. Chairman, just indulge me for one minute – we just have no other fish to fish for. Partyboats/charterboats are doing what they're doing to survive.

They've been impacted, as all the other states are with winter flounder, with a 60-day season. There is really nothing else in our waters at that point in time. As you may know, herring are on a steep decline so they don't even go fishing for herring. Boats that are

capable of leaving the bays and harbors to go out for cod fishing, that's where it is, you know, 20 miles offshore. As far as the blackfish are concerned, tautog, we're heading down a deep slippery slope there, too.

So, it just seems that the question is what kind of socio-economic impact are we putting on these folks based on these – and I don't like the word – draconian measures we have to take in order to make this fishery come back to where it is. That's a whole other issue, but I did want to say for the record that this is going to be even tougher this year than it was in previous years for New York with this additional 34 percent reduction. And for all you states that went over, welcome to the real world.

CHAIRMAN TRAVELSTEAD: David, you have some comments?

MR. SIMPSON: Yes, thanks. I just wanted to say that this is exactly why I think the technical committee has encouraged coast-wide management or at least regional management because I think it's the subject of Amendment 15. I lose track of which is which, but the whole issue of what would you use for the basis of allocation when you look at times changing. Right now with summer flounder, the allocation is based on one year to the states, 1998. That was a decade ago. And how do you incorporate things like changes in demographics within states, changes in population size within states, changes in availability of the resource as it grows? And if you believe there are trends in climate and temperature, certainly it's viewed as fact among fishermen that fluke are moving north and east, and yet our allocation is based on a condition a decade ago. So, the only way out I see from a technical view is to get away from allocation on a very small spatial basis that is established on yesterday. Ten years from now it will be even more absurd.

CHAIRMAN TRAVELSTEAD: Are there any further comments on the motion? Pat.

MS. PATRICIA KURKUL: Thank you, Mr. Chairman. We really appreciate the work of the technical committee, especially in the timeframe they had to look at these issues; and also appreciate their recommendation with respect to the adjustment factor. However, we continue to believe that it's both necessary and possible to apply the factors that the technical committee was asked to look at on a state-by-state basis and would like to encourage continued consideration of those factors over the next year as we move into setting measures for 2009.

I also want to say that we agree with the technical committee's assessment that this would be perhaps a more effective system if we went with a coast-wide program versus the state-by-state management programs. The agency is still, of course, deliberating the recommendations of the council on whether or not to adopt conservation equivalency or coast-wide measures in federal waters.

That would be for federal waters and federal permit holders. As the states look at the options that they've provided, we would certainly encourage them to take the technical committee's advice into consideration with respect to seasons being more effective than bag limits and size limits or in fact their advice that bag limits and size limit changes may not be effective at all and would certainly rather see some adjustments to the seasons.

We've had the same look at the precautionary default that was proposed and the coast-wide measures that were proposed at the council and board meeting in December and reached basically the same conclusion as the technical committee, and that is that they're not sufficient as proposed, and so we're looking at more restrictive measures for both of those.

Finally, regardless of whether we go with, at the federal level, conservation equivalency or coast-wide approach, even if we go with conservation equivalency, we would be certainly monitoring it during the season to see if there were any serious red flags that we felt was necessary to respond to. Thanks.

MR. ROY MILLER: Thank you, Mr. Chairman. I don't have a comment relative to the motion, but I would like to come back to something Dave Simpson mentioned and also Pat Kurkul touched on if I may after we dispense with the motion. Thank you.

CHAIRMAN TRAVELSTEAD: Any further comments on the motion to approve the state proposals? Tom.

MR. FOTE: I noticed we're missing some of the New York people. I guess they couldn't make the meeting today down here. I think I'm going to voice some of my concerns that I've had from New York and the appropriate action that should be taken. I mentioned a little while ago the 2002 figures that were kind of messed up. I fought before this Board numerous times about the fact that New York, all the way from the eighties to about 2001, basically had between four and six hundred thousand anglers.

Because I think of better interception and everything else, they started picking up anglers that had never been recorded before. There was no way of handling that in the catch or regression analysis. I will give you the simple facts. If I remember right, in 2001 they went from where it was always between four and six hundred thousand to all of a sudden 700,000 anglers.

In 2002 we can't really tell because it was extrapolated figures, but I look at the figures in 2003, and it was basically they went up to 900,000 anglers. Well, that would make sense if they paralleled New York and New Jersey because they usually do because of weather and fishing ability.

So when we looked at New York and New Jersey at the same time, in 2001 we went up in figures also. We went to 1.3. But in 2003 we actually went down 200,000 anglers and New York went up to the highest level they've ever been before. Again, I think they picked up anglers they have before. So, part of that performance problem is basically what they're doing is picking up anglers.

Instead of doing a regression analysis and looking at those figures and adding and saying we are underestimating New York's catch, we were underestimating how many anglers they had, and there actually was more fish out there, we basically did the same thing we did on blackfish numbers. In 2002 when we had this screwy number in New York, we basically ignored it, but we still use it in a stock assessment. We know it's an outlier.

It's the same thing we did with weakfish numbers in New Jersey in 2005 when we caught, you know, a huge amount when New York only caught a hundred – we know it's an outlier yet we still do it in a stock assessment. This is not fair to the states; this is not fair to the anglers. Hopefully, when we move forward with the better figures and everything else, when we do this Federal Register, we will look back and correct it.

Those figures need to be adjusted. We're penalizing states for doing the right thing, trying to do the right thing, but sometimes we're not giving the information that is really there. Thank you for your patience.

CHAIRMAN TRAVELSTEAD: Thank you. Any further comments on the motion? Mr. Leo.

MR. ARNOLD LEO: Thanks, I'll keep it brief. Arnold Leo; I'm the consultant for commercial fisheries, Town of East Hampton. I know we're talking about the recreational fishery here, but there is a fundamental principle that concerns me. Here we have the availability of a stock on the increase and we're lowering the quota. Obviously, the chances of exceeding the lowered quota are becoming greater and greater because the availability of the fish is increasing.

Also, one way of reducing the catch, of course, is to increase the size limit, and that's just asking for more discard mortality. These are principles that concern me a lot. I think when a stock is going up, at least we should hold the TAL where it was, if not actually increase the TAL. Thanks.

CHAIRMAN TRAVELSTEAD: Thank you. Is there a need to caucus? Seeing none, all those in favor of the motion, please raise your right hand; opposed, same sign. The motion carries. Jim, I know you said you had some further discussion, and, Roy, you did, too, but what I'd like to do is continue with the agenda – we have a couple of other actions we need to take – and then come back to this issue under other business, as Pat had suggested. We do have the issue of precautionary default. Pat.

MS. KURKUL: Sorry, Mr. Chairman, could you just record my abstention for the record?

CHAIRMAN TRAVELSTEAD: I'm sorry, I didn't ask for abstentions; were there abstentions on the last vote? Two abstentions. There is the issue of the precautionary default that this Board had previously set. The technical committee is recommending a change. This will require, if the Board is so inclined, a motion to reconsider and then a two-thirds majority to establish the new precautionary default. What is the Board's pleasure on this issue?

MR. AUGUSTINE: Point of information, Mr. Chairman. We didn't see the deliberations that you went through to come up with that. Could someone give us an idea as to what process you went through to arrive at it or to arrive at the new default measures? Are they different than the council or is this combined council and Board?

MS. KERNS: The precautionary default was first suggested based off of information that we had at the monitoring committee prior to the December Board meeting, and that was given to both the Board and the Council. The Board and Council both adopted a precautionary default based on the direction from the

Board and Council at the December meeting to account for the additional factors.

The TC recommends adjusting that precautionary default to the state with the largest reduction necessary. That state is New York. The TC based the precautionary default recommendation on New York's proposed recommendation, and the TC suggested at least, because the language in Framework 2, which is what sets the rules for doing precautionary default, reads, "at least the overall reduction required for landings in each state."

