

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
WEAKFISH MANAGEMENT BOARD**

**Crowne Plaza Old Town  
Alexandria, Virginia  
August 4, 2010**

## TABLE OF CONTENTS

<b>Call To Order .....</b>	<b>1</b>
<b>Approval Of Agenda.....</b>	<b>1</b>
<b>Approval Of Proceedings .....</b>	<b>1</b>
<b>Public Comment.....</b>	<b>1</b>
<b>Review Of The White Paper On Weakfish Discarding .....</b>	<b>1</b>
<b>Discussion Of White Paper .....</b>	<b>2</b>
<b>North Carolina Proposal For Alternative Management .....</b>	<b>6</b>
<b>Presentation of Proposal.....</b>	<b>6</b>
<b>Technical Committee Report.....</b>	<b>8</b>
<b>Law Enforcement Committee Report.....</b>	<b>9</b>
<b>Discussion And Approval Of North Carolina Proposal .....</b>	<b>9</b>
<b>Update On Addendum IV Implementation.....</b>	<b>17</b>
<b>Consideration Of The Weakfish Biological Sampling Plans For 2010 .....</b>	<b>17</b>
<b>Other Business.....</b>	<b>19</b>
<b>Adjournment .....</b>	<b>19</b>

## INDEX OF MOTIONS

1. **Motion to approve agenda by Consent** (Page 1).
2. **Motion to approve proceedings of May, 2010 by Consent** (Page 1).
3. **Move that the Weakfish Management Board direct the Technical Committee to develop indicators as outlined in the white paper or other ideas that they develop themselves for possible management use as the stock recovers** (Page 5). Motion by A. C. Carpenter.; second by Louis Daniel. Motion carried (Page 6).
4. **Move to approve the North Carolina request for conservation equivalency with a 10 percent bycatch allowance up to a thousand pounds and require an annual review by the Technical Committee and Board to ensure conservation equivalency is maintained** (Page 12). Motion by Louis Daniel; second by Rob O'Reilly. Motion carried (Page 16).
5. **Move to approve the 2010 sampling plans and support PRT recommendation to minimize content of sampling plans** (Page 18). Motion by Pat Augustine; second by Pat Himchak. Motion carried (Page 19).
6. **Motion to adjourn by consent** (Page 19).

## ATTENDANCE

### Board Members

Paul Diodati, MA (AA)	Jack Travelstead, VA, Administrative Proxy
Robert Ballou, RI (AA)	Steve Bowman, VA (AA)
Dave Simpson, CT (AA)	Rob O'Reilly, VA, Administrative Proxy
Lance Stewart, CT (GA)	Bernie McCants, NC, proxy for B. Cole (GA)
Rep. Craig Miner, CT (LA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Jim Gilmore, NY (AA)	Dr. Louis Daniel, NC (AA)
Pat Augustine, NY (GA)	Robert Boyles, SC (LA)
Brian Culhane, NY, proxy for Sen. Foley (LA)	John Frampton, SC (AA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Malcolm Rhodes, SC (GA)
Tom Fote, NJ (GA)	Spud Woodward, GA (AA)
Craig Shirey, DE, proxy for P. Emory (AA)	John Duren, GA (GA)
Roy Miller, DE (GA) (Chair)	Jessica McCawley, FL (AA)
Bernard Pankowski, DE, proxy for Sen. Venables (LA)	Bill Orndorf, FL (GA)
Tom O'Connell, MD (AA)	Sen. Thad Altman, FL (LA)
Bill Goldsborough, MD (GA)	A.C. Carpenter, PRFC
Russell Dize, MD, proxy for Sen. Colburn (LA)	Brian Hooker, NMFS
Cathy Davenport, VA (GA)	Jaime Geiger, USFWS

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

### Ex-Officio Members

Lee Paramore, Technical Committee Chair

### Staff

Nichola Meserve  
Brad Spear

Mike Howard

### Guests

Sean McKeon, NCFA  
Joe Cimino, VMRC

Arnold Leo, E. Hampton, NY  
Carrie Silky, NOAA

## **CALL TO ORDER**

CHAIRMAN ROY MILLER: I'm Roy Miller; I'm the governor's appointee from Delaware. I'm serving as chairman of the Weakfish Management Board. I would like to convene the Weakfish Management Board.

## **APPROVAL OF AGENDA**

CHAIRMAN ROY MILLER: The first order of business for the Weakfish Board is approval of the agenda for this meeting. It is in your briefing packet.

Are there any additions or corrections to the agenda today? Seeing none, I'm going to assume that it is approved for the time being.

## **APPROVAL OF PROCEEDINGS**

CHAIRMAN ROY MILLER: With regard to the proceedings from the May 2010 Weakfish Board Meeting, again that's in your packet. Are there any suggested additions or corrections to those proceedings? Seeing none, I'm going to assume they're approved as written.

## **PUBLIC COMMENT**

CHAIRMAN ROY MILLER: At this time we will accept public comment on any non-agenda item before the board today. No public comment at this time? Mr. McKeon, when the time comes for a vote, I'll be sure to recognize you; or if you have an issue that comes up with a specific item, just let me know. The next item on our agenda is the review of the white paper on weakfish discarding. I'm going to call on Nichola for an orientation of this white paper.

## **REVIEW OF THE WHITE PAPER ON WEAKFISH DISCARDING**

MS. NICHOLA MESERVE: On your briefing CD there was a white paper on weakfish discarding that was developed at the request of the management board back in February. Of course, in November the board approved Addendum IV, which included the hundred pound commercial trip limit.

In February some concern was raised that the commercial trip limit could lead to excessive discarding in certain mixed fisheries. This white paper was developed to address that issue, discuss it and possibly provide some potential reactions to that. The white paper looks at the pre-addendum discard level and then what we might expect in discarding in both the short term and the long term and also some

implications for the assessment process from increased discarding.

A subcommittee developed this white paper together. There were several members of the board that participated as well as the technical committee and the plan development or plan review teams. A couple of the advisory panel members were – their comments were solicited with limited feedback.

First to look at the pre-addendum level of commercial discarding, the group looked at some data used for the 2008 stock assessment. Discard estimates were developed for that assessment from the Northeast Fishery Science Center Observer Program. That data set covers Massachusetts through Virginia and has data from 1994-2007. The stock assessment subcommittee was able to develop estimates of discards for the gill net and trawl fisheries, and they also estimated discards from 1982-1993, before the program had data based on the later data set.

A ratio extrapolation method was used, meaning that the stock assessment subcommittee looked at haul-level data from the program, developed ratios of discarded weakfish to targeted species and then extrapolated those ratios based on the total annual landings of the target species. Because there were a low number of trips observed that discarded weakfish and because there was high interannual variability in the ratios developed for discarded weakfish, the SAS developed estimates of weakfish discards from each of those fisheries based on the ratio from the complete time series. Annual ratios were not used. The stock assessment subcommittee assumed a hundred percent mortality of the discards, and the SAS determined that data were either unavailable or inadequate to estimate discards in fisheries other than gill net and trawl or from North Carolina through Florida.

This figure provides some of the estimates. The gray part of that figure is the commercial landings' estimates from 1982-2007 and the darker blue that is stacked on top of the gray is the discard estimates developed for the stock assessment. The black line shows you the percent of the total removals that are estimated to be discards. That increases across the time series, with 33 percent of the commercial removals being estimated to be commercial discards by 2007. That is the discard estimates prior to the implementation of the hundred pound trip limit. Do you want to take questions now?

## DISCUSSION OF WHITE PAPER

MR. THOMAS FOTE: When you're discards, is that sublegal and legal fish, both combined?

MR. LEE PARAMORE: Regulatory and non-regulatory.

MS. MESERVE: Regulatory and non-regulatory discards. The next part of the white paper looks at what we might expect of discarding in the short term, meaning before there is any recovery in the weakfish stock. Of course, we believe that discarding will increase under the hundred pound commercial trip limit, especially for those gears that are non-selective, mixed-species gears.

This was a fact that was recognized during the development of Addendum IV. There was an analysis done using coast-wide data from 2005-2008 to estimate a 61 percent harvest reduction from implementation of the hundred pound trip limit. That meant that landings were converted to discards in order to get that harvest reduction.

The white paper also includes some state-specific data, specifically from Virginia and North Carolina where we have detailed trip-level data. At the state level the data also indicate that based on 2005-2008, the hundred pound trip limit projects a 58 percent harvest reduction.

This slide has some additional data at the state-specific level to give you an idea of where we're going to see these discards under the hundred pound trip limit. The reason we're getting the harvest reductions is although most of the trips that catch weakfish land less than a hundred pounds of weakfish, those trips account for a smaller part of weakfish harvest.

