

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
WINTER FLOUNDER MANAGEMENT BOARD**

Crowne Plaza Hotel - Old Town
Alexandria, Virginia
May 20, 2013

Approved February 4, 2014

Proceedings of the Winter Flounder Management Board Meeting May 2013

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1. **Approval of Agenda** by consent (Page 1).
2. **Approval of Proceedings of February 20, 2013** by consent (Page 1).
3. **Move to approve Issue 1, Option 1 for Section 3.1 and 3.2 (Page 2)**. Motion made by Pat Augustine; second by Tom Fote.
4. **Move to substitute Option 2 for Issue 1 for Section 3.1, Gulf of Maine/Southern New England**. (Page 7). Motion made by Terry Stockwell; second by David Pierce. Motion carried (Page 7).
5. **Move to approve Addendum III as amended** (Page 8). Motion made by David Simpson; second by Pat Augustine. Motion carried (Page 8).
6. **Motion to adjourn** by consent (Page 16).

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ATTENDANCE

Board Members

Patrick Keliher, ME (AA)	David Simpson, CT (AA)
Terry Stockwell, ME, Administrative proxy	Dr. Lance Stewart, CT (GA)
Steve Train, ME (GA)	James Gilmore, NY (AA)
Sen. David Watters, NH (LA)	Pat Augustine, NY (GA)
Doug Grout, NH (AA)	Russ Allen, NJ, proxy for D. Chanda (AA)
G. Ritchie White, NH (GA)	Tom Fote, NJ (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Roy Miller, DE (GA)
David Pierce, MA, proxy for P. Diodati (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Bill Adler, MA (GA)	Charles Lynch, NOAA
Mark Gibson, RI, proxy for R. Ballou (AA)	Kelly Denit, NMFS
Bill McElroy, RI (GA)	
Rick Bellavance, RI, Proxy for Rep. Martin (LA)	

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

Ex-Officio Members

Harold Brown, Advisory Panel Chair

Staff

Toni Kerns
Melissa Yuen

Katie Drew
Mark Robson

Guests

Richard Allen, Newington, NH
Janice Plante, Commercial Fisheries News

Jeff Kaelin, Lund's Fisheries
Anthony Rios, Ofc. of Sen Boyle, NY

Proceedings of the Winter Flounder Management Board Meeting May 2013

The Winter Flounder Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 20, 2013, and was called to order at 10:50 o'clock a.m. by Chairman G. Ritchie White.

CALL TO ORDER

CHAIRMAN G. RITCHIE WHITE: I would like to call the Winter Flounder Board Meeting to order.

APPROVAL OF AGENDA

First is approval of the agenda. Are there any changes to the agenda? Seeing none; the agenda has been passed.

APPROVAL OF PROCEEDINGS

Approval of proceedings from February 20, 2013; are there any changes or additions to the proceedings? Seeing none; consider those approved.

PUBLIC COMMENT

Is there any public comment on items that are not on the agenda? Tom.

MR. THOMAS FOTE: Not public comment, but I would like to add something to the agenda. I would like to have some insight into how we allowed a 5,000 pound catch of winter flounder in the ocean fishery in the southern area like we are so restrictive on what we can catch and what we can catch in state waters, and now our guys are coming in with 5,000 pounds offshore. I would like the members of the New England Council give me an insight on how they came up with that figure.

CHAIRMAN WHITE: Okay, Tom, we will add that to other business. Are there any other additions to the agenda? Okay, moving on to consideration of Draft Addendum III. Melissa.

CONSIDERATION OF DRAFT ADDENDUM III FOR FINAL ACTION

MS. MELISSA YUEN: I will now go over Draft Addendum III to the Winter Flounder Management Plan. This flow chart shows where the draft addendum is in the process. In February the board approved Draft Addendum III for public comment with a change to include the Southern New England/Mid-Atlantic stock.

Today I will be reviewing the options for the board's consideration. Currently the winter flounder management plan allows for changes in the management measures through the addendum process. The proposed annual specification process will enable the commission to more quickly respond to changes in the federal annual catch limit.

While the federal annual catch limits are subject accountability measures, the state water landings are used to estimate the sub-component for state waters. This is not an ACL and is not subject to harvest control measures. Instead the state water harvest is controlled by output controls such as trip limits, seasons, size and bag limits.

The purpose of Draft Addendum III is to consider changes to the specification process for winter flounder commercial and recreational fisheries and to consider in-season harvest control measures for the commercial fishery. The first issue proposes to use the annual specification process for commercial and recreational measures. The first option is status quo, continue using the addendum process to change management measures.

The second option is to set annual or multi-year specifications based on federally estimated state water harvest. Each year the Winter Flounder Technical Committee will review the best available data and make recommended changes to commercial and recreational specifications to the board.

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As part of the annual specification process, the board can address commercial trip limits, size limits and season. For the recreational fishery the board can address size limits, bag limits and season. If the option for annual specification is chosen, then the board will also consider the second issue on harvest control measures.

Option 1 is status quo; no harvest control measure will be established for commercial state water harvest. Option 2 proposes to establish a commercial harvest control measure. If chosen, this option will establish a trigger that reduces the state water commercial trip limit when a percentage of the estimated state water subcomponent is reached. The options for the percentage trigger are 75, 85 or 90 percent.

Those are the options of Draft Addendum III. I will now provide a summary of the public comments. The public comment period for Draft Addendum III was open from February 23rd through April 10th. There were two public hearings; one each in New Hampshire and Rhode Island. A total of seven participants attended both meetings combined.

Two comments were presented at these meetings. Twelve written comments were received via e-mail and traditional mail. The comments were submitted by one group and ten individuals. The two participants that provided comments at hearings also submitted written comments. This table summarizes the comments received at public hearings.