So that suggests that it could be more severe than the minimum required for each state. The TC felt strongly that the size and bag were appropriate and that the season would be the most effective way of constraining that precautionary default.

MR. AUGUSTINE: A follow-on, Mr. Chairman, for clarification. Having developed it for New York, does that include a 34 percent performance review; is that a part of that or was it just based on the normal overage that we had had in 2007?

MS. KERNS: It's based on the performance factor adjustment that was done for all states based on the direction from the Council as well as the Board.

MR. A.C. CARPENTER: Could you give us the dates that we adopted in December and what the technical committee is now recommending, please?

CHAIRMAN TRAVELSTEAD: For the existing are May 23<sup>rd</sup> to September 1<sup>st</sup>; and the technical committee recommendation is July 4 to September 1.

MS. KERNS: And to remind the Board when the precautionary default comes into motion is if a state does not submit a proposal or if a proposal is rejected the precautionary default becomes that state's measures in order to make sure that we achieve the coast-wide reduction or coast-wide TAL.

CHAIRMAN TRAVELSTEAD: Is there a motion? David.

DR. DAVID PIERCE: I would move to reconsider the coast-wide default.

CHAIRMAN TRAVELSTEAD: I think we can do this all in motion. It's a motion to reconsider and then to establish the specific measures.



DR. PIERCE: A motion to reconsider the coast-wide default and to adopt the default recommended by the technical committee.

CHAIRMAN TRAVELSTEAD: Seconded by Pat Augustine. Comments on the motion that is going up on the screen? Seeing none, is there a need to caucus? I don't see any need to caucus. All those in favor of the motion, please raise your right hand; opposed, same sign; abstentions; null votes. The motion carries. We're going to move on to Agenda Item 5, consider approval of the scup recreational proposals.

### **SCUP RECREATIONAL PROPOSALS**

MS. KERNS: The four northern region members, Massachusetts through New York, needed to reach a 53 percent reduction. Those four states got together with technical committee members, as well as industry members, to put forward a proposal for the scup recreational fishery. Dave Simpson is here to review what they put through.

MR. SIMPSON: Okay, just for a little bit of background of what we're doing and why for 2008, the 2007 harvest was 3.6 million fish between Massachusetts and North Carolina. That's a projected total for the end of the year. Our target, however, in 2008 is about 1.7 million fish for the states of Massachusetts to New York, so that's going to require a 53.3 percent reduction in the coming year or this year.

At the last Board meeting it was agreed that the states of Massachusetts to New York, who collectively account for 97 percent of the harvest, would take the entire reduction for the coast. Our target for the Massachusetts to New York area is a 53.3 percent reduction. Anyway, with this regional scup management, the goal since 2005 has been to try to establish common regulations among the four states while also recognizing that there are differences in fish availability seasonally and that there are unique needs of the different modes, the party boats, private boats and the shore-based anglers.

The text doesn't come out so hot at the bottom, but, again, just to emphasize the point of the really diverse nature of these fisheries and the availability in terms of fish size, catch rates and seasonal availability by mode and area. In 2007 these states all had a common minimum size of 10.5 inches and 153 days open.

The seasons differed a little bit in that Massachusetts was open from May 1 through September 30 while Rhode Island to New York were open beginning a month later, June 1 through October 31<sup>st</sup>. The bag limits were 25 fish for shore-based fishermen, private rental vessels and what we're calling the regular or non-bonus party/charter season.

Then each state had one wave in which their party vessels could fish at a 60-fish limit and they could choose their best wave. So, for Massachusetts that would be Wave 3, the May/June period; and Rhode Island to New York it would be Wave 5, the September/October period.

So for developing options for 2008 the state agency board members and several industry representatives from the four states met in Mid-January to brainstorm options for reducing harvest by 53 percent, and a couple of the technical committee staff, myself and Paul Caruso from Massachusetts, were there to help out and to try to give them viable alternatives to consider.

The methods that we used to develop measures for 2008 included expanded length frequencies by mode. Now this is the first time, to my knowledge, that this has been done. Traditionally, you take the lengths that were measured in MRFSS, apply them equally to all fisheries, but we felt that would be a problem this year, especially because now there is enhanced sampling in the party/charter model.

So, while there were 55,000 scup measured last year, which is great, 52,000 of them were measured on party/charter vessels, so it would end up looking like all fish look like party/charter catches. So they were all expanded, weighted by landings by wave, mode and sub-region, and I expanded up from there.

As it says, I constructed the size limit table based on mode, so I did one size limit table for the party/charter vessels, another for the private rental vessels, and a third for the shore mode; each looking, hopefully, much more representative than they would have otherwise. The bag limit table was done somewhat similarly. Because the party/charter bonus season had a 60-fish limit, we couldn't use the same table this year for everyone else because they had a 25-fish limit, so there were two bag limit tables, P/C bonus and other.

The season effect was calculated by mode, Rhode Island to New York versus Massachusetts, so there were four subgroups of the fleet effectively, the Massachusetts boat fleet, and that would include the

party-charter non-bonus season; Rhode Island to New York, the same thing; the shore mode, collectively up and down the coast; and the P/C bonus season. To calculate the overall reductions achieved in these four subgroups, if you will, the reductions were weighted by their contribution to total catch.

Okay, so for 2008 what the group developed and I tried to analyze, or did, was a regional season, so all states would have their season within the timeframe of May 15 to October 15. The private vessel and shore mode would have a 10.5 inch minimum size and now a ten-fish limit, down from 25; and the season would be May 24<sup>th</sup> to September 26<sup>th</sup>, so that's a 126-day season instead of 153.

The party/charter bonus season would now be up a half an inch to 11 inches and down 15 fish to 45. Their season would be 45 days long instead of 61, I guess it was. And it would be consecutive days within a mode. That was a constraint that was put on it, so Massachusetts, presumably, would stay within Wave 3; the states would presumably stay within Wave 5. All of that analysis was done on the presumption that it would be best wave, so any change would lead to greater conservation, frankly.

The party/charter regular season, their non-bonus season, would still have an 11-inch size and a ten-fish limit, and it would be any consecutive 81 days continuous their bonus season for a total of 126 days, as the other modes have. This is to show how that breaks out by the four subgroups of fisheries that I did the analysis on.

This is the same information as in the last slide except for the weighting down at the bottom to give you a sense of how much each fishery contributes. The Massachusetts boats made up about 13 percent of harvest; Rhode Island's and New York boats, 64 percent of harvest; the shore mode collectively about 11 percent; and the party/charter bonus season, about 12 percent.

So embedded within the Massachusetts to New York boats is the P/C non-bonus season, and that was about 2 percent of landings in 2007 when they could have the 10.5 and 25 fish limit. That's just my talking slides because I had too much time on my hands last night.

CHAIRMAN TRAVELSTEAD: Any comments of questions of David? Do you any of the four states wish to present further information? Eric.

MR. ERIC SMITH: Only in the sense of Dave's presentation hit the nail right on the head of what went on. I just wanted to make the observation our office seems to be a central location because the New York folks have to come by ferry. The fishing representatives came into the room, and I have to tell you it's one of those times when you kind of want to throw a piece of raw meat in the room before you go in because people were just fired up.

As with the fluke fishery, this is not an easy-to-accomplish reduction. People started from a position of not wanting to give anything up, wanting to have everything justified, and in the course of the day they came to a negotiated agreement that captured the essence of what we want to do with this region is have the rules, to the extent possible, apply across the four-state region so that we minimize those bumps and grinds between interstate differences and the variability in the impact of regulations or effectiveness of regulations that we were seeing an hour ago when we talked – or half an hour ago when we talked about fluke.