What I mean here is that in Virginia, for example, only 13 percent of the trips land more than a hundred pounds of weakfish, but that accounts for 79 percent of the harvest in Virginia. In North Carolina 7 percent of the trips land more than a hundred pounds of weakfish, but that accounts for 75 percent of the weakfish harvest. Again this is based on state data averaged for 2005-2008.

If you want to look at which gears the discarding can be attributed to, in Virginia, gill nets and pound nets land 59 percent and 29 percent of the weakfish harvest respectively, and most of those trips are landing weakfish in amounts greater than a hundred

pounds per trip, so that's where we're going to see more of the discarding.

In North Carolina, ocean gill net, haul seine and the estuarine gill net fisheries land the largest proportions of weakfish. For ocean gill net and haul seine, most of their harvest is coming from trips that land more than a hundred pounds, so, again, those are the fisheries that are going to be experiencing the most trips with weakfish discards. The estuarine gill net, while it accounts for a large portion of the weakfish harvest, more of those trips land less than a hundred pounds of weakfish. About 65 percent of their trips land less than a hundred pounds of weakfish.

There are some tables in the white paper that you can find this data to get an idea of where we expect the discarding to occur. There are a couple of assumptions made in these short-term discard estimates. They assume that all the factors are held constant, so there are some ways that the discard levels might be lower in the short term, either if harvester behavior changes and fishermen avoid fishing in areas where weakfish are known to aggregate or if they move after the first tow or set is made and a lot of weakfish are encountered.

An additional mechanism by which discarding could be lower is if there were additional regulations implemented. The technical committee has indicated that gear modification such as bycatch reduction devices, larger mesh sizes, or seasonal or area closures would be the primary means to reduce weakfish discarding. The white paper notes that the proposal from North Carolina, which is the next agenda item, does not look to reduce discarding.

In the long term what we might expect for weakfish discarding will have a great deal to do with the stock size. As I said, the short-term expectations are based on weakfish biomass remaining at a low level. If natural mortality declines and weakfish begins to rebuild, discarding will likely increase, assuming that the gear interactions cannot be avoided.

For example, it is estimated with the North Carolina data that if the stock rebuilds to the level that was present in 1997-1999 – those are the last three years that the weakfish stock was not in a depleted state – the North Carolina discards may increase to 82 percent of North Carolina's catch of weakfish; or the commercial removals, I should say.

Such a high level of discarding may be an undesirable situation for both managers and

stakeholders. The potential solution that the white paper subcommittee looked at would be easing the cap as the stock rebuilds and potentially removing it at a later date. History shows us that the weakfish stock has the ability to rebuild quickly when natural mortality is low, and managers might not want to be in the position of waiting for a completed and accepted stock assessment when anecdotal information or survey-based information tells us that stock rebuilding is occurring or that there is excessive weakfish discarding.

Completing the assessment may be more difficult in the future with the restricted landings' time series, poor discard estimates and changing natural mortality, so it might not be – although the Board just implemented Addendum IV, it might not be too soon to begin to look at some indicators that could be used to indicate to the board that stock rebuilding is occurring and some type of indicator to trigger the board reconsidering the hundred pound trip limit.

These indicators should be reliable and quick to estimate. The subcommittee for the white paper offered several potential indicators that could be used to monitor the weakfish stock and trigger a re-evaluation of the hundred pound trip limit. They're not really fully fleshed out yet. They don't have specific trigger values yet, and so they would require additional development by the technical committee and plan development team prior to the board really considering them in full.

However, there are four of them listed. The first would be to look at the proportion of commercial trips that max out at a hundred pounds of weakfish; to look at the relative biomass indices, specifically those that were used in the last assessment, the recreational catch-per-unit effort, the Delaware Bay Trawl Catch-Per-Unit Effort and the New Jersey Trawl Survey Percent Positive Tows. The third is the proportional stock density index. This is a size quality index which the SAS has estimated using the Delaware Bay Trawl Survey. The last would be relative F; your harvest plus discards divided by some index of abundance or biomass.

The last thing that the white paper looks at is the implications of increased discarding for the stock assessment. Of course, poorly estimating any part of the fishery removals can bias your assessment results, and the commercial trip limit has the potential to affect our ability or the SAS' ability to accurately and precisely estimate the commercial discards. That

statement is based on the current level of observer coverage and the current discard estimate method.

It is unlikely that if the number of trips discarding weakfish increases that the observer coverage is going to increase proportional with that increase in the number of trips discarding weakfish, so there will be more uncertainty in the ratios developed for those gears that are observed. There are also a number of gears that are not observed, and there will still be no estimates for those gears.

Also, the current discard estimation method presents a problem. As I said, a single ratio is used to estimate discards over the time series; and so if there is not another ratio estimated for post addendum, then you're not going to see the change in discards that's affected by the commercial trip limit.

One thing that the white paper committee notes is that estimating these discards becomes more important as natural mortality declines and the stock begins to rebuild. Currently the discard removals are a minor portion of the total mortality to weakfish because of the magnitude of natural mortality; but if natural mortality declines, then the discards become more important; and so in future having a better level of observer coverage and either annual discard estimates or pre- and post-addendum discard estimates will become more important.

That's a summary of the paper. You will note that on the agenda it does say possible action next to this agenda item. That is there as a suggestion if the board wanted to consider tasking the technical committee with further development of the indicators.

CHAIRMAN MILLER: Comments or questions from the board? Pat Augustine.

MR. PATRICK AUGUSTINE: I think the technical committee did a very admirable job and thank you, Nichola, for the presentation. Has the state of North Carolina looked at the variables affecting the discard analysis that you folks have put on Page 4? You discussed the harvest behavior and then on the next page you specifically identified fish and gear technology, what the working group might have had to say there concerning bycatch reduction panels and specific types of gears.

The reason I ask is that if we were to go forward and approve the North Carolina Proposal, I think New York wants to jump on board and have the same

allowance. I think it is very admirable that they've gone forward with their proposal and a lot of documentation, but the problem is in one sense it's opening Pandora's Box.

Unless it's a short-term approval, I think we have to ask the technical committee to go back and look at the recommendations that you made to find out whether, one, North Carolina – if it's just North Carolina – can and will look at angler behavior. What is the status of the gear that has been mentioned that might be applied in those specific gear types? I don't know if the technical committee wants to respond to that, but it would be helpful if they had some suggestions as to what we do as the next step.

CHAIRMAN MILLER: Nichola, do you want to take a stab at that. We may need to call on Lee and we may need to call on members of the board to respond.

MS. MESERVE: I guess the only thing that I would say was that the white paper committee didn't make any assumptions about harvester behavior, so I can't answer that part of the question. I'm not sure if Lee and I are sure what the second part of your question is.

CHAIRMAN MILLER: Clarification; Tom Fote.

MR. FOTE: In studying the discards in Virginia in the pound net fishery, could you remind me what the size of the fish are in the pound net fishery? I think it's smaller than in most of the other fisheries.

MR. ROB O'REILLY: No size limit.

MR. FOTE: There is no size limit; so when we talk about 23 percent of the fishery could be on six-inch, eight-inch, ten-inch fish, which none of our fisheries besides the pound net fishery in Virginia are allowed to be kept. Am I mistaken or am I right on that when we talk about that amount of fish?

CHAIRMAN MILLER: Someone from Virginia want to respond? Louis, you have your hand up; are you going to speak for Virginia?

DR. LOUIS DANIEL: I was just going to say that I think North Carolina and Virginia are the ones that actually requested that the board provide us with the authority through conservation equivalency and through additional penalties in order to have the variable size limits in the pound net fishery and the haul seine fishery.

I don't think we should be penalized for something that the board approved us doing. I would also remind you that the natural mortality rates are much higher on those six-, eight-, ten-fish than they are on the adult fish. Based on what I've heard from the technical committee, the majority of the problem seems to be after age one, which would exclude those fish from being a concern, anyway.

CHAIRMAN MILLER: My recollection was that decision was made some time ago. Tom.

MR. FOTE: That's not the question I'm asking. I understand it was made under conservation equivalency, but we have no conservation equivalency in a moratorium, so that's where I'm getting to the point. I'm just asking the question are those fish smaller than all of us have been catching, and that's all I was trying to get clarified. I understood that was allowed under conservation equivalency, but now we're in a different state of affairs.