There was only one comment that directly opposed an option in Draft Addendum III. It opposed Issue 1, Option 2, which proposes to use the annual specification process for changing commercial and recreational measures. The person commented that the annual specification process does not allow for public input.

Written comments did not specifically address the issues in Draft Addendum III but covered a range of topics. There were comments with suggestions for tightening or relaxing recreational regulations, increasing commercial trip limits to make it more worthwhile to catch

winter flounder. Some suggested a complete moratorium on the winter flounder fishery.

Some stated that Gulf of Maine stock was in trouble. There was a comment on habitat concerns, and quite a few mentioned the socioeconomic importance of winter flounder. Copies of the actual comments are available in the summary report. This concludes my presentation on Draft Addendum III and its public comment period. Thank you, Mr. Chairman.

CHAIRMAN WHITE: Are there any questions for Melissa on her report? Seeing none; is there a motion? Pat.

MR. PATRICK AUGUSTINE: **Mr. Chairman, move that the board approve Addendum III to Amendment 1 to the Winter Flounder Fishery Management Plan for approval.**

CHAIRMAN WHITE: Seconded by Terry.

MS. TONI KERNS: You need to pick some options and there are options in the document.

CHAIRMAN WHITE: Pat, are you going to go through and pick options out?

MR. AUGUSTINE: I thought I would just go ahead and let it go straightaway. Option 1 – can we go through them?

CHAIRMAN WHITE: Yes, you have to go through them.

MR. AUGUSTINE: Let's go; go to the next one – Option 1.

CHAIRMAN WHITE: So your motion is Option 1 for 3.1 and Option 1 for 3.2?

MR. AUGUSTINE: Yes.

MR. TERRY STOCKWELL: I withdraw my second.

MR. AUGUSTINE: That's okay.

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CHAIRMAN WHITE: Is there a second to that motion? Tom, are you seconding that motion?

MR. FOTE: Can I say the reason why?

CHAIRMAN WHITE: If you're seconding it; then you may speak to the second. Are you seconding it?

MR. FOTE: Yes.

CHAIRMAN WHITE: Okay, you may speak to it.

MR. FOTE: Yes, I'm seconding the motion. I wouldn't have done this maybe a couple of weeks ago; but when the New England Council allowed for a 5,000 pound bycatch from my offshore boats while I'm still restricting the recreational anglers to two fish and basically my pound net fishermen to 38 fish a day and yet the guys that go offshore can land a 5,000 pound bycatch, I can't support changing the state regulations at this time until we get some kind of reasoning why we are allowing for a 5,000 pound catch on a stock that is in such a desperate situation in our area.

I mean, you shut the fishery down because we were worried about basically where it was and we were talking about a moratorium when we basically approved the two fish and the 38 fish, and now we're basically having New England again go in their own direction and not listening to us, so I'm not about at this time to approve anymore status until we figure out how do we manage this plan jointly and not happen things that happen right now with a 5,000 pound bycatch.

MR. STOCKWELL: Mr. Chairman, I'm opposed to the motion on the board and support Option 2 for both 3.1 and 3.2. My rationale is to coordinate the specifications between the commission and the council. We're looking for accountability when we're going to argue about the science all day long.

The council moved forward by allocating the fish to rather than no harvest, and it was specific to not throwing over dead fish. By allowing an

annual specifications' process, it allows us on the commission here to have a suite measures for both the commercial and recreational fishery that can scale the fishery to the resource. By allowing us to have a controlled harvest measure, we can be somewhat more responsible in the harvesting of the fish. For those reasons I'm opposed to the motion on the board.

CHAIRMAN WHITE: Are there any other comments from someone that has not commented yet? David.

MR. DAVID SIMPSON: I'm opposed to the motion, too. I feel a little bit differently than Terry. I think I would prefer Option 2 for Issue 1 so that we have greater flexibility to set our rules each year without going through an addendum process. But particularly in Southern New England I'm not ready for harvest control measures and trip limit triggers that imply explicit quotas for state waters and state-by-state allocation, which is where this will head. I'm not comfortable with the status of the resource enough certainly at this point to go that far. I will refrain from making a substitute motion right now. We will deal with this and keep the record easy and clean.

CHAIRMAN WHITE: Are there any other comments from someone that has not commented yet? Doug.

MR. DOUGLAS GROUT: Well, just a little further explanation of the council's action is keep in mind that the vast majority of fishermen are under sectors so they're under quotas. Terry, correct me if I'm wrong, but this 5,000 pound trip limit only applies to the common pool, which there is a very, very small number of individuals.

I will be honest with you; I was a little bit surprised that the regional administrator setting that trip limit so high. The only reason that a change was made by the council was because we were allowed to have a longer rebuilding schedule. Now, you can argue the science of that, and, clearly, our

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technical committee provided some words of caution on whether this is a viable rebuilding schedule.

To the motion, I certainly originally was sympathetic to the state of Massachusetts' desire to have a little bit more flexibility and the ability to change the trip limits in the Gulf of Maine, which was really what drove this original addendum, and it has expanded to larger areas. My one concern was actually what was brought up in our public hearing is that particularly from the recreational standing if we were to set specifications, I would want to have – you know, we were going to be potentially changing recreational size limits, bag limits and seasons.

I would want to have public input on that, a formal public comment process on that to try and hear the coast-wide or the stock-wide input on how recreational would like to have to have their regulations relaxed or restricted depending on what we were trying to do. I would strongly suspect that if we were doing something other than changing trip limits for commercial fishermen, such as putting in area closures, they would want to have public input on this.