This model since 2004 has worked very well; and those guys, I just take my hat off to them on how they came around to each giving a bit more than they wanted to and then eventually a lot more than they wanted to. It was just very encouraging to see that kind of process be able to work, and I just hope that model can somehow be transferred into fluke some day because I think it will solve a lot of our problems. Thank you.

DR. PIERCE: Just to echo what Eric said and also to emphasize that this very difficult job was made easier by the fact that we had great technical support, David and Paul Caruso in particular who worked before the meeting, at the meeting and then after the meeting to make sure that the numbers were crunched correctly. Through their efforts we were able to accomplish what you see before you now.

MR. GILMORE: Sorry I missed the beginning of that. I was just going to say I think the same thing but also to thank Eric. I think you were very humble in your chairing this entire thing and did a terrific job in making this thing come together, and we really appreciate the effort.

MR. SIMPSON: Toni correctly asked me to point out that this was done over the course of the last few weeks, and the technical committee has not had the opportunity to review this fully. I did give a presentation of what I had done and how I had done it

at the last TC meeting, but the point of that meeting was to review the fluke proposals.

Frankly, it was at the end of the day and we were losing people so I didn't get a tremendous amount of feedback on this. It's essentially the same type of approach, developing bag, season and size tables, but I had to do some things differently because we had a different size limit and a different bag limit in these different fisheries.

I did really want to take into account the difference in size composition of the catch by modes, so those are some new innovations, if you will, that hopefully we can use for other species. The other thing, I guess in the interest of full disclosure, is that when I did these reductions, it was presuming a hundred percent effectiveness, hundred percent compliance, if you will, for other species, including fluke.

We did remove any fish that were observed below the minimum size, if an angler was silly enough or ignorant enough to show a creel agent their undersized catch, that goes into the MRFSS data. In this scenario I did not include that kind of correction. If you do, instead of getting 54.3 percent, you get 49.5 percent, so it has about that much slop in it.

There are, as a proportion, a tremendous number of shore-based angler catches that are below 10.5 inches. There are fish that are below 10 inches. I mean, clearly, they've just reached the pain threshold in terms of minimum sizes. Both party and charter and private rental, the proportion under the minimum size of 10.5 inches was 4 or 5 percent, so either pretty good there or they're just more cognizant of regulations and more reluctant to show what they actually had under the size. But in the interest of putting everything I can out there and recognizing that the TC hasn't had the time to fully evaluate what I've done here and give the nod to it.

MR. SMITH: I'm glad Dave brought that last point up because I wanted to mention in this one pager that was handed out that describes what you saw on the screen, when you get down towards about halfway and you see overall reduction achieved, 54, and he just described that's really 49.5 to 54.3, with no way, really, of knowing which it is.

He described where the preponderance of that comes from, but we thought – on the meeting on January 15<sup>th</sup> we thought it was important, knowing that we might be a little over or a little under and the under would be more concern than the over, to have a couple of points that came out in our discussion to

explain why we thought that there were things that were unquantifiable in here that were going to serve to be more conservative than the analysis showed.

They effectively mitigate against – if you're at the 49.5 analytically, that number is going to come up and approach the 53 again because of those two points. The first one is the more important of them. The way this was analyzed, only the bonus fishery was analyzed as if it was an 11-inch size limit, but in reality the party/charter fishery is going to have that 11-inch size limit throughout their whole season. That means they're going to be held to a more conservative standard than Dave was able to analyze, and that pushes that number up.

The other one, the same type of point, in the non-bonus fishery, when they have a ten-fish limit, they were very candid in saying we aren't going to target scup. They'll be fishing for other things at that time, and the time that they will take scup is if they're on, what the New York guys call, a mixed species bottom fishery.

They might catch a little bit of black sea bass and a little bit of scup, but they're not targeting anything. They're more or less fishing and what they catch they can keep up to ten fish, so it won't be a directed trip trying to fish for scup as they do in Connecticut, Rhode Island and Massachusetts. Those two things tend to bring the worse case analysis and percentages up more towards the target, but as Dave rightly points out, no matter how you look at it, you're really dealing with something that hovers around the low fifties to 53 to 54, somewhere in there. Thank you.

CHAIRMAN TRAVELSTEAD: Can we get a motion on the scup recreational proposals? Eric.

MR. SMITH: I would move that the Board adopt this northern regional approach as identified in the handout distributed today.

CHAIRMAN TRAVELSTEAD: Is there a second to the motion? Seconded by Jim Gilmore. Comments on the motion? Seeing none, is there a need to caucus? Apparently not. All those in favor of the motion, please raise your right hand; opposed, like sign; abstentions; null votes. The motion carried.

## **2008 COMMERCIAL SCUP SUMMER PERIOD QUOTA**

On to the next item, 2008 commercial scup summer period quota. There are some discrepancies there. As you know, the 2007 summer period quota was

exceeded and that overage comes off the 2008 federal summer period quota, so there is some inconsistency now between the commission and the federal quotas. Toni is going to present some options for your consideration on how to deal with this.

MS. KERNS: Thank you, Mr. Chairman. On the CD you have a memo dated January 18<sup>th</sup>. This memo gives information on your 2008 black sea bass quota; and then when you move to Page 2, it begins to talk about scup. The Winter I trip limit for the scup fishery is, in federal waters, a possession limit of 30,000 pounds, and the states implement a 30,000 pound two-week landing limit.

If 80 percent of the quota is reached, that changes to a possession limit of a thousand pounds per day. In the summer period the 2007 NOAA and Commission quotas were different. The 2007 NOAA summer period quota was exceeded by 624,819 pounds. This number could possibly change due to updates in landings.

I also have been having a hard time getting the same exact number from the landings that I've been receiving from the states versus the landings data that is coming off of SAFIS. I'm working to reconcile those differences and will update the Board once I can achieve that. The overage from the federal quota will be coming out of the 2008 summer period quota.

In 2008 both the Commission and the Council set the same total allowable landings for scup, but due to this overage we will end up having different summer period quotas. Implications of having different TALs in federal and state waters is that the federal waters could possibly close before state waters do.

This will shut down anyone from fishing for scup that holds a federal permit, and this is regardless if they're in state or federal waters. It creates an inequity between the federal and state-only fishermen. Last year when federal waters closed early, the Commission received several phone calls from concerned fishermen due to the inequity between state-only and federal permit holders.

If we continue to have different quotas, then the overages will continue to build from year to year forward. Staff suggests that the Board could consider applying the federal overage to the Commission's summer period quota. We could apply this all this year or we could look at applying the overage in multiple years, as we did in 2002 where we took the overage 50 percent the first year, 50 percent the second year.

If there are any underages in this summer period of 2008, it would go ahead and come off the overage, so then in 2009 there would be less overage to account for. This table represents, based on the currents that I have right now, what your state quotas would look like if we did no adjustments to the Commission summer period quotas, the first column – the states just didn't show up.

It goes north to south. If you look in your memo, Page 3 is a larger version of this table. The first state at 2,496 is Maine, and it goes down south all the way to North Carolina at 514 pounds of quota. If we do no adjustments, then the summer period quota would be about two million pounds. If we took the entire federal overage in 2008, we would have about 1.4 million pounds. If we took 50 percent in 2008 and 50 percent in 2009, the summer period quota in '08 would be about 1.7 million pounds.

The second issue that needs to be considered is the concern for landings of the scup fishery at the beginning and ending of the periods. NOAA Fisheries records all landings data on the date of purchase; not the date landed. The regulation's language is looking at the date landed when you say whether or not something has been caught in the Winter I versus the summer period.

We have seen landings that were at the end of the Winter I period, they're getting counted in the summer period because of the date that they were purchased on. This could become more problematic as the quotas get lower, especially for those states that have very small shares in the summer period.