MR. O'REILLY: I can address that question. I think it was about 1998 or 1999 this board approved the pound net and haul seine fisheries in Virginia for no minimum size limit. However, the plan that went forward was still under conservation equivalency. Originally for pound net, what it involved since 1995 was an effort-based system where licenses had to be forfeited and still are to keep gray trout. In addition, that was also something that was looked at for the haul seine fishery. That was about 1998 or 1999, I think, where the size limit was allowed to be no minimum.

CHAIRMAN MILLER: Thank you; did that address the question?

MR. FOTE: Yes, I was just looking at in 1995 we had a stock that was starting to rebuild, and it was whole different parameter than we are right now.

CHAIRMAN MILLER: Any other comments or questions relative to this report? Rob.

MR. O'REILLY: Yes, I did for the white paper on several things. One is to Nichola's comment about direction to the technical committee. I think I need to see more information about these, but off the top of my head I would say that there has been a recreational CPUE as part of the assessment process or at least indirectly as part of the assessment process all along.



I think it focuses on Mid-Atlantic only private boat trips and catch, A plus B1 plus B2, so I think it's a really good idea to continue that despite the fact that regulations have changed recently with the one fish. Nonetheless, it's a good time series. The second idea is on the relative F. I was on the white paper committee. I had to ask Nichola if she wanted me to say anything because I wasn't sure of the whole makeup of it, but she said, yes, indeed, so I'm certainly promoting relative F especially for the commercial fishery.

I don't know how much direction we have to do something else, but we certainly can use that and carry that forward as some measure. I think everything we've done since Amendment 1 has been built on conservation equivalency with the idea that there is an input control where a closed season, a closed area, net forfeiture, whatever it is, is judged before the fishery starts that year to achieve a certain reduction in exploitation or fishing mortality, and some way we're going to need that as part of any recovery scenario.

However, concerning the indicators that you talk about, I'd like to share an indicator that was recently worked up. It shows that the Addendum IV indicates that a hundred pound trip limit for the commercial fishery will result in a 61 percent reduction from 2005-2008 on average. It further indicates that a minimum there will be a 54 percent reduction in the recreational fishery.

There was a table that had different size limits built like a conservation equivalency table. So give you an indicator, in 2009 the commercial fishery already declined beyond that point, 64 percent, from 2005-2008. So indicating our management actions are going to achieve a 61 percent reduction, well, 64 was already achieved in one year, 2009.

For the recreational fishery, in terms of the landings, it is a 71 percent reduction. Combined there was just under a 65 percent reduction for the 2005-2008 period to 2009. If you look more closely at just 2008 overall to 2009, commercial and recreational fisheries, it is a 49 percent reduction; just about as drastic as you'll find similar to what happened between 2002 and 2003.

So, part of this information tells me that the discards are really what we're managing at this time. The more we talk about trying to manage harvest, the more behind we're going to fall, because, really, that

graph that we saw three or four meetings ago about rebuilding the stock with or without intervention in management didn't seem to make a whole lot of difference.

I was certainly skeptical of that and I'm sure some of you were as well; because classically if you reduce the fishery, reduce the harvest, reduce the effort, you get some type of response. We're getting just the opposite if in one year you can have a 49 percent reduction in landings. I wanted to share that with you. That's preliminary data, I suppose. I'm not sure all the recreational data is finalized.

It leaves a backdrop effect for what we're trying to do when we talk about moratorium. If we talk about moratorium, there are still discards – everyone has said that – so how do we manage that effect of it? It certainly makes an impact in looking – which we're going to look at in a minute – at the North Carolina Proposal and by extension the Virginia Proposal, the New York Fishery, the New Jersey Fishery. How many discards do we want? I'll comment more on the effects of the hundred pound limit versus the 10 percent bycatch limit and thousand pound limit in the Virginia data at the time you bring up the North Carolina Proposal. Thank you.

CHAIRMAN MILLER: All right, thank you, Rob. I should also point out that among the potential indicators that the white paper committee outlined, there are a few fishery-independent indicators as well. They may have some potential such as proportional stock density, Delaware Bay Trawl Survey, New Jersey Trawl Survey and so on. Were there other hands with regard to the white paper? A.C. Carpenter.

MR. A.C. CARPENTER: If I understood the presentation correctly and the technical committee is looking for direction, I really do believe that we need to get them started on some type of quick, reliable index that we can use to adjust this hundred pound bycatch limit as the stock recovers. We have no idea when or how long that is going to take, but I do know that getting this type of work is not something that can be done between two meetings. **I would like to move that we direct the technical committee to begin developing these indicators for possible management use as we see the stock recover.**

CHAIRMAN MILLER: A motion has been made; is there a second to that motion. Louis Daniel. Discussion of the motion? Seeing none, I'll read the motion; move that the Weakfish Management Board

direct the technical committee to develop indicators for possible management use as the stock recovers. Motion by A.C. Carpenter; second by Dr. Louis Daniel.

MR. CARPENTER: I think I need to add somewhere in there as outlined in the white paper or other ideas that they develop themselves.

CHAIRMAN MILLER: I assume you're okay with that, Louis?

DR. DANIEL: Yes.

CHAIRMAN MILLER: Any discussion again on this particular motion? Seeing none is there any opposition to this motion as read? **Seeing none, I'm going to assume the motion is approved unanimously.** All right, if there is nothing further on the white paper – maybe there is; Rob.

MR. O'REILLY: I think this is related, but given the decline in 2009 and given that the stock, on the basis of landings, is continuing to decline, is it possible that – is there a November meeting planned for weakfish, by the way?

MS. MESERVE: If there are enough items for the agenda, yes.

MR. O'REILLY: Okay, would it be possible that the technical committee could illustrate what has occurred since 2005-2008 in 2009 on area-specific, gear-specific changes; and also since – I mean, let's face it, since the discard estimates are nominal in some cases but they're still being used, perhaps there can be an exploration of where the discards also may have increased, decreased, however that may be. I'd just feel better if I know more than a percentage decrease for both fisheries and the technical committee looked at all aspects of that. I hope the rest of the board would want to see that in November. It doesn't have to be elaborate but just so we get an idea as we move forward towards what A.C. has just asked that we can keep tabs on a pretty close basis as real time as possible.

CHAIRMAN MILLER: Lee, did you understand that particular charge; and if so, would you respond as to whether you think that's doable by the technical committee before the November meeting.

MR. PARAMORE: Are you referring to what has happened since the hundred pound has gone into place or –

MR. O'REILLY: Not at all; I'm just referring to the 2009 fisheries' performance –

MR. PARAMORE: Just '09; yes, that's doable.

MR. O'REILLY: – for the technical committee to look at that compared to 2005-2008. Even if some of the feedback is qualitative, what kind of area changes there were, gear changes. The recreational fishery is in there.

MR. PARAMORE: Okay, so shifts in the fishery 2005-2008 versus '09.

MR. O'REILLY: Yes.

MR. PARAMORE: Okay, no problem, that's pretty doable.

CHAIRMAN MILLER: All right, Lee has indicated that is a task the technical committee could handle prior to November. We're ready to move on, so we're now to the agenda item for the North Carolina Proposal for alternative management. For a presentation of the proposal, I'll call on Dr. Louis Daniel.

## NORTH CAROLINA PROPOSAL FOR ALTERNATIVE MANAGEMENT

### PRESENTATION OF PROPOSAL

DR. DANIEL: Thank you, Mr. Chairman, and just one quick other item; I think our independent gill net survey may turn out to be a very good opportunity to look at weakfish abundance in the face of the restrictions that we have, so I'm sure Lee is familiar with that and will look at that as well.

We have submitted a proposal since the last meeting. One action and one activity that is not in the proposal that I would like to make sure that the board is aware of is that North Carolina has been hit pretty hard by reductions in effort, reductions in harvest due to sea turtle interactions. We've had to put in some pretty restrictive measures in the last year to reduce interactions with endangered sea turtles in the gill net fishery, and so we're seeing some pretty drastic reductions in landings and effort just because of that issue.

That is going to start impacting some of our fishery-dependent information that we have, and certainly it will have an impact on weakfish because a lot of gear won't be in the water. What we have proposed – and the white paper is in the briefing book. The technical

committee has reviewed it, the law enforcement committee has reviewed it, and it really just falls in line with what Nichola has just presented.

It shows that a small percentage of trips in North Carolina account for a large percentage of the landings of weakfish, but in the last five years or more our fishermen simply haven't targeting weakfish. This is not like some of our fisheries in the Mid-Atlantic where we can go fish for black sea bass and catch black sea bass; we can go fish for summer flounder and catch summer flounder.