What I'm looking for here, if we were to go to a specifications' process, is some mechanism that there would be a formal public input process in our specifications and not just have fishermen come down here, because they're not going to drive to Alexandria for this. It would have to be something with some kind of state public hearings. Until I hear that we have a process where we would include that in the specifications, some kind of public hearing process where we would get a report back on all the public hearings, I'm going to support this motion.

CHAIRMAN WHITE: Toni, did you have a clarification to make?

MS. KERNS: I have a further clarification on the common pool sub-ACL. As you all know, there are several sub-ACLs for the winter flounder fishery, and there is the sector sub-ACLs as well as the common pool sub-ACL, and they are both a specific quota amount. That

5,000 pound trip limit is associated with the common pool fishery; and when that quota is reached, that fishery is closed.

It is different than the commission's trip limit whereas we do not close at any particular quota, so it is monitored. That quota was what was approved through the complete specification process that got the quota that the state water quota is under as well. Melissa has just put that up on the board so you have the total common pool for this year is 715,000 metric tons and state waters is 272,000 metric tons.

The common pool is 24 metric tons – I'm sorry, that is Gulf of Maine. For Southern New England we have the common pool at 142; the state waters is 235; and so that is the difference. There is a mechanism to close their fishery when their quota is reached, and we do not have mechanism for state waters.

CHAIRMAN WHITE: Tom, did you want to comment again?

MR. FOTE: Yes; I'm just looking at what the caps are; but if you look at what we realistically harvested since we've put the new rules in effect, two fish bag limit on the recreational sector and a 50-pound bycatch in pound net fisheries or any inshore fisheries, I don't even think we come close to any of these.

I don't have the figures from the top of my head and if somebody does they can enlighten me. We were at that time considered strongly putting a moratorium because we were so worried about the stocks, and we only just allowed this to basically harvest dead fish. I heard a long time ago we should be able to harvest dead fish; but when you get to a point where it is 5,000 pounds and the price of fish is big enough, then that becomes a directed trip. That is not a bycatch. It is different when you talk about menhaden; and you're talking about a 5,000 pound bycatch that is only worth \$540 at the dock, they're not going out to do that, but this

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is different. It becomes a different fishery instead of a bycatch fishery.

MR. STOCKWELL: I have no other comments but I have a motion to substitute, and I move to substitute Option 2 for 3.1.

CHAIRMAN WHITE: Anything on 3.2?

MR. STOCKWELL: If I get a second, I'll explain why I didn't do 3.2.

CHAIRMAN WHITE: Seconded by David Pierce.

MR. STOCKWELL: I'm sensitive to the issue that Dave raised about the harvest control rules. To me the more important of the two measures is the annual specifications' process. I'm also sensitive to Doug's comments about public process. We had a sidebar about that before the board meeting began, and I'm not sure how formal we need to make it.

If we're setting our specifications at our winter meeting, I think the states would have the obligation to meet with their industry members prior to that meeting in order to ensure that public comment was brought to the board. I would hope that discussion of the board would reflect that without having to hardwire in another set of meetings.

CHAIRMAN WHITE: Are there any other comments? Roy.

MR. ROY MILLER: Mr. Chairman, my only concern, and it may be a little selfish, is that if we go to an annual specification process, then states that have marginal to no fishery, like Delaware, are going to have to go through this regulation process every time everyone else decides to change the specification limits. It is not so bad being a state that doesn't have a fishery as long as you don't have to change regulations every year. When you do, it becomes a bit of pain.

CHAIRMAN WHITE: Are there any other comments? Bill.

MR. WILLIAM A. ADLER: I understand Option 1 is, as he said, a hardwire addendum process. I know we have other fisheries where we have the ability to set specifications. I'm just trying to remember back how we do that and get the public comment as well. Does anybody remember how we do the ones that we can just set by the board and then we just do it or we go to public hearing before we do it? How do we get that public comment so we can just do it without an addendum? How do we do that?

MS. KERNS: Bill, we can get comment here at the meeting. If people see that it is on the agenda, they have the opportunity to send comments in up until I think it is a week before the board meeting begins or they can bring comment to their commissioners and their commissioners can bring that comment to the table.

CHAIRMAN WHITE: Speaking for myself, I would certainly for New Hampshire would want to support enough time that we could have a public hearing. I think this could be important enough that the public really ought to have a chance to come to a meeting and discuss it and give input. I think we certainly would want to see enough time to allow that. David.

MR. SIMPSON: Yes, I guess the examples for the states from Massachusetts to North Carolina are fluke, scup and sea bass where there are annual specifications, and there is no formal commission public hearing on that, but we certainly get together with our public and get input. That requires some advanced heads-up. If this is something we would decide in a February meeting, we would need to know in advance of that what the parameters might be. We would get together with the public before, say, it was the February meeting so that we already had their input before we made a final decision.

CHAIRMAN WHITE: David, could you comment on when the information normally comes out from the feds on this? What is the timing of when the ACLs are available so

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that we would know how much time that we would need to react to it?

DR. DAVID PIERCE: Well, I would turn to Terry on this one. I think it is a multi-year specification process. We would know in advance what the state waters ACL subcomponent would be. We know that now so we can then act accordingly. The challenge will be for our technical committee to advise us as to what sorts of limitations would make sense for states waters fishermen.

We will be able to act well in advance, go to public hearing, get input from the public as to what might make the most sense, the strategy to be employed. Again, this is not a state quota. We all need to remember that; this is not a state quota. It is a state waters ACL subcomponent, meaning it is what the federal government, what the councils think might be caught by non-federal permit holders in state waters.