For instance, North Carolina this year has about 8,000 pounds of landings that we had a hard time accounting for because they were purchased in the summer period and actually landed in the winter period, so it took a while for us to figure out why their landings were so high for the summer period. This would make them exceed their quota by several thousand pounds because they only get about a thousand to two thousand pounds per year.

Because the Winter I trip limits are so high, it could influence a very high overage for those states with small shares. Staff suggests that we can look at this issue in the long term as well as in the short term. To have a long-term fix, we can look through Amendment 15 in either having rollovers from the Winter I to the summer period or we can look at actually adjusting the allocation for all of the period, so Winter I, summer and Winter II for total shares.

But Amendment 15 is going to take several years to be implemented, staff suggests a short-term solution so that in these years that we have low quotas there are no states that will suffer from a date sold versus a date landed. Staff suggests that states would close their Winter I period on the last Saturday of April. Quota weeks end on a Saturday so that would be the last day of the week for the SAFIS recordings.

This would allow for a few days to pass between the dates landed and possibly dates sold in the month of April. So for 2008 states would close their Winter I period on April 28<sup>th</sup>, and no landings of scup would occur again until May 1<sup>st</sup>. I think depending on your state it would either be a possession rule or a landings' rule, depending on how you would do your regulations. Are there any questions?

CHAIRMAN TRAVELSTEAD: Questions for Toni? David.

DR. PIERCE: Toni, I don't think I understood what you said regarding what happens with the Winter I landings. Did you say that because of reporting problems, some of the Winter I landings were counted as summer landings; and if that's so, how much were accounted for as summer landings because that has a significant impact, if it's a large amount, on what we're going to do here for the remainder of this morning. There is the 624,819 pound so-called overage of the federal summer quota and how much of that should be reduced and moving into the Winter I period?

MS. KERNS: David, I'm having a difficult time trying to account for all of the landings so far. When I query SAFIS, I have found that there were 4,245,273 pounds of fish for landings in the Winter I period, but I have 4,247,329 million pounds purchased in the summer period, and that's supposed to be for the summer period and not the winter period, so it's about a 2,000 pound difference from what I get from SAFIS.

But then when I ask states what their landings were, some states actually have higher landings than what is recorded in SAFIS, so I'm trying to figure out why there is a difference in SAFIS versus what a state is accounting for in their landings, and then also a difference from what I received from the regional office in terms of landings.

DR. PIERCE: Okay, recognizing that difficulty – and thanks for digging into it. Obviously, it's hard to do – can we assume then that a relatively small

amount of fish was incorrectly attributed to summer landings?

MS. KERNS: I think so. It's at least 2,000 pounds, I believe, but it could be more. The point that needs to be made is that the Service accounts for landings on the date sold, and that will not change. To rectify that solution, we're posing that we close the Winter I period earlier so that none of those landings will count then.

MS. KURKUL: Just to speak further to that, this issue doesn't relate to a data issue – a data error, rather. It relates to, as Toni just pointed out, the fact that we count the landings as of the date of purchase. Now, for many dealers and in many places the date of purchase and the date of landings are the same, but there are other places where they are not; and as a result the dealer in many cases doesn't know the date of landing. That's why we use the date of purchase.

It has caused problems in at least New York. I queried at least some of the states and nobody else identified problems anywhere else. Where it is a problem, obviously since the trip limits are so high in the Winter I period, what you want to try to avoid is – or find some way to ensure that those are counted against Winter I and not against the summer period. I think the staff's recommendation is a good one.

CHAIRMAN TRAVELSTEAD: Thank you. Other comments? Red.

MR. RED MUNDEN: Thank you, Mr. Chairman. In 2007 we had a vessel to land scup on the last day of April. It was during Winter I. Those landings were credited – and Winter I ended, I believe on a Wednesday. The landings were credited when they were sold at the end of the week, and they were charged against North Carolina's 1,100 pounds of scup quota for the summer harvest period, so we had an overage of several thousand pounds.

It will take us about four years to erase that overage for the summer harvest period unless some state is willing to transfer scup to North Carolina. My thanks to Massachusetts because they did transfer some scup to North Carolina that were landed over our limit quota during the summer harvest period.

But, Toni, having said that, would you put your last slide up for me, please? Okay, would you clarify the second bullet, no landings of scup would occur until May 1<sup>st</sup>? If we're going to close on April 28<sup>th</sup>, it would appear to me that if scup are landed after that period – well, just clarify that for me.

MS. KERNS: The staff's thought was that between April 28<sup>th</sup> and May 1<sup>st</sup> that your state waters would be closed to catching scup and landing them. I know that some states have the possession rules, some states have landing rules, so I guess I should have said no landings/possession of scup from April 28<sup>th</sup> through May 1<sup>st</sup> to give that buffer a few days to allow for those fish that were landed to then be sold in the areas where sometimes there is a delay between date landed and date sold. Does that help?

MR. MUNDEN: I think so.

CHAIRMAN TRAVELSTEAD: Yes, a boat could come in on April 28<sup>th</sup>, land legally, and it could end up selling on April 29<sup>th</sup> or 30<sup>th</sup>, that would still be legal. You just couldn't land after the 28<sup>th</sup>, so NMFS would still count the date of landing. It would still be assigned to the Winter I period instead of the summer period. It's just allowing a separation between the two periods so that we don't get into this situation. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, do you need a motion on that? I want to go to the next issue.

CHAIRMAN TRAVELSTEAD: I think we're eventually going to need two motions; one how to address this situation, and this is how the staff has recommended we fix it. And the other is how to address the overage that occurred.

MR. AUGUSTINE: Well, Mr. Chairman, I didn't know if you wanted one or two motions. I'd make the two motions, as you suggest, when you're ready.

CHAIRMAN TRAVELSTEAD: Let me come back to you, Pat Kurkul has her hand up, and then we'll get a motion.

MS. KURKUL: Before you put up a motion on the issue, I did want to make a couple of comments. As Toni has noted, this situation happened in the past, and the alternatives developed were based in part on what the Commission did the last time, but the situation is different now than it was in 2002.

I think we need to acknowledge that we're under a rebuilding program at this time for scup, and so in effect by taking 50 percent of the overage this year and 50 percent of the overage next year, that would be allowing a fishing mortality rate above the rebuilding rate for scup, and so we would have some serious concerns about that.

Of course, ultimately we need to achieve the federal target regardless of what the Commission does, and so if the Commission did adopt a difference we'd be looking at it the same way that we did last year and monitoring to try in any way close to achieve the federal target. Thanks.

DR. PIERCE: If I may to that point, I appreciate Pat's concern, legitimate concern, but at the same time I would there would be a recognize by the federal government that the states, in particular, have done something dramatic, disadvantaging us dramatically, and that is we decided to get back on the same page as the federal government in 2008.

That was a major decision on our part, to not go in a different direction. We decided to get back on the same page, so I would hope that would be recognized and considered as part of any federal decision down the road that would relate to what the Board is going to do here today.

CHAIRMAN TRAVELSTEAD: All right, are we ready for a motion? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I guess the first motion would be – Toni, would you put back the information up there that would encompass the April 28<sup>th</sup> to May 1<sup>st</sup>, whatever that date was. I move that the states should close Winter I Period scup on April 28<sup>th</sup>, with the understanding that no landings of scup would occur until May 1<sup>st</sup>. That's based on the technical committee's recommendation.

CHAIRMAN TRAVELSTEAD: Is there a second to the motion? Seconded by Pat Kurkul. Comments on the motion? Mr. Leo.

MR. LEO: I want to thank the technical committee for coming up with this suggestion. I just wanted to mention, so Toni knows, she said that she thought there were a couple thousand pounds of fish that got landed in the Winter I period and assigned to the summer. In New York in 2007 that happened to be 56,000 pounds of scup landed at the very end of April. It happened to be weekend. They didn't go to market until May 1<sup>st</sup> or 2<sup>nd</sup>. They got assigned to our summer quota. The summer quota was something like 180,000 pounds, and right off the bat, on the first day you deduct 56,000 pounds from that quota. That hurt. Thanks.