The weakfish fishery off of North Carolina is a mixed-species assemblage. If you notice in the tables, those landings of weakfish are a very, very minor component of the total catches from those various gear types and during those various seasons. You'll notice that for 10 percent or 5 percent, we landed 186,000 pounds of weakfish to 32 million pounds of other stuff, so that they're not going to forego catching those large quantities of fish to avoid weakfish.

What we're trying to do is we're trying to come up with some mechanism that was conservation equivalent, that would allow for some reduction in the unquantified discards that we know we're going to have and that we know that is confound our ability to assess the population, come up with some measure that would allow us something.

When we originally looking at this, we were looking at 50 percent and we looked at various other iterations to this whole thing. What we were able to pare it down to make our request very similar in terms of reductions to the hundred pound trip limit was this 10 percent with a maximum of a thousand pounds. That is what we have proposed.

The technical committee has reviewed this, and I'll let them explain that. The law enforcement committee has reviewed it, and I'll let Mike handle that. My hope is to be able to come back and make a motion, Mr. Chairman, once all the reports have been vetted through the board. I think one of the concerns, though, that I wanted to address is the fact that we do have these multispecies fisheries.

On any one day in Pamlico Sound in the haul net fishing operation, there is going to be seven, eight and nine hundred pounds of weakfish taken along with twenty or thirty thousand pounds of other species. They might be croaker, spots, kingfishes menaceris, flounders, butterfish, any number of

things. The fishery just does not allow itself to be one where you can cull at sea, so the culling is done at the dock.

Under the hundred pound provision that we have in place right now, you can see from the data Nichola provided that we're going to have an excessive amount of discards, and it's going to be waste. We don't believe that waste will be – we will not have the mechanism to account for all that waste, and so that's going to confound our ability to assess the population.

I think it is a difficult situation in North Carolina. We have some times – you know, as I've told you the last time, we could have a flynet fisherman or any trawl boat off of North Carolina could hit 50,000 pounds in a 20-minute drag. All right, they're all going to be dead, but right now that is not happening. I think that there is an opportunity here to collect some information.

I would certainly support any state that wanted to pursue this same avenue to try to avoid discards and avoid the unquantified discards but try to account for some of the mortality. We've got a system in place that you will hear from the law enforcement committee. We've got as good a system in place of tracking landings as anybody.

We've also got a pretty intensive observer coverage program where we would be getting some information from observed trips. I can't tell you what percentage right now, but we've got a lot of effort moving forward in an observer program, and we'll be able to monitor this and determine if there is any kind of abuse to it.

People are not going to catch a thousand pounds of trout and look for 9,000 pounds of other stuff. It's just not going to happen especially not for the price that weakfish bring. I would be glad to answer any questions that folks have. I would be glad to have this be annual review by the technical committee, have them look over our trip ticket information and look at its functioning. If it's not meeting your comfort level, then we can come back and readdress it.

Again, I'll restate what I've said I think two meetings before and the meeting before is that if we get to the point where this stock recovers quickly, which it could do – we've seen it happen in past history – it is critical that this motion that A.C. put up is taken care

so that we can move quickly so that we don't end up with some real serious discard problems.

Mr. Chairman, I don't know really what else to say about our proposal other than it is our attempt to be conservationally equivalent and to try to avoid the discarded waste that we know is going to happen with the hundred pound trip limit. That is, by the way, in effect and I believe North Carolina is fully compliant with the weakfish plan at this time. Thank you.

CHAIRMAN MILLER: Thank you, Louis. We could take questions now or we could get the technical committee report and the law enforcement report and then up open up for questions for all three. My inclination is the latter; are you okay with that? Seeing heads shaking in the affirmative, we will continue and I'll call on Lee Paramore for the technical committee response.

#### **TECHNICAL COMMITTEE REPORT**

MR. PARAMORE: The Weakfish Technical Committee met back on June 2<sup>nd</sup> via conference call to discuss the North Carolina Proposal and primarily to discuss whether or not we thought North Carolina Proposal was conservationally equivalent to the hundred pound trip limit in Addendum IV.

The proposal, as you know, was considering an alternative to the hundred pound trip limit that would provide a similar reduction. As we discussed here today, that included a 10 percent bycatch allowance and also a thousand pound cap to limit any trip at a thousand pounds. Harvest reductions were based on the same period of 2005-2008.

Just so everybody is clear as far as the methods that were used, the assumptions and methods that were used were identical to those used in Addendum IV and the hundred pound limit, so there was no difference in how the calculations were made as far as the reductions go. They were evaluated based on the harvest reduction that was attained.

Here you can see the reductions under Addendum IV. A hundred pound trip limit just based solely on North Carolina data achieves about a 58 percent reduction in harvest. On a coast-wide level – and you have to realize this data is not comprehensive. All states don't trip level data, so this is data that was provided through the Northeast Fishery Science Center. It's not a complete set, but using the best available data that we had it came out to a 61 percent reduction.

Then based on the North Carolina proposed actions, just a 10 percent bycatch allowance alone results in a 57 percent reduction. Then when you put the thousand pound cap with that, it results in a 59 percent reduction. The technical committee conclusions based on this were that the data and methods used were sound and that the North Carolina Proposal was conservationally equivalent in terms of the harvest reduction that was achieved.

One of the technical committee points was that all options result in increasing discards whether it is the hundred pounds or the bycatch allowance, and that these discards would likely increase as the stock rebuilds. Another conclusion from the technical committee was that under current stock conditions, which have the low F and the high natural mortality, really discards are currently a minor component of the total removals from the population.

There were some concerns and some caveats from the technical committee. The concern primarily is that under the 10 percent bycatch allowance, particularly in a situation where the stock begins to rebuild, is that people may choose to target weakfish under a 10 percent bycatch allowance where a hundred pound trip limit is just more definitive and prevents targeting.

Also, if the stock rebuilds and targeting occurs, the problem with this is they think maybe it could be possible – this is sort of speculation of what could happen, but it could be possible that North Carolina could see a disproportionate increase compared to what other states are getting under the hundred pound trip limit.

One of the suggestions – it was already suggested here by a member – is that if approved, ASMFC should monitor landings to see if no proportion of the harvest increases relative to other states as we go forward as sort of part of the compliance report or some other means. As you see, the primary objective for the North Carolina Proposal is to prevent excessive discards in mixed fisheries, as we talked about.

These would be like long hauls, fly nets, fisheries that typically encounter large amounts of weakfish sort of unexpectedly during certain tows. The technical committee felt that discards were not unique in North Carolina and that discards occur coastwide. They did feel that North Carolina should be commended by the fact that they actually have trip level data and they're actually able to show conservation equivalency, but

also realize, and as other states have noted here that they may want to follow suit, that was a concern for the technical committee in that those states may not have the data to demonstrate conservation equivalency.

That would be a question as to how those states, if they did propose – not to penalize North Carolina for having the data, but how would the other states show they could get conservation equivalency. As I said, Addendum IV did not evaluate reductions based on a state-by-state by basis due to the fact that data is not available at a state level for every state.

Some other concerns that were expressed were over the enforcement of a percent bycatch allowance, but obviously we deferred that to the law enforcement committee and you'll get a report on that. They did not that there are some precedence that exist in some other fisheries and within the weakfish fishery where we allow 50 percent bycatch allowance for certain gears not meeting the minimum the mesh size restrictions. That sort of regulation does exist currently in the weakfish fishery.

Other issues that were brought up maybe weren't completely germane to this issue. There were some differences on the technical committee as to whether or not they applied, but two things that were not considered in Addendum IV was the length frequencies of fish that occur in different commercial fisheries.

One person asked for the length frequencies of different fisheries and were kind of shown, and there were some undersized fish in some of our fisheries. Between 2 and 9 percent of the fish that were harvested were undersized. Also, North Carolina has always had a scrap fishery, and we presented results from the scrap fishery. Currently about 10 percent of our harvest, the removals occurs in the scrap fishery, and that has greatly diminished since Amendments 2 and 3 of the plan, so that has been a decreasing trend with the scrap fishery. With that I will conclude the technical committee report and I guess pass it over to law enforcement/

CHAIRMAN MILLER: We'll call on Mike Howard for the law enforcement view.

#### **LAW ENFORCEMENT COMMITTEE REPORT**

MR. MIKE HOWARD: The law enforcement committee has reviewed the North Carolina Proposal. We had four or five returns and comments followed

up by several calls with North Carolina's law enforcement in response to passing Addendum IV to Amendment 4 that would allow 10 percent of a fisherman's commercial to be weakfish up to a thousand pound limit.