It is a guess, for the most part, which is one reason why it is hard to buy into it as a state quota because it is an educated guess, but something has to be set aside for states waters catch, and these are the numbers that have been offered up. I suspect that when all is said is done – by the way, I do support the motion on the board.

When all is said done, I think the technical committee is going to be recommending that this board adopt for non-federal permit holders in state waters a very low trip limit that would stay constant because of the status of winter flounder in Southern New England and the Mid-Atlantic in contrast to what the council has done – and I'm part of the council, of course, but I know what is inside state waters based upon our own research, our own surveys, and it doesn't look good.

It looks in those areas not very good at all, so I think the limits are going to be relatively low. There is no need for us to get into fine tuning 75 percent, 85 percent and 90 percent. I think it is going to be just set a low trip limit, for example, and then you let it run, and then you see what is caught by non-federal permit holders in state

waters; and we go from there, meaning that if the amount exceeds what has been set aside for state waters, federal permit holders will be – their amount will be less than that additional amount taken from state waters. It is all about this being a set-aside and not being a specific state quota, and that we all have to keep in mind. Again, I think the motion makes a great deal of sense. Our technical committee will be in a position to provide advice as to what we should do in state waters fairly soon.

MR. FOTE: After we had the 5,000 pound – before we had requests for public hearings, I bet there would have been a lot of people at our public hearings commenting on the 5,000 pound bycatch. I think it is – I'm going to be careful of my words – hypocritical to sit here and talk about these draconian measures that we basically have in place that I think we all support in state waters while we're allowing for the huge amount of catch that goes on in federal waters and Southern New England are the same stocks. To basically do that – and I wouldn't be opposed if it was normal and we basically had a joint plan where we were looking at this and they weren't making arbitrary decisions, but nobody consulted the public in New York, New Jersey or Delaware or any of those states that basically are looking for winter flounder to build up when they allowed for the 5,000 pound trip limits. I don't see this happening at all.

I also see that this is an ongoing problem, and it has been a problem since Day One when we put this plan. Yes, they had a moratorium and that all of a sudden, as we put it in state waters, they lifted their moratorium and went to a fishery and basically said to the state waters, no, we can't, so it is very difficult for me to support a motion like this at this time.

MR. AUGUSTINE: Mr. Chairman, just a point of clarification. Is it possible that if we accept this option, that we will find ourselves in a similar bind that we do with summer flounder, scup and black sea bass in setting specifications where we get another time crunch for data? I know it says here we can

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actually set the overall specifications for up to three years, but it seems to me we always end up reviewing them on an annual basis whether we like it or not, and then we go into a crunch mode.

The perfect example with it is the black sea bass debacle we just went through and what we have been doing with summer flounder. I guess my concern is that if we support this, what is going to prevent us from doing the same thing with winter flounder that we have done with these others. Can you see any mechanism or trigger that could prevent that from happening, Mr. Chairman?

CHAIRMAN WHITE: I can't, Pat. Mark.

MR. MARK GIBSON: Mr. Chairman, I agree with Dave Pierce's analysis of it and Terry's as well. It is a good substitute motion and I support it. Thank you.

MR. GROUT: David, you gave an example of how you handle things in the specification process for scup and black sea bass, and you said you go out to the public. Now, is that information from the public meetings that you have brought back to the board for consideration or do you just keep those public inputs within your state and setting it? What I'm looking at here is trying to set – if we're going to make changes particularly to the recreational, having something that is consistent, I want to hear what Maine has to say, what Massachusetts has to say as the appropriate way.

MR. SIMPSON: Yes, I think the fundamental difference that David Pierce has been emphasizing is that we are not in a summer flounder, black sea bass, scup mode here. The very fundamental difference is that this is a set-aside for what might be anticipated as landings from state waters. It is not the federal government or the New England Council telling the states you will not land more than this. That is the situation we're in with fluke, scup and sea bass.

They tell us what we're allowed and you can't catch one more in state waters all the way up

into freshwater in New Hampshire is how it works with the Mid-Atlantic Council. This is very different, so in terms of public input what it has evolved down to is individual state allocations of commercial and recreational catch in state waters.

And so it is conservation equivalency; New Hampshire gets X number of fish; that is not what we're talking about. So, no, I don't share it openly with everyone else because it doesn't affect them. This is a key point. I hear Tom's frustration and I have shared it with you already over this very sudden change in winter flounder management in federal waters that catches us by – caught us all by surprise. Yes, to narrowly answer your question, it is a different thing. It is a state allocation and so I just keep the public input to myself, but I certainly hope that this does not lead us down a path of the federal government again telling us what we can and cannot do in state waters.

CHAIRMAN WHITE: Are there any other comments? Is there a need for a caucus; a couple of minutes.

(Whereupon, a caucus was held.)

CHAIRMAN WHITE: Are we ready? **Okay, the original motion is move to approve Issue 1, Option 1 for Section 3.1 and 3.2. Motion by Mr. Augustine; seconded by Mr. Fote. The motion to substitute Option 2 for Issue 1 for Section 3.1, Gulf of Maine/Southern New England. Motion by Mr. Stockwell; seconded by Dr. Pierce.**

We're voting on the substitute motion. All those in favor please raise your right hand; opposed same; null votes; abstentions. The motion passes six, three, zero, zero. All right, now we vote the substitute as the main motion. All those in favor, right hand; opposed same; null; abstentions. The motion passes six, three, zero, zero. Are there anymore motions? David.

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MR. SIMPSON: Well, we need to address somehow the harvest control measures, and so I would just make a simple motion for status quo on Issue 3.2, harvest control measures.