DR. PIERCE: I can appreciate the need to make sure that the landings are accounted for properly; that is, what season were they actually caught in and when the landings occurred. However, in Massachusetts' particular case this would provide for a very awkward and difficult situation and extremely – well, how should I put this?

The fisherman would think this is a awful foolish regulation since the fishermen in my state wait for scup to come to our waters, Nantucket Sound and Vineyard Sound, and they generally arrive, finally, around – depending upon the weather, the temperature, they may arrive around April 22<sup>nd</sup> or April 23<sup>rd</sup>.

The draggers begin to fish, small draggers, fishing inshore under state rules and, of course, rules that enable us to keep to the quotas that have been established by ASMFC. So, the fish arrive, the fishery begins. With this particular motion in place, we would then have to say, after they've been fishing for, let's say, three days, we have to say, "Stop!"

Then three days go by and we would say, "Go!" It doesn't make any sense. We're not dealing with an offshore fishery. For us it's all an inshore fishery. So, again, very difficult to explain to our inshore fishermen that finally they're able to fish and now we have to shut them down. Now this all presupposes, of course, that there is still Winter I quota to draw on and the fishery is still open.

If it is still open and the fish arrive on the scene, then, again, the stop and go would be somewhat embarrassing for us to try to implement because it doesn't make any sense for us in Massachusetts.

CHAIRMAN TRAVELSTEAD: Other comments on the motion? Eric.

MR. SMITH: I understand David's reaction on the face of it because when this issue first came up, that's the way I looked at it. It just didn't seem to make any sense until you start to think about it. In fact, his inshore fishermen could be the ones harmed by a change in behavior of any fisherman who is allowed to land in Massachusetts that might come in with a bigger than usual trip.

We have that same concern. It hasn't happened but it doesn't mean it couldn't happen by our own boats that decide to behave differently than they have in the past. Yes, it will take some explaining, but I think it's a reasonable course of action. Frankly, it almost doesn't need a motion or a vote. It needs each state

to deal with it because each state is the one who is going to be impacted if this thing doesn't work right. I support the motion.

CHAIRMAN TRAVELSTEAD: Other comments? Seeing none, is there a need to caucus? We'll take a few seconds to caucus and then we'll vote.

(Whereupon, a caucus was held.)

CHAIRMAN TRAVELSTEAD: Pat, while everybody is caucusing, could you look at the motion on the screen and make sure it says what you wanted. Staff did a little bit of wordsmithing for clarity purposes. The motion is move to close the Winter I Period on April 28<sup>th</sup> with the understanding that no landings or possession of scup would occur until May 1<sup>st</sup>, the beginning of the summer period.

The motion was made by Mr. Augustine and seconded by Ms. Kurkul. Are we ready to vote? All those in favor of the motion, please raise your right hand; opposed, like sign, 1; abstentions, 3; null votes, 1. The motion carries. Okay, the second issue, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Relative to the comments that were made about the possibility of overages and that we're in a rebuilding schedule with scup, it just seems to me that, as Dr. Pierce had indicated, it's another one of those issues where we hope the National Marine Fisheries Service will understand what we're going through.

I really would like to go ahead and have that motion say the following: that the summer period overages that incurred in 2007 will be applied over two years. Any underages in the 2008 summer period quota would reduce the reduction in 2009 by that same amount. Is that clear?

CHAIRMAN TRAVELSTEAD: So your motion is to split the overage in half and apply it half this year and half next year; is that correct?

MR. AUGUSTINE: That's correct, Mr. Chairman.

CHAIRMAN TRAVELSTEAD: Is there a second to the motion? Seconded by Gil Pope. Discussion on the motion? David.

DR. PIERCE: Just to make sure I understand the motion, I think that if we approve the motion, if it is adopted, then we would be agreeing to abide by the 2008 summer period quotas, including 50 percent of the federal quota – that's the last column in one of the tables provided by Toni?

CHAIRMAN TRAVELSTEAD: Right, in the January 18<sup>th</sup> memo.

DR. PIERCE: Okay, that would be the column we would use; correct?

CHAIRMAN TRAVELSTEAD: Yes. Any other comments? Yes, sir, Bill.

MR. ADLER: I have to put my usual in. I want the feds to change their quota up to us. I have to say this because here we go again. Thank you.

CHAIRMAN TRAVELSTEAD: You're on the record. Any final comments? Is there a need to caucus on the motion? Apparently not. All those in favor of the motion, raise your right hand; opposed, like sign; abstentions; null votes. The motion carries, 7, 1, 2, 0. Okay, now we're going to move to other business. Toni is going to update us on Amendment 15 real quickly.

DR. PIERCE: Excuse me, Mr. Chairman, would you please read the vote again?

CHAIRMAN TRAVELSTEAD: The vote was 7 in favor, 1 opposed, 2 abstentions, and 1 null vote. I think I said zero. I wrote down "zero" for some reason.

## **OTHER BUSINESS**

### **AMENDMENT 15 UPDATE**

MS. KERNS: Thank you, Mr. Chairman. Staff recently attended the FMAT meetings for Amendment 15. FMAT basically means plan development team. At that meeting some new information came to light regarding the issues that are being considered in the document. The Mid-Atlantic Fishery Management Council Chair is Gene Kray and Pete Jensen met with the Mid-Atlantic Council staff to develop the workplan for their staff in 2008.

During that time period, they looked at the 18 issues that were prioritized by the Council and the Commission in Amendment 15 and decided that would be too large of a workload for council staff, and so they prioritized those issues to six. In that they said that if other issues were able to be tied into those six and if there was time to develop more, then staff would, but six of them would be the priority that would need to be met.

The six issues that the Council Chairs prioritized were summer flounder commercial allocation; the management of the summer flounder recreational fishery; the scup commercial allocation; management of the scup recreational fishery; the rollover of unused quota; and the limitations on vessel replacement upgrades.

The plan development team for the Commission seeks advice from this Board on how you want to move forward with the documents. Currently we were planning on doing a joint document with the Mid-Atlantic Council on all 18 issues. When they dropped to six, that would put this Board's document in a different direction, and so the plan development team needs to know if you would like us to split off the council's Amendment 15 document or do we want to stay together and then we drop the other 12 issues.

If we do split from the Mid-Atlantic Council's document, then the Board will have to consider that we might need some additional staff work because that will be an additional workload without having the ability to work jointly with the Mid-Atlantic Council staff. I think that we would also need to reconsider who is on the plan development team for this document.

CHAIRMAN TRAVELSTEAD: I'm going to suggest something up front here for your consideration. The decision of the Mid-Atlantic Council Chair and vice-chair to prioritize the 18 issues down to 6 to my knowledge has not been brought before the full council. This was an executive decision, if you will, to focus the work of the staff for the Mid-Atlantic Council.

I think it's an issue that deserves discussion by the full council, and I would assume that is going to happen at some point in time. That decision was not brought to my attention, and I assume this is the first time you're hearing it as well. I think before we proceed to a decision to go down a different path we need to get clarification as to exactly where the Mid-Atlantic Council stands on this.

In the meantime there is plenty of work to be done on Amendment 15. The staffs can at least initially be working on the six prioritized measures until we get this issue worked out with the Mid-Atlantic Council and it becomes a little bit more clear as to exactly how they're going to proceed.



I would prefer that we not make a decision here today based on what little we know at this point to sort of separate and go our own way addressing the full 18 measures until we have clarification from the council. Pat, you have some comments?