We recognize the need to regulatory discards, which stirred much discussion. We also found that a hundred pound limit is generally easy to enforce dockside. It is an after-the-trip boarding. It's a dockside boarding. It can't be boarded at sea. Attempting to enforce a 10 percent bycatch up to a thousand pounds is very difficult to enforce under any circumstances.

It could easily result in advertent errors in judgment in judging the catch weight followed by enforcement action dockside. This was discussed in depth. North Carolina felt with the limited number of boats that were involved, they would give it a good effort and to a great degree be able to handle that.

It will be less than robust strict enforcement with a 10 percent/1,000 pounds. In other words, you see it come in and you're going to see 20 boxes of fifty pounds and you're going to make an estimate. If see a boat with a hundred boxes at fifty pounds, you know they're over the limit and enforcement action will probably be taken. That's a general statement.

The officers said that even though difficult, they'd do their best under the above constraints to monitor and enforce any regulation of weakfish bycatch enacted. It is recognized there may be some targeting of weakfish to reach the total allowable bycatch of that 10 percent/1,000 pounds in certain boats under certain conditions.

Of course, the best scenario which law enforcement always wants to throw in is a zero tolerance, which is the easiest to enforce. You see one, it's illegal. North Carolina was recognized as having an excellent trip ticket monitoring program and support system of biologists or port agents to assist in observing these fisheries along with the officers who are willing to support management in that specific area, and it is a specific area. The fishery is one state. They feel they could handle that 10 percent/1,000 pounds.

#### **DISCUSSION AND APPROVAL OF NORTH CAROLINA PROPOSAL**

CHAIRMAN MILLER: Okay, you've heard the North Carolina Proposal and you've heard the technical committee's comments and you've heard

the law enforcement committee's comments. Now I would like to entertain your questions and comments. Tom Fote.

MR. FOTE: This question is for the technical committee. I'm trying to figure out how a thousand pounds can be equivalent to a hundred pounds. I know that's new math to me, but I think I understand it and I want to make sure I do understand it. What you're saying is because the catch would be 800 pounds or 900 pounds and you would be discarding 800 pounds of that 900 pound catch, so there would be a hundred percent mortality, anyway, and that is why they become equal?

MR. PARAMORE: No, the 10 percent bycatch allowance – for example, if you were going to land a thousand pounds of weakfish, you would have to land 9,000 pounds of other species in order to have that thousand pounds of weakfish. Just say if you're a small-mesh gill netter in the Sound and you go out fishing on a typical day, it's highly unlikely that you're going to land more than a couple hundred pounds of other species, so you're typically never going to be able to have more than 30 or 40 pounds of weakfish on board.

Now, let's say you're a flynetter off the coast of North Carolina and you typically bring in a hundred thousand pounds of croaker, now those guys are going to be able to land a thousand pounds of weakfish if they encounter them. That's where you get the difference. With a hundred pound trip limit, the gill-netter can always bring in a hundred pounds of weakfish if he catches them, but with the 10 percent bycatch allowance he can only bring in 10 percent of the total fish that he lands.

If you look at one of the tables here in the back of the report – this is the North Carolina report that Louis talked about – if you look at Table 8, what you see is with the 10 percent bycatch allowance, you're shifting the burden away from things like flynets and long hauls, and you're shifting them on to smaller operations like gill nets, because those fisheries don't have the capacity to keep a thousand pounds of fish.

That was one of the concerns with North Carolina is that some of these episodic events with haul seines or with flynets, that these guys are going to have to dumping a thousand pounds of over. A lot of the people in our state marine fisheries commission didn't want to see that happen, so they wanted some allowance for those events to be able to keep more of

those fish and not have all these fish dumped over at one time. That's the difference.

MR. FOTE: But that does now allow the flynet fishery where these big episodes can happen to land a thousand pounds of fish, and they would do with more regularity since they would be catching a lot more than 900 pounds or a thousand pounds of fish. There would be more opportunity for the flynet fishery now to land those fish.

MR. PARAMORE: Yes, and you also have to realize in these reductions that a reduction is assumed that anytime that they could have landed them and they did – because you have to remember these reductions were done during a period when it was completely legal to harvest weakfish; so if the weakfish were available and the flynetter actually wanted to land weakfish and could easily do it, he would have done it.

That's where the reductions would have come from. I guess what I'm saying is there is nothing to have stopped them from doing it in the past, and that's where we're calculating the reductions from. We're giving them credit for those thousand pounds if they actually did it.

MR. FOTE: But that's not what we have right now. We have a hundred pound catch, so that means that the flynet fishery would be restricted to a hundred pounds, which means there would be a lot less fish being landed, so it would be not the same reduction. I find it very confusing.

MR. PARAMORE: Well, the difference is – and let me elaborate – the difference is what the flynets are not going to be able to land under the hundred pound trip limit, what they're going to lose the gill netters are going to gain. Under a 10 percent bycatch allowance, the gill netters are going to lose their proportion of the catch in a larger proportion than what the flynetters are, so it basically just shifts the burden from one gear to the other, depending on the capacity of that gear to have the necessary target species to land the weakfish.

MR. FOTE: Well, I would feel more comfortable by seeing what the actual landings were in relationship to what the catches were at that time. I'm still having a problem with the new math.

CHAIRMAN MILLER: Clarification on that particular issue, Louis.

DR. DANIEL: Yes, I think the issue paper answers a lot of Tom's questions in that the catches from the flynet fishery have dropped off to virtually nothing. I mean, it used to be that was the dominant gear. In fact, they haven't had the large catches of late, but the catches in the flynet fishery are down – they may be the fourth or fifth most important gear now as opposed to what they used to be, which was number one.

Also, I find it interesting that of the gear types listed, they're the primary one that hasn't been actually having any directed trips on weakfish. I think with the numbers of weakfish down so low, they're just not going out there targeting them. I guess the point that I would make is that if they don't have a thousand pounds and they do catch a thousand along with their 50,000 pounds of croaker, they're just going to dump those fish overboard, and there is a hundred percent discard mortality. It is really how do you want to take care of these fish? Do we want to land them and account for them and collect the information that we need off of them, or do we just want to dump them overboard? That's what is going to happen in this multispecies fishery.

CHAIRMAN MILLER: To that point, Tom.

MR. FOTE: But that is assuming that your fly – you know, you're getting a 59 percent reduction assuming that your flynet fishermen were catching those fish. If they were not catching those fish, then you're not getting a 59 percent reduction. It's like assuming what I tried to do with striped bass a couple of years ago saying I wasn't harvesting the fish in my bonus tag program, so I should be allowed to basically use that as a credit. That's not how I see fisheries – if I'm understand this right, and that's why it's driving me nuts.

MR. O'REILLY: I think overall that table on page 4 shows the flynet, the 11 percent, but what I really want to bring up was this isn't limited – so, in other words, 11 percent of the weakfish landings – this isn't limited to North Carolina. There are other states with trawl fisheries, and this pertains to those states as well.

The part about the technical committee having difficulties with data analysis might be a moot point at this stage of the game. In 2009 coastwide the landings were about 356,000 pounds; that's coastwide. When Louis portrays these large hauls, as he has for a few meetings, you have to put that into context of how much of that would be discards.

In the other states you have to look at if there is a migration of fish coming down the coast off New Jersey, how much is going to be in a trawl? You have to look at New York. I mean, you have to look at all the states, but the main idea is – the reason it's a moot point to worry about the data is we're already at the declined level. The idea now is how to manage the discards, I think. Of course, you're managing the harvest with the measures that are left over from Amendment 4, but this is a little bit different, because I don't think it's idle talk about being able to discard and where you can and where you can't.

I guess, Dave, you had indicated earlier, because I wrote it down, that one fishery, it's easy to release bycatch, other fisheries not so easy. In the case of weakfish, much of it is mixed species as you've heard over and over again. The question now is does the 10 percent with the thousand pounds do an equal, better or lesser job than the hundred pound bycatch limit does?

In the case of North Carolina, right now it does an equal job, and that's what the technical committee said. In the case of Virginia, which I don't think Nichola has the information, it's a 58 percent reduction with the hundred pound limit. It's a 52 percent reduction with the 10 percent bycatch and a thousand pound limit. We did the workup the same way North Carolina did.

The only difference between the two is somewhere more discards are out there, and it's with the fact that you've got the hundred pound limit if you work up the data. The other part of it is, which is a fine point, there are trips that don't have other species. In Virginia weakfish is taken by gill nets, for example, about 1.2 percent where it's just weakfish. Everything else is mixed species. That's part of the difference between the 58 percent and the 52 percent.