CHAIRMAN WHITE: That automatically stays in. **Are you making that motion, David, motion to approve Addendum III as amended?**

MR. SIMPSON: **Yes.**

CHAIRMAN WHITE: Second by Pat Augustine. Is there any discussion? This is a final action so it needs to be a roll call unless there is no opposition. Is there any opposition to this motion? There is opposition; okay, roll call vote.

MS. YUEN: Maine.

MAINE: Yes.

MS. YUEN: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. YUEN: Rhode Island.

RHODE ISLAND: Yes.

MS. YUEN: Connecticut.

CONNECTICUT: Yes.

MS. YUEN: Massachusetts.

MASSACHUSETTS: Yes.

MS. YUEN: New York.

NEW YORK: Yes.

MS. YUEN: New Jersey.

NEW JERSEY: No.

MS. YUEN: Delaware.

DELAWARE: Yes.

MS. YUEN: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: We will abstain.

MS. YUEN: U.S. Fish and Wildlife Service. (No response)

CHAIRMAN WHITE: U.S. Fish and Wildlife Service is not in attendance.

MS. KERNS: For the record, they're not a part of this board.

CHAIRMAN WHITE: Bob, what was the National Marine Fisheries Service's vote?

MR. BOB ROSS: Abstain.

CHAIRMAN WHITE: **The motion carries seven, one, one, zero.** Okay, next is to consider specifications for Fishing Year 2013.

REVIEW OF SPECIFICATIONS FOR FISHING YEAR 2013

MS. YUEN: These are the specifications set by NOAA Fisheries for 2013 and 2014 for the Gulf of Maine. As you can see, the state waters subcomponent is 272 metric tons. Southern New England is 235 metric tons for the state waters subcomponent. Gulf of Maine was the same as last year, but in Southern New England this is a 34 percent increase from 2012, which had 175 metric tons.

CHAIRMAN WHITE: Technical committee report, Katie.

TECHNICAL COMMITTEE REPORT

DR. KATIE DREW: I'm just going to over the status of the stock really quickly just as a reminder because I think it is important context for the technical committee's report. Basically, the last SARC in 2010 declared that the stock was overfished but overfishing

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was not occurring. That is what those two graphs are showing you.

All the figures in this report are in the technical committee's report. If you would like to see them in more detail, that was part of the supplemental materials. Essentially, SSB is 16 percent of the target. Fishing mortality is minimal because of the strict harvest controls currently. In addition, recruitment has been poor in recent years, and this is a big concern for the assessment and for the technical committee because weak recruitment will slow stock recovery.

Recent trends in the indices for both the adults and for the recruitment show no rebuilding in the stock for the most recent couple of years since the 2010 assessment. Recruitment indices remain very low. The technical committee has serious concerns about the reopening of the Southern New England/Mid-Atlantic fishery, because reopening is not really related to improvements in the stock status.

Basically, the rebuilding timeframe has been extended from 2014 to 2023; and because of that longer timeframe, you can now have a slightly higher rebuilding F; but reaching the rebuilding target in 2023 you will require a 15 percent per year increase in spawning biomass, and we certainly have not seen that in the indices in recent years.

Stock status remains poor and lifting catch restrictions may result in further stock deterioration. Especially concerning is that state water fisheries operate on pre- and post-spawning aggregated fish, which may cause localized depletion of the spawning population. The technical committee cannot predict the effects of increasing trip limits.

We don't have a lot of data on what is being discarded now, and furthermore we can't really predict what the change in effort will be if we switch from what is essentially now a bycatch fishery to a directed fishery. It is hard to predict how much effort will change and what kind of an effect that would have on catch rates.

The technical committee recommends that any increase should be accompanied by adoption of annual quota and harvest control measures to reduce the likelihood of exceeding the total fishing mortality threshold, and the board may also wish to consider allocation among states and between recreational and commercial groups given the limited nature of the fishery. Thank you.

CHAIRMAN WHITE: Are there any questions for Katie? Pat.

MR. AUGUSTINE: I've often wondered – we have a two-fish bag limit for 60 days at a 12-inch minimum size. It just seems ludicrous that we end up catching or allowing people to catch fish up to or caught up to 12 inches. If any of you have ever fished for winter flounder, I have yet to see a hook that is designed with the exception of a barbless hook that you can unhook a winter flounder without doing major damage to it.

Over the years I've suggested we look at what you catch is what you keep. I'm not sure that the mortality rate that we use for winter flounder now – I'm not sure what that is and maybe you can tell us – but it just seems to me that people go through an awful lot of fish in New York, anyway, to end up keeping two.

It just seems to me maybe the technical committee should take a look at if we looked at what you catch is what you keep; would that have a very positive effect upon the total stock or the remaining body of fish? I don't know how we can address that and whether you'd like to talk about it, Katie, or we can talk about it later, but I think we have got to do something more. As long as we have a season on winter flounder, the mortality rate is out of sight.

Every fish you put back in the water, generally speaking, is going to have a torn-out larynx, gills or lips, and typically they're dead in a very short period of time. I don't know how else to address this program short

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of a moratorium and we still have discard mortality. Do you have any ideas on this?

DR. DREW: We can certainly look at a bag limit and size limit analysis. I think part of the problem would be we don't have a lot of data on the size of the fish that are actually discarded, so it is hard for us to know if we're talking people are discarding mostly undersized fish or if they're actually upgrading or high grading the fish that they're catching.

I know there is some data available through the MRIP Type 9 records, and we could look into that. But, again, I think the other big uncertainty component is going to be how effort would change. Would that encourage people to fish more or fish less, and that is what we have hard time predicting. If the board is interested in that, the technical committee could look into it.