MR. AUGUSTINE: Yes, to follow what you're saying, Mr. Chairman, it just seems to me, though, if it's obvious there are items on here that the Board does not agree should not be looked at in Amendment 15, it would seem to me that, through Toni and staff, we might want to figure out about – a guesstimate now – about how much staff time it's going to take if we do have to come forward with assistance to the council to advance some of these items on here.

I know it's premature but, again, two more months are going to go by before the council meeting, three months for us, and it just means that the end date is out another three, six or however many months. That's my only concern, and I don't know how we advance it. As you were surprised, we were surprised when we saw that they had done this.

CHAIRMAN TRAVELSTEAD: Well, it's clear that there's no way that the ASMFC staff, by themselves, can prepare 18 measures without the assistance of the Mid-Atlantic Council staff. Of course, our schedule right now calls for the presentation of all the options at the August meeting. That still leaves us some meetings in between now and then to work this thing out and see where we end up. Gil.

MR. GIL POPE: Thank you, Mr. Chairman. Plus, it looks like to me – I just checked off at least 12 or 13 of these items that are basically more policy than substance, in my mind. They're basically how you feel about things opinion-wise rather than actual things as to whether it's rebuilding or whether it's about the science involved. So, do we need to do some policy work on this before you even start to go down these lists? We need to identify them. Do you know what I mean?

MS. KERNS: Gil, just a reminder that the requirements by any federal document for consideration has to go through the NEPA and EIS draftings, and so any issue that is included in the federal document, as it is a joint document, would have to go through all of those evaluations, and that is what takes such a considerable workload and staff time to do. So even if they are majority policy issues, we still have to do that development work, so the workload would remain the same.

CHAIRMAN TRAVELSTEAD: Other comments on this issue? What is the pleasure of the Board? David.

DR. PIERCE: Well, my pleasure is to follow the lead that you suggested, Mr. Chairman. Indeed, it is a long list and I suppose it needs to be pruned. The Mid-Atlantic Council has to have a shot at it, have some prolonged discussion. I'd like to see a document from the council staff that will eventually come out of the discussions between the chair and the vice-chair. All we have is a list here with no rationale as to why some were being considered and some are being Xed out.

I see a few here that I would like to have remain on the list, but I don't think it's necessary to have those discussions today. I would encourage the postponement of this issue until after the Mid-Council has time to discuss it further.

MS. KERNS: The rationale that the council chairs used to pick these six issues is these are the six issues that the council originally adopted to be in the amendment document. If you recall when we went back and forth on the issues to be included in Amendment 15 several times between the Board and the Council, the Council had met and come up with six issues prior to the Board meeting coming up with the 18 issues that they wanted to include.

So then after we saw that difference between the issues, we went back to the council with the 18 issues that the Board would like to consider, and we came to an agreement of those 18. This is just the council chairs prioritizing based off of the first initial read from the council members.

CHAIRMAN TRAVELSTEAD: I see Jessica is here from the Mid-Atlantic.

MS. JESSICA M. COAKLEY: I just want to make a comment about how Chairman Jensen and Vice-Chairman Kray came to the recommendation that council staff prioritized these six issues. As the lead on the fishery management action team, I basically, in order to populate that team, went out looking for technical support to develop options for these issues.

Because as you realize issues of commercial capacity, potential sector allocation, the party/charter fishery, before we even get into an EIS or an EA that's required for the Service, just developing options that are going to be effective is going to be very intensive and require quantitative economists, social anthropologists.

There are 18 issues on this list; and as you know, the more issues that are added in, the longer this is going to take. In trying to populate that team, it became clear that we weren't going to get the amount of technical support that we had hoped for, which means that this process is going to take a lot longer, and it was going to be very difficult for staff to just come up with options for these 18 issues for the Board and the Council to consider at their August meeting, which was what we have on our original schedule.

So, in a staff meeting with our director, Chairman Jensen, Vice-Chairman Kray, I brought this to their attention, and they said obviously staff has to allocate their time somehow. So, in June the council had identified these six issues as their priority back in June 2007; start there with those six issues, and there are many other issues that the analysis will kind of spin off of those, like issues of party/charter fisheries, potential sector allocations are subsumed in some of these other issues; start there and get to as much as you can before the August council meeting.

As you know, this process started back in October 2004 with the Ron Konkelman council meeting. So, each time we've stopped and tried to prioritize issues, it slowed the process down. That decision was made back in the fall, to get staff started with this, and that's where we are right now. I just wanted to give a little bit of background.

These six issues were not randomly identified as, you know, just the six priorities of Pete Jensen and Gene Kray. They were council priorities and they didn't discount these other 12 issues. They said to start there and see how much you can get to before the August council meeting, present what you have then and we'll get additional direction at that point. I just wanted to make that clear.

DR. PIERCE: Okay, Jessica, just a clarification, I think you said that some of these issues may actually be subsumed in the ones that have been selected – in the six that have been selected. If that's the case, then can I assume that Number 12, management of the scup recreational fishery, could eventually entail treating the party and charterboat fishery different from the shore-side fishermen; in other words, pursue with management strategy that would address those different segments of the recreational fishery?

MS. COAKLEY: Well, it's based on our first fishery management action team meeting. That was one of the issues that the FMAT is going to be considering as a way to deal with some of the issues of management in the scup recreational fishery. Sector

allocation is one of the things on our list to take a look at. Now what those options will actually end up looking like once an analysis has been done is another question, but that is one of the things that they did discuss.

MR. AUGUSTINE: Thank you, Mr. Chairman. So, Jessica, I would assume by the August meeting we will have, I'll use the expression, scoped down – in line with what Dr. Pierce said, scoped down or developed beyond the heading of a line item; for instance, Number 12, management of the scup recreational fishery.

There may be bullets under that, so to speak, that would incorporate some the action within the 18? I think that's what you're suggesting. My concern was that some of these are very clear cut. Limitation on vessel replacement upgrades, I was not in favor of that way back when and I'm not in favor of it now because that's an issue that's governed by the federal government as to size and replacement upgrades.

So, to spend time on something like that as opposed to one of the other issues – I understand the executive director, chairman and vice-chairman and yourself and FMAT put this list together, but when I see an item like that, based on the 18 that the Board asked for, I'm just afraid that some that we think are more important in the ensuing six or eight months after the August thing may get pushed farther out into the process.

I guess it will be up to us board members and council members to make sure that we're continuing to incorporate some of these other items that we think are as important as. I don't know if you can respond to that or not, but I'm hoping that you group together and incorporate one of the other items, it will show up as a bullet referring to one of the other items. Does that make sense or not?

MS. COAKLEY: I think so. I think as Jack had suggested, it might be worth bringing this up at the next council meeting to make sure that, indeed, some of the council priorities and board priorities are moving forward. Like I said, staff can only get to so many, and it's unlikely, after our first plan development team meeting, based on the feedback from all of the technical people working on that – just getting to a few of these issues is going to be difficult by the August meeting. We're going to try to address as we can with the information that's available.

MS. KURKUL: Thank you, Mr. Chairman. As Jessica so diplomatically suggested, one of the

reasons the council feels the need to reduce this list is because they weren't able to get the support they had hoped for in their FMAT. At least one of the organizations that hasn't been able to provide that support is the agency, the Fisheries Service. We simply don't have the resources that would be necessary to address all 18 of these issues.

It's a massive undertaking. At this point our resources are being devoted to addressing overfished fisheries and dealing with overfishing, and then starting to prepare for the necessary implementation of accountability measures and annual catch limits. I think that's part of what is driving this.

CHAIRMAN TRAVELSTEAD: Unless the Board here today is willing to pare their list of 18 down to the same 6 that have been identified by the Mid-Atlantic, I'm not sure what else we can accomplish here today other than to allow for some further discussion at the council on this and then come back at your next meeting.