Another little point, if I may, Mr. Chairman, the conservation equivalency, which has been mentioned quite bit, I don't know whether it was the reaction overall that led to moratorium proposals or hundred pound limit and a complete disregard for everything that was in place from 1991 until 2010, which was conservation equivalency.

If you look back at Amendment 1 and go forward, it's all based on conservation equivalency. I think it's a little bit of a dilemma let's say for New York that doesn't have trip ticket information as far as the technical committee being able to quantify

specifically the data, but it shouldn't pose a problem to choose between a hundred pound bycatch limit for New York versus a 10 percent bycatch and a thousand pound maximum.

MR. CARPENTER: Mr. Chairman, I think we have answered all the questions, and I think it's time to get a motion on the table so that we can debate the motion. I'll look for Louis to do that.

CHAIRMAN MILLER: Louis, are you prepared to make a motion?

DR. DANIEL: I am. **I would move to approve the North Carolina request for conservation equivalency with a 10 percent bycatch allowance up to a 1,000 pound trip limit or a bycatch allowance.**

CHAIRMAN MILLER: Is there a second to this motion? Second by Rob O'Reilly.

DR. DANIEL: I added the words "bycatch allowance" after a thousand pounds as opposed to a trip limit. It's a bycatch allowance. Well, that's fine the way it's written; move to approve the North Carolina request for conservation equivalency with a 10 percent bycatch allowance up to a thousand pounds.

CHAIRMAN MILLER: All right, discussion of the motion? Tom.

MR. FOTE: When we went out to public hearings with this amendment that we voted on, there was no mention of conservation equivalency, there was no mention of any of this in the plan. It was basically whether you have a moratorium or basically a hundred pound bycatch and one fish for the recreational. That's what we went out to public hearings.

This is not a perfection of an addendum. This is actually a new addendum. If you're going to put conservation equivalency – and, yes, we've been under conservation equivalency for a long time and the stock has gone down the tubes, and that is what the public is looking at. I mean, that is what the call was for the moratorium.

I tried to avoid a moratorium by leaving the hundred pounds and making the motion to do that, but this is different from what we went out to public hearings with, and this needs to be gone out as an addendum because we need the public's input because there

were strong feelings in my state and I think New York and above and as a matter of fact Delaware and other states that know of at public hearings – I saw the public hearings that we should have a moratorium.

I guess because I feel that this is change from the plan that we sent out to public hearing and the addendum that I would like a ruling from the chair of whether this is out of order or we consider doing this as an addendum. That's what I'm basically looking at. I will make a motion that we go out as an addendum if you want to do that, not that I approve it. I don't think I will make the motion in thinking more about it, but I'm saying that if that's the direction we're going, we need to go to an addendum on the plan.

CHAIRMAN MILLER: I'm going to call on Nichola to respond to your comments, Tom.

MS. MESERVE: Just technically speaking, Addendum IV identifies the specific parts of Amendment 4 that are modified, and the conservation equivalency part of Amendment 4 is not modified by Addendum IV. That was an issue discussed by the technical committee and the plan review team and they came to the agreement that conservation equivalency proposals are still allowed under the current fishery management plan for weakfish.

CHAIRMAN MILLER: Other comments relative to the motion? I'll just remind you before I call on Tom that Nichola has a couple of AP comments, too, and we'll insert them before we have the vote. Tom.

MR. THOMAS O'CONNELL: I just wanted to clarify and make sure I understood. My question for you, first, I heard that law enforcement raised some concerns about the difficulty, but did I hear you say that the North Carolina Marine Police felt they could handle this?

MR. HOWARD: That's correct. I had several follow-up conversations with the command staff there. They looked at the exact type of fishery they have, the number of boats and the harvest, and knowing that it will dockside – they also said it wouldn't be an exact science, but that roughly a thousand pounds, the way they're offloaded, could be monitored.

There is a slight chance that people could be over and find themselves in a difficult enforcement situation, but they would enforce it as they see it. It is not



recommended coastwide for every fishery, by the way. That's not one of our best recommended practices for law enforcement.

MR. O'CONNELL: Thanks, Mike, and I would expect that if it became a problem, that we would hear back for the law enforcement committee on that?

MR. HOWARD: It will be discussed at our annual meeting, and certainly weakfish is reviewed for its enforceability, and this will be part of that annual review.

MR. O'CONNELL: Thanks, and it may be a question for you, Roy. I heard from the technical committee that some type of annual review would be helpful to ensure that the conservation equivalency would be maintained if stock levels changed, and I expect that would be part of the annual review process and not needed for this motion.

CHAIRMAN MILLER: Nichola suggests adding that to the motion, Tom. True, that was mentioned in the technical committee report.

MR. O'CONNELL: Well, I would offer that up unless Louis would be willing to add that, that we add language that would require an annual review to ensure that the conservation equivalency is maintained over time.

DR. DANIEL: I'd make that perfection to the motion without any objections as long as the seconder is okay with it.

CHAIRMAN MILLER: Is the seconder okay with that?

MR. O'REILLY: Yes.

CHAIRMAN MILLER: Thank you, Tom. I think, Malcolm Rhodes, you had a comment.

DR. MALCOLM RHODES: It's an interesting issue to look at in this way, using conservation equivalency for this. When this first came up, our board was very close to a total moratorium; and the vote, as I remember, was very close. I'm looking at the data here; flynets, over 50 percent of them have – from your historic data were over a hundred pounds; ocean gill net, not quite. The haul seine was about 50 percent were over a hundred pounds.

I don't see how this is not going to lead greater exploitation of it. I understand that there are going to be less discards in one area and more in another, but I can't see how increasing to a thousand pounds would not start directing fisheries in the flynets into areas of higher concentration.

CHAIRMAN MILLER: I'll indulge a quick response, Louis.

DR. DANIEL: I just remind you that we have a trip level data base program, and we'll be able to see what is being landed with the weakfish. We do this with red drum and it has worked very well for North Carolina. We have made cases from trip ticket information where we've seen abuse.

If we notice that abuse as we proceed through our trip ticket data reviews, which we do that on a weekly basis, we can go to specific areas where it appears there is abuse and see precisely what they're doing. We had an issue where folks were packing croakers on the boat and then going fishing. Well, we don't allow that, and so we were able to curb that problem. I think with the annual review in place, give us a chance to use our quality data collection program and our quality enforcement program to show you that this can work.

MR. CRAIG SHIREY: Mr. Chairman, I can certainly understand a state's desire to eliminate or reduce regulatory discards. It's an ugly practice whether it be recreationally or commercially. The commercial fishermen consider it a waste as well as most other fishermen. I'm troubled that having a relatively large allowance up to a thousand pounds, considering Delaware Bay's harvest this spring totaled 151 pounds, could lead to fishing to reach that thousand pound limit.

I'm also remembering the technical committee's original advice that stated that any removals will just delay or maybe even prohibit the recovery of the stock. I'm also wondering if there is a large public outcry or concern over large amounts of regulatory discards of weakfish, that perhaps these fisheries could eventually change into something that would not have near the number of discards and they could modify their practices accordingly.

MR. DAVID SIMPSON: This is obviously a tough one and something North Carolina has struggled very hard to do the right thing. I think we have the technical committee input that they found it to be conservation equivalent. You can see in part of their

strategy they're shifting some of their weakfish take from small directed fisheries to bycatch fisheries where these interactions are unavoidable, and this is all in an effort to reduce waste in the fishery.

As much as I've struggled with this as much as everyone else does, I think it is the best action to take. It has the added benefit of proper accounting of these removals where if they just put a blind eye to it, a hundred pound limit, the same number of fish is going to be dead and we just won't know about it. I'm going to support it.

CHAIRMAN MILLER: Thank you, David. Have we exhausted the board comments? No, two more hands. I saw Tom first and then Pete.

MR. FOTE: This is a very difficult situation for me, because we went out to public hearings – and I'll keep it short – we went out to public hearings saying you had a choice of a moratorium or a hundred pound bycatch. The people that read the document, nowhere in that document and nowhere in the things that we said, well, you can still be allowed conservation equivalency.

I guess you make assumptions. I would never have made the vote – I would never have made the motion to allow for – I would have let the moratorium go in place if I had known that we were going to corrupt what we basically went out to public hearings. If this motion goes, my next motion – and whether it fails or not and whether I get a second – is that we go back out with an addendum to put a moratorium in on the weakfish fishery.

I felt that we are being dishonest to the public or that's how it's going to be perceived. I put my name and my stamp of approval on this back then, and it has been twisted from what I thought and it's very confusing like what we vote on as a moratorium is not a moratorium and I'd finding this very difficult to struggle with. We're looking for loopholes.