MR. AUGUSTINE: Thank you; and my follow-up point is the one you made; what do we do about reducing mortality and how do we bring these fish back? I know Mr. Brown's article suggested that in the Gulf of Maine maybe the population and natural mortality and et cetera have taken the population so low there is a likelihood that they won't come back.

I think the board needs to be cognizant of the fact that we've got to take some action other just saying we recognize it is a problem, Mr. Chairman, but what do we do about it? This 5,000 pound thing, as Mr. Fote has brought forward, I absolutely agree. We know that it is going to be a negative impact on it, but we don't know what. Thank you, Mr. Chairman.

MR. SIMPSON: Katie, do you know for Southern New England in particular there is a state waters sub-ACL, a couple hundred thousand – what was that, a couple hundred tons I guess – is it metric tons?

DR. DREW: I think it is 235 metric tons is what is proposed for this coming season, which is a 34 percent increase over what it was last year.

MR. SIMPSON: Okay, so they're expecting an increase. Do you know what proportion is recreational versus commercial, rough idea?

DR. DREW: I don't off the top of my head, but we could look that up if you wanted to know.

MR. FOTE: I'm trying to look at whether we even got up to what we were last year. It is 174,000. That is the question I kind of asked before whether we were there, and again my concern here is – you know, I'm not so much worried about the hook-and-release mortality as Pat is because I've seen what happened with the winter flounder fishery when we went into a two-fish limit.

There are no partyboats, there are no charterboats going out because they can't make money and people are not paying to go out for two fish. What we have out there are a very small number of the guys that historically fish, but you're not bringing in any new fishermen out. Usually what we have are new fishermen coming into a fishery; but when you have got a two-fish bag limit and worms are costing an outrageous price, they're not going winter flounder fishing.

They're betting off going to buy a pound of summer flounder in the market than they are trying to catch winter flounder. You can tell that from the tackle stores that I've talked to and the partyboats. Even the pound net fishermen at 38 fish, it is part of their bycatch so they've already got their fish in there.

But, under the current regulations, a 34 percent increase ain't going to have any effect because the regulations are so high. I think we're way below what we were with 34 percent out of there, so I'm saying why are we increasing the specifications. I don't want to follow New England's proposal. I mean, New England did it because they wanted to justify their 5,000 pounds. I don't want to justify an increase. That is one of the reasons – I mean, in a normal year I would not have opposed that motion going on here, but I

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found it hypocritical of myself to basically vote for something because of what happens.

MR. BUD BROWN: Katie, do you have any comments on the Gulf of Maine stock from the technical committee?

DR. DREW: This call just focused on the Southern New England stock, but I believe it was at a previous board meeting that the technical committee had looked into some trip limit analysis for the Gulf of Maine stock. I think their concerns were similar in that we really don't know how the stock is doing.

We only have the swept-area biomass assessment for the Gulf of Maine, so I think there is a lot of uncertainty into how the stock is doing, and so the technical committee has similar concerns about increasing fishing mortality on a stock we're not completely confident of its current status and health.

CHAIRMAN WHITE: Are there any other questions? Seeing none; advisory panel report. They had a phone call that I listened into and they had a lively discussion. Bud.

ADVISORY PANEL REPORT

MR. BROWN: Yes, we did have a lively discussion. We also got an e-mail from one member in Rhode Island. Subsequent to the phone call, Gary Libby sent an e-mail out to supplement. We feel from looking at how the fishermen are doing that the stock is in real trouble both in Southern New England and in the Gulf of Maine.

I believe this is my 20th year of talking about the Gulf of Maine stock and nothing has changed. We're concerned about the stock assessment. It just is not reflective and the bottom line of our recommendations is we would like to see a moratorium on the fishery in both stocks. Really, that is it; there is no sense going any further.

CHAIRMAN WHITE: Are there any questions for Bud? Tom.

MR. FOTE: I noticed, Bud, there was very little participation because a lot of people have lost interest because of the small size of the stocks. I am looking at what participated and it was only like four people on the call. I'm thinking of the states involved. There was no representative – I'm embarrassed – from New Jersey and Delaware and a few other states. To say for a moratorium, you're really only reflecting what four or five people said or was the consensus about the group that was on the phone call?

MR. BROWN: That was the consensus of the people on the phone call. You're right and you saw – well, we also are looking for the states that their people are not participating to come up with some new members. Both the recreational and commercial people in Maine, I being one of them, was represented; a recreational guy from New Hampshire; an e-mail from a recreational guy in Rhode Island; and that was it.

DR. PIERCE: Not a question; I would make a motion if you would entertain it regarding the Southern New England/Mid-Atlantic winter flounder management approach for this current year.

CHAIRMAN WHITE: As soon as I see there are no other questions for the advisory panel – seeing none; I will accept the motion, David.

CONSIDER 2013 SPECIFICATIONS AND HARVEST CONTROL MEASURES

DR. PIERCE: Okay, the technical committee has done a good job. They have highlighted the continued problems with stock status. Certainly, the situation in state waters that is rather unique in terms of where fish are pre- and post-spawning – well, they aggregated for spawning. They make a number of important points:

Lifting of restrictions will likely attract an increase of fishing effort. They mentioned

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that if we lift catch restrictions, that will likely result in further stock deterioration, and I believe those are correct assessments of the situation in light of the status of the stock. Comments have been made about the 5,000 pounds for the common pool, concern about that.

There is a quota for the common pool, and the New England Council and the National Marine Fisheries Service have responded by putting a limit in place. Sectors have specific allocations of winter flounder in all stock areas, and they have no trip limits. They're just restricted by their specific sector ACE, their annual catch entitlement,

Basically all individual fishermen's quotas in a sector, there are allocations in sector aggregated to create this ACE; so, no trip limits, but they're restrained by a hard quota. So for us it seems to me that in light of the technical committee's advice that we should have status quo harvest control measures for Southern New England and Mid-Atlantic winter flounder fishery; so, that would be my motion for status quo; status quo harvest control measures for Southern New England/Mid-Atlantic winter flounder fisheries.