Is there any objection to that approach? We're running out of time on the agenda, and I know Roy Miller had some additional items and Jim Gilmore did, too. Seeing no hands, I'm going to move on, then, to the last item on the agenda. Roy, you had some comments that you wanted to make.

MR. MILLER: Mr. Chairman, we are running out of time so I would defer to Jim Gilmore first. I would like to hear what he has to say, and then perhaps I'll either offer comments or defer to another time.

CHAIRMAN TRAVELSTEAD: Okay, very well. Jim.

MR. GILMORE: Thank you, Mr. Chairman. Going back to the previous comments on fluke and my comment that we needed to start planning for the future and also from two other points that we had technical committee recommendations on a regional approach would be conservation equivalency as something that would work better and also the advisory committee had recommended that and also came up with three potential options on what regions would be, I would like to propose a motion that we move to develop an amendment to the fisheries management plan that would require mandatory regions for conservation equivalency for the 2009 harvest season.

CHAIRMAN TRAVELSTEAD: Where did you leave me, Jim?

MR. GILMORE: I just put a motion up.

CHAIRMAN TRAVELSTEAD: Okay, thank you. Is there a second to the motion? Seconded by Najih Lazar. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. As some of the members have heard me in the last three or four days and last year talking about mandatory regions, I would hope that Jim's understanding of this motion and the intent would be to actually move to amend the plan so that it would incorporate mandatory regional management and remove the optional regional language.

Jim has said for 2009. I would almost like to see that as a tool in the box and not just be for one year. The FMP says – through the council board – says that you can either have coastal or conservation equivalency or an optional regional. An optional regional absolutely has not worked ; we tried it. New York is the bad guy all the time, so no one wants to join us.

On the other hand, if we leave the optional regional in there as another conservational measure, meaning state by state, I think we end up in the same place we are now. It's obvious in the last three years Brian, Gordon and myself have spoken on behalf of coastal year after year, and we have been very outspoken about it.

We also accept the fact that with states such as North Carolina, farthest to the south, Virginia and possibly into Maryland, when you're talking about 14, 15 or 16-inch fish, to see you have to go to an 18-inch fish and enjoy the pain that we have based on moving those fish in all those other regions, we don't see coastal happening for an awful long time.

Like striped bass, it's coastal, it's rebuilt, it works. Like black sea bass, it's coastal, it's rebuilt, it works. So, I just don't see ever getting to summer flounder as being one of those tools in the box that becomes optional. Optional, it doesn't work – I'm sorry, conservation equivalency state by state doesn't work.

So, if Jim doesn't mind I would like to change that – I suggest that we might amend that with his concurrence, if he would change the language, "Move to develop an amendment to the FMP" – here is how I wrote it, please. "Move to amend the Summer Flounder, Scup, Black Sea Bass FMP to incorporate mandatory regional management as a tool and remove the optional regional language." So, it's just another tool.

CHAIRMAN TRAVELSTEAD: Before I call for a second, I want to ask Jim Gilmore for clarification on the original motion. Jim, was your motion to actually require that we use the mandatory regional approach in '09; or, is it simply to add that approach as a tool in the toolbox, so to speak?

MR. GILMORE: It's the latter, Mr. Chairman. 2009 was just a target point, but I agree with Pat, if we could essentially put that as tool in the toolbox, it will work fine.

CHAIRMAN TRAVELSTEAD: Okay, so the difference between your motion and the one that Pat is offering is that Pat is also suggesting that we remove the optional regional approach from the toolbox. Okay, do you accept that as a friendly amendment?

MR. GILMORE: Yes, that's fine.

CHAIRMAN TRAVELSTEAD: Okay, so we're back to a single motion; that being that the mandatory regional approach would be a tool added to the toolbox while the optional approach would be removed from the toolbox. Eric.

MR. SMITH: One other clarification; you read it as to incorporate mandatory regional management, but in the drafting they didn't capture that. The word "mandatory" should follow the word "incorporate".

CHAIRMAN TRAVELSTEAD: After the first "incorporate" in second line, put "mandatory". Now let me ask the makers of the motion; does that do it?

MR. GILMORE: That's fine, Mr. Chairman.

CHAIRMAN TRAVELSTEAD: Is there a second to the motion? Did we get a second? Seconded by Eric. Bill Adler.

MR. ADLER: This is proposed as an amendment for 2009, and I question whether – first of all, if it does require an amendment – I'm not familiar with whether an addendum would do it or not, but if does require an amendment, then I would have to ask staff whether that could be accomplished in time for the 2009 season money-wise and through the process of an amendment?

CHAIRMAN TRAVELSTEAD: Okay, Bob, do you want to comment? Is it an amendment or an addendum?

MS. KERNS: We can do this under an addendum to the plan for changing to mandatory regions. The money I will look to Bob.

MR. ROBERT E. BEAL: The action plan did not set aside resources to do an addendum to deal with this issue. With that said, if it's simply staff work pulling the document together and then states are able to conduct their own public hearings and those sorts of things, there shouldn't be a lot of financial resources obligated to complete this document.

As far as the timing goes, I think is the other part of Bill's question, if something was initiated now, a draft in May, public hearings this summer, approval of something in the August timeframe, it could be done. It depends how complicated the document becomes or sort of evolves over time, but the timing could work out so this could be completed by August. It needs to be completed probably in August in order for the Board to have the completed document available to them at their December meeting with the Mid-Atlantic Council when they're discussing what '09 management is going to look like.

CHAIRMAN TRAVELSTEAD: Okay, Red , you had a comment and then A.C.

MR. MUNDEN: Thank you, Mr. Chairman. I assume that when the staff develops the addendum they will list various options relative to the structure of the regions, but I would like for the maker of the motion to share with us his thoughts as to how many regions and what type of regions and which states would be incorporated in this.

CHAIRMAN TRAVELSTEAD: Before the maker responds, I would suggest you be very vague in your answer to that question.

MR. AUGUSTINE: We can be very vague, but the one thing that would be consistent through all of the options would be that North Carolina would stand alone, and you do that all the time. But you would be considered as a, call it, region by yourself, and whatever quota share you have would be your quota share.

Again, because of all the history and background of North Carolina and the minimum size and bag limits and the fact you're fishing on both summer flounder and southern flounder, it adds credence to keep you as a separate entity all by itself. So, every region that would be recommended would be with North Carolina alone.

The advisory panel of the Summer Flounder Board came forward at the council meeting and board joint meeting and gave us several options. They included something as simple as Rhode Island and Massachusetts visualized up there. Mid could be from there all the way to Virginia, another grouping, and then the third one could be down in North Carolina.

Another combination that was talked about was the four middle states, Massachusetts/Rhode Island. The next would be Connecticut, New York, New Jersey and Delaware. Another option could be Delaware, Maryland and Virginia. The thing that has to be considered here is contiguous bodies of water.

If there are four states fishing in the same bodies of water, why should you not be fishing on the same size fish and so on? So, rather than go any further than that, I think it's up to the technical committee or the PDT to come up with how those options would work, but in all cases North Carolina would remain consistently out here. Not that we don't love you or anything, but you would be treated as a section all by itself.

CHAIRMAN TRAVELSTEAD: My answer to that question would have been that we're simply adding a tool to the toolbox and that the addendum wouldn't specifically identify – it doesn't necessarily have to identify the regions. That would be done on an annual basis when we set the specifications for the coming year. It could certainly have options in it that specify a variety of regions, however, and we've done that in the past, of course. Jim, did you want respond?

MR. GILMORE: Yes, just a quick comment. My feeling was it would start with the three options that the advisory panel had recommended, but to keep with what Jack had recommended, whatever works is really what the reasons would be. Thanks.

MR. CARPENTER: It seems that we've plowed this ground quite a bit for quite a long time. I see us trying to replot the same ground; and until there are some specifics added to what constitutes a region, I think you are fooling yourselves if you think that this is going to work. The devil has always been in the details on this one.