Now, maybe it's not true and maybe it's conservation equivalent, but I'm sitting here having a difficult time, and I'm sitting here having a difficult time and I've got to explain this to the public in my state and New York and Massachusetts and Connecticut and everything else, and we will be fried on this. That's why I cannot support this.

MR. PETER HIMCHAK: Mr. Chairman, this is my first time sitting on this board, so I have a very limited comment on this. I find it surprising that the

potential for the conservation equivalency is not debated when the options were drawn up or at the public hearings themselves because all I recall is a hundred pounds or a moratorium.

I'm thinking that obviously the interpretation by a number of other states was that it was a hundred pounds or a moratorium and there was no conservation equivalency, so that now is it likely that a number of states will say, hey, we can do a lot better than a hundred pounds. Again, that just opens up an avenue for will there be more landed weakfish and then five years from now you wonder, well, how come we took such drastic action and they didn't recover? I see it from like a perplexing procedural problem here. As I said, I'll limit my comments.

CHAIRMAN MILLER: My recollection is that we did not discuss conservation equivalency on the particular day at least that vote was taken. Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, I don't agree with Mr. Fote very often on the record because it comes back and bites me later on, but I agree with him on that, and I agree with your recollection, Mr. Chairman, that at the time of the discussions, which were very in-depth, and the time we went out to public hearing there was no mention of conservation equivalency.

We were trying to address a major problem in this fishery. We sold a bill of goods to our fishermen, telling them what the added value would be. The difficulty I'm having is that we have gone forward with a technical committee evaluation and a white paper that does clearly identify two or three action items that those states that are concerned about this bycatch could do; specifically some rearrangement of the gear.

I'm sure there is some gear out there that has been tested already that will reduce the bycatch. Further, again, education of the commercial fisher person – we've had it in New York – they know they're going to make a run, if they're going to end up with a thousand striped bass and they only have 21 tags or 7 tags, they do what they have to do and they get out of the area.

It just seems to me to take this overt action, although it's correct and we're trying to reduce bycatch, I do think I would agree with Mr. Fote that if we're going to go down this road, I think we would require a new addendum to allow for conservation equivalency, so I

don't see how New York – I personally and I know my two counterparts are not going to support this motion. That's our concern and we wanted to make North Carolina aware of the fact that we think they should have tried or could try some of these other options before we go forward with this change.

CHAIRMAN MILLER: Thank you, Pat. I'm going to call on Nichola at this time for the AP comments that she has received to date.

MS. MESERVE: The advisory panel was asked for any comments on the proposal, written comments. Two were received and they were passed out by staff. They're from Bill Mandulak, the recreational AP member from North Carolina; and George Scocca, the recreational member from New York. Both of the AP members submitting comment opposing the proposal, and largely agreeing with the points in the technical committee and law enforcement committee reports. Both suggested that North Carolina consider additional gear modifications if they're worried about the bycatch of weakfish. These are two individual comments from AP members and not a consensus report from the advisory panel.

CHAIRMAN MILLER: All right, Louis, to that particular report or something new?

DR. DANIEL: It is something new. We have done what Pat has suggested in that we have implemented gear reductions. We have implemented bycatch reduction devices. We have implemented time-and-area closures. We've done those types of things to try to avoid it particularly in the long haul seine fishery, which is one of the primary issues that we have.

The other point that I think I need to make is that we didn't discuss a lot of things in Amendment 4 when we went out to the public with Addendum IV. One of the questions I got hit with the minute I got home on Addendum IV was does that mean the flynet fishery reopens south of Hatteras? No, all the things in Amendment 4 remain in place.

I don't think there is anything nefarious there. The fact that we didn't mention certain aspects of Amendment 4 will lead us to believe that we can't take action on the amendment. There was a lot there, Mr. Chairman, that I think that puts it in a different perspective to me.

CHAIRMAN MILLER: All right, Rob, and then I have Robert Boyles.

MR. O'REILLY: I think we did discuss conservation equivalency on an ad hoc basis. When North Carolina made the substitute motion a couple of meetings ago for a 150 pound bycatch limit that only seven jurisdictions supported so it failed, one of the things I had asked North Carolina was had they considered season, gear-based or area closures, and there was a little bit of discussion about that at the board.

Inadvertently or indirectly, certainly conservation equivalency was there. Another thing is right now I do think strongly about the discard issue more than anything else, and the thousand pound limit sounds severe in some respects. But, again, looking at the Virginia data, out of all the major gear types, there were only two trips with the haul seine fishery that even had more than a thousand pounds.

There is very little difference right now with the hundred pound bycatch worked out as a scenario and the 10 percent trip limit with a thousand pounds except for this discard issue. Nichola said early on – and it's the same case for Virginia as North Carolina – that you have a small percentage, relatively small percentage – in Virginia it is about 20 percent of the trips are taking 78 percent of the weakfish, so you know those are the trips that you don't want to turn into waste. I mean, I'm just stuck on that issue; and with 56,000 pounds in 2009 and with a year-by-year review of conservation equivalency as this motion is indicating, I'm very confident about it.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, just for the benefit maybe of some of our new members, I just go back to the Charter and remind you that conservation equivalency is defined as actions taken by a state which differ from specific requirements of the fishery management plan, but which achieve the same quantified level of conservation for the resource under management; for example, various combinations of size limits, gear restrictions and season length can be demonstrated to achieve the same targeted level of fishing mortality. The Charter allows for conservation equivalency.

We've heard from the technical committee and the law enforcement committee about their opinion on conservation equivalency. I recognize where many of us are. I share the discomfiture with where we've been. We approached this with the idea that those of us in South Carolina, where we don't have a large commercial take, we're contemplating the difference between a one-fish recreational bag limit and a

moratorium. We thought a one-fish bag limit was a better way to go, a wiser way to go, which would allow this resource to recover, but the Charter allows for conservation equivalency. I'd just like to remind folks what that definition is.

CHAIRMAN MILLER: Thank you for that reminder. My perception is the comments are winding down a little bit, so I'm going to open it up to brief comments from the audience. Are there any with regard to this motion before we take a vote? Seeing none, are there any additional board comments? All right, are we ready for the vote? Okay, why don't you take two minutes to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN MILLER: All right, I think we've allowed ample time for caucuses. I'll read the motion; move to approve the North Carolina request for conservation equivalency with a 10 percent bycatch allowance up to a thousand pounds and require an annual review by the technical committee and board to ensure conservation equivalency is maintained. Motion by Dr. Daniel; second by Mr. O'Reilly.

Are we ready for the vote? Those in favor of the motion would you raise your right hand, please.

MR. FOTE: Mr. Chairman, I would like a roll call vote, please.

CHAIRMAN MILLER: Okay, we'll accommodate that.

MS. MESERVE: Massachusetts.

MASSACHUSETTS: Yes.

MS. MESERVE: Rhode Island.

RHODE ISLAND: Yes.

MS. MESERVE: Connecticut.

CONNECTICUT: Yes.

MS. MESERVE: New York.

NEW YORK: No.

MS. MESERVE: New Jersey.

NEW JERSEY: No.

MS. MESERVE: Delaware.

DELAWARE: No.

MS. MESERVE: Maryland.

MARYLAND: Yes.

MS. MESERVE: PRFC.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. MESERVE: Virginia.

VIRGINIA: Yes.

MS. MESERVE: North Carolina.

NORTH CAROLINA: Yes.

MS. MESERVE: South Carolina.

SOUTH CAROLINA: Null.

MS. MESERVE: Georgia.

GEORGIA: Null.

MS. MESERVE: Florida.

FLORIDA: Yes.

MS. MESERVE: Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: No.

MS. MESERVE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN MILLER: The vote was nine yes, four no and two null. **The motion carried.** Moving on through the agenda – Tom.

MR. FOTE: Question on the motion; does that mean now if we can reduce reductions in the recreational fishery and the other commercial fisheries up there, we can all come in with conservation equivalency?

CHAIRMAN MILLER: Recreational, did you say?

MR. FOTE: If I'm looking at the recreational fishery, it took a greater reduction by going to a one-

fish moratorium than 58 percent, which is what the commercial conservation equivalency, is, do we basically open up that whole can of worms? I'm just asking the question because I'm going to get asked the question.

CHAIRMAN MILLER: I'll call on Bob Beal

MR. ROBERT E. BEAL: I think the answer is yes, states can bring a conservation equivalency forward at any time if they have the data to support that analysis.

CHAIRMAN MILLER: My recommendation to any states that intend to bring a proposal before the board, my suggestion is give due consideration to conservation equivalency when you present your proposal because by passing this motion I think we have established a precedent in regard to that. All right, Nichola.