CHAIRMAN WHITE: I have just been told that we don't need a motion if we're not going to change anything.

DR. PIERCE: Then, fine.

CHAIRMAN WHITE: Are there any other motions? David.

MR. SIMPSON: I guess a question for when will we take this issue up for 2014?

MS. KERNS: We can bring the issue back up either in February of next year or at the same time at the May meeting again. I would think that you would want to bring it up earlier so that your fishermen have an idea of what their measures are going to be, but you would want to have as much landings' information as possible to look at and for the technical committee to consider. The board can decide when they want it to be brought forward, but that would be my suggestion.

CHAIRMAN WHITE: Yes, I would think we would want to have it before the board in February so that we then could have the states that want to have hearings prior to the May meeting and then make our decision in May.

MR. SIMPSON: Right, thanks. I'm thinking of a timetable for assessment updates and we have multi-year specifications already for winter flounder, so we already know what the quota will be in 2013, '14 and '15; is that right?

MS. KERNS: Yes, '15, we do.

MR. SIMPSON: Okay, so probably – I mean, I hesitate to make a motion about 2014 now, but certainly in August – maybe in the August meeting we could have a board meeting and that would give us a couple of months to think about this, but then allow us to act in plenty of time to get public input.

Any change from what we're doing now is going to be significant and nobody was anticipating a change in winter flounder for quite a while based on everything you've heard about stock status. That would be my suggestion, that maybe we look at scheduling an August winter flounder meeting.

OTHER BUSINESS

MR. FOTE: My suggestion is a couple of ones I'm going to make. One, we need a status of what we have been catching. I mean, I've asked the questions three or four times, and I need to find out where we are, what we have been landing in state waters. I need a justification in response to our technical committee of how New England came up with the increase of 34 percent.

Give me your justification where you got that information in looking at the status of the stock. These are things that we need to discuss at a board meeting to basically have some realization of what is going on here. I'm not going to harp anymore about the

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5,000, but the increase in 34 percent is really troubling to me about what we're doing.

I'd like maybe a letter from the commission asking the New England Council to explain these three moves by us, including the 5,000 pounds, and basically get their take on this before we consider anything else. As I said, few things get this troubling to me and especially when we're being so restrictive in looking at what we're doing with winter flounder, that we really need some answers before we move forward.

I think those are justifiable questions we can ask the New England Council. The Mid-Atlantic Council comes all the time to basically inform us of what they're doing mainly because we have joint plans. We don't have a joint plan in winter flounder, but we need a briefing by them to explain this 34 percent increase.

CHAIRMAN WHITE: Are there any objections to writing a letter that Tom suggests?

DR. DREW: The 34 percent increase essentially comes from the fact that they have extended the rebuilding timeline. According to their projections, if you allow this amount of harvest or this amount of mortality on the stock, we will be rebuilt by 2023. We essentially moved the goal post from a 2014 deadline, which basically everybody looked at the data and said there is no way we're meeting that deadline, and so we extended – they extended the rebuilding timeframe to 2023; and with a longer rebuilding timeframe, you can now have a slightly higher rebuilding F.

MR. FOTE: As you said, you based this on increasing of 15 percent of spawning stock biomass every year and we're not seeing that either, so how can you justify that rebuilding period to go on? That is the questions we need to ask.

MR. SIMPSON: I guess what you said was important; and if I read it correctly, the assumption was that state waters landings would increase 34 percent. I don't know if you can go back to that. I think for federal waters they were

increasing the quota 67 percent; so there is more than just the rebuilding timeframe there. It was an expectation of what state waters fisheries might – what we might do.

MS. YUEN: To correct that, the total ACL was actually an increase of 167 percent.

MR. SIMPSON: Okay, I thought that was just some people say 32 percent increase and some people say 132 percent so –

MS. YUEN: No, the state water component was increased by 34 percent, but the total ACL across federal and all the subcomponents, the total is 167 percent increase. That is just for Southern New England. The Gulf of Maine ACLs were the same as last year.

MR. AUGUSTINE: This is amazing math, absolutely amazing math. We have a stock that is near depleted; weren't overfished or overfishing wasn't occurring. The stock was in such jeopardy we thought we would eliminate our fishing down to 60 days. All of a sudden we're trying to squeeze here and there along the way, and now we have an increase of 150 percent or 60 percent by sliding out the rebuild schedule.

We took a rebuild schedule. The Magnuson says 10 percent; it doesn't apply to state, but it does apply to federal waters. We took it from 2013 or whenever it was supposed to be, and now we're going to be 2023. I think that is a lawsuit. I hate to say that, but I don't know how we can support that kind of management. I really don't know how we can do it.

I think it has got to be mud on our face. Whether it is New England or whether it is the Mid-Atlantic or ourselves, to move along in this direction is absolutely ludicrous. Like everything else, when we make a decision that is questionable, it will only destroy our credibility. Now, I don't know what we do to slow this thing down.

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I believe the comments that Mr. Simpson made and Mr. Fote about reviewing this next year, some time midyear, Katie, after you folks get some more data and more information is going to be a move in the right direction, but I just don't know how we can support this to do that. Thank you, Mr. Chairman, for listening to me on that one.

SENATOR DONALD H. WATTERS: To follow up on these comments, I note on the technical committee's report on Page 1 the reference to warm winter temperatures. I wondered whether the 2023 date is realistic as a target if we see continuing warming in water temperatures.