Nobody wants to be with anybody else. You have an optional program now within the plan that if two or three states want to get together and do it, they are encouraged to, and for those reasons I'm not going to support this motion.

DR. PIERCE: Well, with scup we have a regional approach and it works well because four states have felt it made sense for us to work in that direction. We have accommodated each other. The fluke, clearly, there is the tool in the box for us to use the regional approach if we care to do so.

And if, indeed, after deliberation of all the options before us, the Board chooses to go with an alternative that provides for a regional approach, then that would be obligatory on the states. It would be a non-compliance ruling, I suppose, if they didn't do it. I don't see why there is a need for us to have specific language regarding mandatory regional management when regional management is already a tool for us to use, and it's just a question of whether or not we, as a Board, decide to oblige a group of states to adopt a region. And, if we do oblige those states to live within a region and to adopt regional management approaches, then it would be a compliance issue if a state didn't comply with the regional approach. I don't see the need for this particular motion at this time.

MR. ADLER: Thank you, Mr. Chairman, two things. First of all, we're now talking about an addendum, and the motion I believe still says "amendment". That was one thing, and the second thing is this looks like it's removing something from the toolbox. I thought we wanted to leave something in the toolbox and not remove something. But, anyway, mostly the motion had said "amendment". You said, Toni, you only need an addendum.

CHAIRMAN TRAVELSTEAD: I hope it's clear to everybody we're talking about an addendum; that's correct. Eric.

MR. SMITH: Thank you. I support the motion. A.C. is correct, we've plowed this ground before, but we keep getting technical committee and Service advice and recommendations that the state-specific approach has flaws and doesn't work, we never meet our targets, and we have these wild gyrations between states that defeat us as we try to manage fluke.

You know, we keep going over that same ground and coming up with dissatisfied partners and unsatisfactory results. This doesn't pre-ordain anything. This says let's try and see if we come to agreement on a vote that we will have a regional-type approach in the future, we're not precluded from it, which is what we are now, we're precluded from that.

And to A.C.'s point, he is quite right, the specifics are what drives this. Every year we go around and talk to people about regions; and if you're under your target, you don't want to be in a region; and if you're over, you're wishing people would jump along with you. I think what we need to analyze is a couple or three different types of regions over the past six years and see how it would have performed if we had had those regions in place.

I think we might be surprised to find that in any one year you might be harmed, but over a six-year period you might actually be far better off. That's the experience we had with scup in the last three or four years. We don't look at other anymore as four individual states and who did better than the other.

We say the value of the region is that we all have the same rules; when we have to go down, we all go down; we can go up, we all go up. It has been a blessing for scup. I think the motion is on the right track, and it does not pre-ordain us to anything that we might not like to do later. Thanks.

CHAIRMAN TRAVELSTEAD: That's right, keep in mind this is a motion to direct staff to proceed with something. This is not the final vote on regional mandates. Tom McCloy.

MR. MCCLOY: Thank you, Mr. Chairman. As A.C. pointed out, we do have the ability now to do this on a voluntary basis; and from my perspective, until just recently, like maybe yesterday, was the first time that anybody has really approached New Jersey about approaching summer flounder management on a regional basis.

One of the things that I think needs to be kept in mind is in any kind of negotiation there has got to be give and take on both sides. You can't expect one state to give it all up for the benefit of others or two states to give it for others. I think that's some of the reason why the voluntary thing hasn't worked up to this point in time, and now you're seeing requests for amendment to do it mandatorily.

I only reflect back on what happened with the commercial allocation for summer flounder that was voluntary several years ago. Because the breakdown in the states was five to four, that became mandatory; and four of the states had to give up quota to five of the other states, supposedly to address bycatch issues.

When New Jersey allocated their additional quota to three of the states, I think, we had requested a report from those states to let us know how they addressed

their bycatch issue. Thank you, Eric, from Connecticut for providing that information, and that's the only information we got. So, I have obviously concerns about moving in this direction, and I think I can't support the motion at this time.

MR. FOTE: We have been down this road before; and as long as it basically looks at one state trying to take advantage of another state, it's not going to work. I mean, I was sitting here listening, and we basically had talked about in 2002 and 2003 about how we would allocate this increasing quota we would have and maybe we would take those increases in the quota to basically handle these problems both in the commercial and the recreational fisheries, spread them out maybe by percentage-wise to each state, they would get an increase in the allocation.

Of course, with the turn of events in the last two or three years, what we saw as being 34 million pounds or 35 has now gone to 15, so it's really everybody is under the gun to try and figure out what to do. You know, when we first started this management plan back in '94 and '96, the southern states were penalized.

When you put one size limit along the coast and we all accepted that, the southern states of North Carolina, Virginia and Maryland, at the time, took a hard hit because they had to raise their size limits from 12 and 13 inches to 14. The northern states got away with really doing nothing for the first couple of years.

I have always looked at that, which really wasn't unfair, but the southern states were able to do it because we basically cooperated together. This is a cooperative and we basically have to cooperate. When you have the option on the table, if we can work out the details that states can cooperate together in a region, that's the way it should be. To try and force one state to basically join a region to the benefit of the other states, it will basically hurt this Compact.

I mean, you're basically trying to be fair and equitable to everybody and you're trying to work together, and that's why you had left it as an option at the time, if the states could figure out the details. Until we start seeing increases in quota, this is going to be a tough road for everybody. Thank you for your patience.

CHAIRMAN TRAVELSTEAD: Thanks, Tom. We're running out of time; we've heard comments

for and against. I had Harley and Roy and then we're going to caucus and vote.

MR. HARLEY SPEIR: Eric, I think you said that the motion would direct the staff to examine options, but I don't think that's what the motion actually does. I see it as being more certain than that; that it would mandate regional management and the formation of regional groups.

CHAIRMAN TRAVELSTEAD: I think if the motion passes you'll see an addendum that allows this Board to mandate the formation of regions when it sets the recreational specifications every year. The addendum could – when you look at it the first time, it may not, but it could contain a description of actual regions. It could have a variety of alternatives or it could have none. It's up to the Board.

MR. SPEIR: Well, with the addition of the performance factors this year, it's fairly easy to see that some pairings would obviously disadvantage some of the states within regions to the benefit of other less compliant states. I think that is the major problem that some of us with reservations have.

MR. MILLER: Mr. Chairman, I support the concept of regional management. As has been pointed by others, it has failed to come to pass to date. In our state we're looking at increasingly draconian measures for 2008, and we have the seemingly nonsensical circumstance of having considerably higher size limits than our neighbor to the east to whom we share jurisdiction of Delaware Bay; and our neighbor to the south to whom we share jurisdictions for our coastal bays.

This situation, in my view, just simply cannot continue. It would have been nice to have done this on an optional basis, but in fact it just hasn't happened, and I'm convinced it won't happen. I intend to support the New York proposal. Thank you.

CHAIRMAN TRAVELSTEAD: I think we've heard quite a bit on both sides, and let's take a moment to caucus and then we'll vote on the issue.

(Whereupon, a caucus was held.)

CHAIRMAN TRAVELSTEAD: Okay, let's prepare to vote. I'll read the motion: Move to amend the Summer Flounder, Scup, Black Sea Bass FMP to incorporate mandatory regional management as a tool and remove the optional language for the summer

flounder recreational fishery. Motion made by Mr. Gilmore; seconded by Mr. Smith.

## ADJOURN

All those in favor of the motion, please raise your right hand; opposed, same sign; abstentions; null votes. The motion fails five to six. Is there anything further to come before the Board? Is there a motion to adjourn? We are adjourned.

(Whereupon, the meeting was adjourned at 10:55 o'clock a.m., February 7, 2008.)