MS. MESERVE: Also note that the plan development team, in developing Addendum IV, recommended against states putting forward conservation equivalency proposals for the recreational fishery that would entertain a higher minimum size limit to increase the creel limit, for example.

MR. ROBERT BALLOU: Mr. Chair, I'm curious of the annual review portion of this; when would that be; would that be a year from now or a year from – I guess it would depend on maybe when North Carolina implemented the measure. I'm just curious on that notion.

MS. MESERVE: I would suggest that it be included in the fishery management plan review.

DR. DANIEL: If that suits the board, that's fine with me. We will add it as a page to our report that basically summarizes the information that we have and whatever the technical committee deems they need to see in order to feel comfortable with what we've done, if that's okay.

CHAIRMAN MILLER: Okay, we have a couple of other agenda items. The next one is an update on Addendum IV implementation and I'll call on Nichola again for that.

#### **UPDATE ON ADDENDUM IV IMPLEMENTATION**

MS. MESERVE: Just one quick slide to show you; the date effective for the states that notified the commission in May that they had not yet implemented the Addendum IV requirements. At this point each state has implemented the requirements of Addendum IV.

CHAIRMAN MILLER: Thank you, Nichola. Any comments or questions in that regard? Seeing none, we will move on to Item 7, consideration of the weakfish biological sampling plans for 2010; again, Nichola.

#### **CONSIDERATION OF THE WEAKFISH BIOLOGICAL SAMPLING PLANS FOR 2010**

MS. MESERVE: On your Briefing CD, there was a copy of each of the states' biological sampling plans for 2010 and also a memo from the plan review team summarizing the plans and making a couple of additional comments for the board to consider. Just as a reminder, Addendum I requires each of the non-de minimis states to collect three otoliths per total metric ton landed and six lengths per commercial metric ton landed and to also continue MRFSS sampling at the 2005 level.

The process is for the commission by March 1 of each year to send the states the projected sampling levels based on the preliminary landings from the previous year; by April 1 the states submit plans based on the previous year landings. The PRT usually gets to review the plans in the spring and then often at the summer meeting is when the board will review them.

Then compliance with the samples is actually done as part of the FMP review and the compliance reports, and so those are due September 1<sup>st</sup>, and the states are to document their sampling by strata. I point out the process here because it's going to be relevant to one of the plan review team recommendations that I'll show you in a couple of slides.

The projected sampling levels for 2010 are shown in the table here. They total to over 1,100 length samples and over 700 otolith samples. Again, these are projected sample levels that are based on 2009 commercial harvest data except for several states where 2008 commercial harvest data were only available and also on recreational data from MRFSS that at the time lacked the Wave 5 data.

Those states that are de minimis don't have sampling requirements so they are excluded from this table. The PRT did receive and reviewed a sampling plan from each of the states that was required to submit one. All of the plans indicated a good faith effort to attempt to sample as required. The memo from the plan review team includes a table summarizing the process that each state will use to sample its weakfish fisheries.

The PRT notes that the plans do range in the level of detail provided and the PRT commends those states that provide a table of landings by strata by which the plan is based on. The PRT finds these sampling plans to be generally acceptable and would recommend their approval by the board.

The PRT noted that a few states did not indicate the temporal stratification that they'll use to sample their fisheries. It should be either on a quarter or half-year basis to represent the fishery landings. This is for the assessment which uses, I believe, quarterly or seasonal age-length keys.

The PRT finds it hard to judge the plans in more detail without knowing how the states actually performed with the sampling requirements from the previous year. As I said, that information is not submitted until September 1<sup>st</sup>; whereas the plan review team is reviewing the sampling plans in usually May or so.

In the past the PRT thus asked the states to provide the previous year performance with the sampling requirements if that information was available. However, few states are able to provide that in March or April when the sampling plans are due, so the PRT is no longer specifically asking for that information. If you would like to review how states have done in 2006, 2007 and 2008 with the sampling requirements, there is a Table 2 in the PRT memo that shows you that information. Because of this disconnect between the sampling plan review and the compliance report review, the PRT is recommending a change to the report content for the sampling plans.

At this point the state plans for sampling have been well established. They have been submitted four times. They have been endorsed by the PRT each year and approved by the management boards for four years. Developing the plans by the states does take some time and yet the plans are not really very useful because they're based on preliminary and previous year landings, and the states change their

targeted sampling levels as the landings are made for the actual year.

At this point if the board agrees, the PRT would just develop a template for the sampling plan for each of the states to use. It would just be a brief memo stating each state's commitment to fulfill the requirements in Addendum I according to their previously approved plan or to acknowledge any expected shortfall with the sampling requirements and the reasons why and also to report if there are any modifications to the sampling plan that has been previously approved.

What the PRT is suggesting here does not require any type of change to the fishery management plan. Each of the steps in Addendum I would still be followed for developing and approving the sampling plans. It is just that the states would not have to spend as much time developing a plan which is not used.

Just a quick summary; the PRT endorses the board's approval of the 2010 sampling plans and asks for the board's support to minimize the content of the sampling plans.

MR. AUGUSTINE: That was a great report; thank you for telling us how bad our previous plan was. I think we all appreciate your recommending a new way to go. **With your allowance, I would go ahead and move the board's approval of the 2010 sampling plans and the board approves – the board supports the PRT to minimize the content of sampling plans.**

Now, will there be more detail as to what that is, Mr. Chairman? That looks pretty bland but it sounds like we're taking on a relatively expansive change, although you say it's not difficult. Could we add something to that so that people who read this later on will have a better sense for what we've just put on the board?

CHAIRMAN MILLER: Is there a seconder to the motion? Pete Himchak. Rob.

MR. O'REILLY: Was there much discussion – and, Nichola, you said so much in so little time I may have lost a step, but was there discussion about the level of sampling given the change from Addendum IV and expectations of what might not be possible by some states in 2010 having the backdrop of the addendum on the requirements?

MS. MESERVE: Several of the states did comment in their reports that they would likely have additional difficulty sampling under reduced landings.

DR. DANIEL: I had the same concerned thought when I saw those numbers for us with the landings that we had last year. Has the technical committee thought about – I mean, I know we've been collecting samples from like our winter tagging cruise off of North Carolina. We can certainly sample from our independent sampling programs in North Carolina.

I know Delaware has a large – they catch large weakfish when they're available. The NMFS Inshore Fall Survey, we might be able to get some fish from them to try to maybe have a pool of collections taken that might offset some of the concerns that the states may have in actually acquiring any fish and kind of get out of jail free card if we can get enough from independent surveys to make up for that. I don't know what the technical committee's thoughts would be on that, but that might help.

CHAIRMAN MILLER: Did the plan review team discuss substituting fisheries-independent indices to meet the sampling needs?

MS. MESERVE: No; and just to clarify what the PRT is recommending here is not any change to the sampling requirements, but just what is actually in the report sent by the states to the commission.

CHAIRMAN MILLER: All right, are we ready for the vote on the motion? The motion is move to approve the 2010 sampling plans and support PRT recommendation to minimize content of sampling plans. Motion by Mr. Augustine; second by Mr. Himchak. No need for a caucus, I assume. Seeing none, is there any opposition to the motion as read? **Seeing none, we will assume it's approved.**

### OTHER BUSINESS

All right, I have a couple of other business items. I wanted to take this opportunity to acknowledge the contributions of Brian Hooker to this particular board and to note that he won't be with us in the future; that he has taken another position outside the National Marine Fisheries Service. Brian, thanks for your contribution and best wishes. (Applause)

On behalf of the board, I would like personally thank the members who participated on the white paper team and the technical committee for their efforts specific to the discard question and the North

Carolina Proposal. Is there any other business before this board? Tom.

MR. FOTE: I'll make it quick. It was a very interesting experience and it has taught me a good lesson. Before I make a motion and before I try to help somebody in the future, I need to be clarified of all the points of interest because what I assume is basically what we vote on is not what has been taking place as far as I'm feeling.

I didn't make the motion that I said I would make because I realized before I do something like that, I should consult with my other commissioners that have been on this weakfish committee for a long time, and they were not here right now. It's very interesting; and again when you think you're basically making motions to prove that and you sent it out to the public and it seems to be totally different than when you go out there, it puts you in a bad light and a bad situation. Thank you.

### ADJOURNMENT

CHAIRMAN MILLER: Thank you, Tom; are there any further comments; anything else to come before this before. May I assume that you're okay with the dismissal of this board? Seeing head nods, we're dismissed. Thank you.