DR. DREW: That is a good question. Unfortunately, we don't have a really good handle on what the relationship between temperature and stock recruitment is. It is probably a combination of temperature affects as well as the low stock size that have been driving the poor recruitment that we have seen in recent years, but it is definitely a concern. I think the low recruitment will certainly slow the recovery down. I don't know if the federal projections have taken that into account.

MR. GIBSON: Mr. Chairman, I just want to point out that an extension of the rebuilding timeline was done in recognition that the shorter timeline simply couldn't be accomplished even under zero fishing mortality. There was also a strong argument made at the council for converting fish already dying. We were still generating a fishing mortality rate of about 0.1.

Those fish ought to be landed, and this action was strongly supported by the council. I frankly think it was pretty well thought out. The rebuilding projections I believe have taken account of the point that was just made that they have divided the recruitment into two stanzas; a low recruitment stanza and a high recruitment stanza.

The expectation is that low recruitment will continue under winter temperatures that are in existence, and yet we have a positive probability of achieving rebuilding over the extended

timeframe. I'm certainly not horrified by the council's action. I participated in it and we have seen evidence of improvement in Rhode Island.

We had four years of increase in our spring trawl survey in total abundance as well as in abundance of larger fish, which is just what you'd expect if you stop killing them. I think there are some good things happening in winter flounder; perhaps not across the entire region, but I'm okay with this.

We're not making any changes for 2013; but like David, I want to see a discussion that starts early so that we can tackle 2014 specifications. Frankly, I'm of a mind that 50 pounds ought to go up, probably not markedly so, but I think it is too low and it is generating discards under the same scenario that the council's former closer was. Thank you.

MR. MILLER: Mr. Chairman, I find myself in agreement with Mr. Augustine's comments. We have heard about the stock status. We have a depleted stock that was overfished even though overfishing is not occurring. We heard from the advisory panel. Although I don't know how representative the participation was on the advisory panel call, we heard from them. They suggested a moratorium. It seems to me we're looking at arranging deck chairs on a sinking ship, Mr. Chairman, and I think we need to make some hard decisions on this stock in the near future. Thank you.

MR. GROUT: Just to Senator Watters' question, at our last council meeting we had considerable discussion about the effects of climate change on our stocks. We have gotten the Northeast Fisheries Science Center to agree to include a term of reference in all future stock assessments that would be in relationship to a question about climate change and the impact on stocks.

There are some members of the council that feel that there has been a regime shift, which may be driving some of the substantial

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changes in our stock status even though in a couple cases we stayed within our ACLs that were projected. What this could potentially mean is that the level that in the future, if we are having impacts from climate change, our rebuilding levels may actually be lower because we don't have the capability under the current temperature regimes of being able to rebuild to the levels that currently have been established in the assessments.

That is yet to be determined. I know we had it done on one stock where we had an increase in natural mortality and it is one of our flounder stocks that lowered the rebuilding level. The point is it is going to be a term of reference in all the subsequent Northeast Fisheries Science Center stock assessments.

MR. BROWN: Well, if you look at my written comments that I put in about winter flounder, in Maine where our waters are very cold and the further east you go the colder they get, we're in a situation where we do not have winter flounder in catchable numbers. I guess I don't see how one makes the jump that warming temperatures in Southern New England is going to be detrimental to winter flounder whereas here we are in the cold water in Maine, we're in the fifties and maybe even the forties when you really get down east where we don't have winter flounder, so I question that we should be looking at that as a cause.

MR. FOTE: If you look at a couple of years back when we were looking at the recreational statistics on winter flounder before we ratcheted the fishery, it was amazing to me that New Jersey, which was at the southern of the recreational fishery, was actually catching almost half of the stock that was being caught recreationally, because we still had fish in substantial numbers at that time and catching fish.

The same thing happened with New York, because we were at the lower range and yet we were still catching fish. From what I have been told from our people that did the winter trawl survey in the other stock assessment, we have now seen that drop now in New Jersey, so it is

something that has happened along the coast, and that is my concern here.

I don't know if we went back to the days we had a full season with a 15-fish bag limit and we would catch those numbers. We can't tell until we open our fishery, but what they're saying from what they see in the trawl surveys, we're not getting the recruitment we were getting and those figures are not what they were five or ten years ago. We were the last bastion, as I said, recreationally inshore, that we were catching fish in Shark River, in Barnegat Bay and things like that. Delaware lost their fishery and the Cape May guys lost it a long time ago.

CHAIRMAN WHITE: Let me summarize where I think we are and certainly jump in if I have not captured where I think we are. We would like to have a meeting in August and staff will try to bring together some harvest data. You wanted that, Tom, I believe.

At that meeting we will discuss how we will proceed with setting the specifications for 2014. I see nodding. Are there any additions to that? Seeing none; then that is how we will proceed. Tom, you have exhausted the 5,000 pounds, I think. Is there any other additional business to come before the board? Toni.

MS. KERNS: With this difference in the federal trip limit versus the state waters trip limits, if any of the states are planning on changing their regulations to allow those landings to occur from those federal permit holders, the commission would need to know what your change in regulations are because the plan just states that you need to report what your regulations would be as part of your compliance reports. I realize that you're not changing your trip limit for your state water permit holders, but you're still allowing a different amount of landings coming into your port.

MR. SIMPSON: Do you need that in the annual compliance report, whenever that is due. When is that due?

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MS. KERNS: November 1st.

ADJOURNMENT

CHAIRMAN WHITE: Okay, seeing no other business to come before the board, a motion to adjourn. Tom; second by Pat. All in favor.

(Whereupon, the meeting was adjourned at 12:00 o'clock noon, May 20, 2013.)