

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

**Crowne Plaza Old Town
Alexandria, Virginia
February 3, 2009**

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INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of October 20, 2008 by Consent** (Page 1)
3. Move that we reconsider the decision at our last board meeting to initiate an emergency action regarding winter flounder management (Page 9). **MOTION REWORDED ON PAGE 13: Move that the board reconsider the action taken at the annual meeting to initiate an emergency action for winter flounder management and instead initiate an addendum.** Motion by David Pierce; second by Mark Gibson. Motion was defeated (Page 13).
4. **Move for the Gulf of Maine, that we close the state water fisheries for winter flounder, commercially and recreationally** (Page 14). Motion by George Lapointe; second by David Simpson.
5. **Motion to table the previous motion until we dispense with Southern New England and Mid-Atlantic and then pick it up immediately afterwards** (Page 15). Motion by David Simpson; second by George Lapointe. Motion carried (Page 16).
6. Move that the commission proceed with emergency action to implement a zero possession limit for winter flounder in the recreational and commercial fishery in state waters (Page 14). **MOTION REWORDED ON PAGE 16: Move to establish an emergency action to implement a zero possession limit for recreational and commercial fisheries for the Southern New England/Mid-Atlantic stock in state waters.** Motion by David Simpson; second by David Pierce. Motion was defeated (Page 18).
7. **Motion to reconsider the motion to initiate an emergency action from the annual meeting** (Page 18). Motion by George Lapointe; second by David Pierce. Motion carried (Page 18).
8. Move to initiate a fast-track addendum for winter flounder for a final decision at the May 2009 commission meeting; and included in the fast-track addendum will be a provision for a complete prohibition on landing and possession of winter flounder and recommendations from the technical committee for a 50 and a 75 percent reduction in fishing mortality (Page 18). Motion by George Lapointe; second by Gil Ewing.

ABOVE MOTION REWORDED ON PAGE 19: **Move to initiate a fast-track addendum for winter flounder for final action at the May 2009 Spring Meeting Week. Included in the draft addendum will be a provision for zero possession limits, trip limit measures that reduce the fishery as low as possible, options for bag/size limits, and measures to prevent an influx of effort in state waters from South New England/Mid-Atlantic and Gulf of Maine stocks. Motion carried (Page 20).**

9. **Move that Don Swanson and Eric Anderson be added to the Winter Flounder Advisory Panel (Page 22). Motion by Douglas Grout; second by William Adler. Motion carried (Page 22).**

10. **Adjournment by consent (Page 22)**

ATTENDANCE

Board Members

George Lapointe , ME (AA)	Pat Augustine, NY (Chair) (GA)
Terry Stockwell, ME, Adm. Proxy	Jim Gilmore, NY (AA)
Doug Grout, NH (AA)	Tom McCloy, NJ, Proxy for D. Chanda (AA)
Bill Adler, MA (GA)	Tom Fote, NJ (GA)
Mark Gibson, RI (AA)	Roy Miller, DE, proxy for P. Emory (AA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Harry Mears, NMFS
David Simpson, CT (AA)	Jaime Geiger, USFWS
Brian Culhane, NY, proxy for Sen. Johnson (LA)	

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

Ex-Officio Members

Steve Correia, Technical Committee Chair

Staff

Vince O'Shea
Robert Beal

Brad Spear
Chris Vonderweidt

Guests

Patricia Kurkul, NMFS

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, February 3, 2009, and was called to order at 1:45 o'clock p.m. by Chairman Patrick Augustine.

CALL TO ORDER

CHAIRMAN PATRICK AUGUSTINE: Good afternoon, Board Members. Welcome to the Winter Flounder Board Meeting.

APPROVAL OF AGENDA

CHAIRMAN PATRICK AUGUSTINE: I would like to have you take a look at your agenda. Are there any additions or corrections to the agenda as presented? Seeing none, the agenda stands as is.

APPROVAL OF PROCEEDINGS

CHAIRMAN PATRICK AUGUSTINE: I assume you have had an opportunity to review the proceedings from the October 20, 2008, meeting. Are there any additions or corrections? Mr. Simpson.

MR. DAVID G. SIMPSON: I just wanted to note that in the summary that Dr. Rago presented, the text, there is a lot of confusion between millions of pounds and metric tons as we always have, so just be aware of that. The figures are all correct, however. So, I don't think it's worth going through and saying he meant thousands of pounds here or it meant millions of pounds there, but just be aware the text is not right, but the figures are.

CHAIRMAN AUGUSTINE: Thank you for that clarification. Any other comments from the board? Okay, any other comments on the proceedings of October 20, 2008? Without objection, the proceedings are approved.

PUBLIC COMMENT

CHAIRMAN PATRICK AUGUSTINE: Are there any public comments at this point in time? If there is an item that does not appear on the agenda and you would like to bring it to the attention, please do so at this time. If not, we will assume the public has no

comments at this time, but you will be able to make comments throughout the proceedings.

NMFS PROPOSED INTERIM RULE

We would like to have an update on NMFS' Proposed Interim Rule at this time, if they're prepared to do that. The rule was released in January, and we would like to have Steve Correia do that.

MR. STEVE CORREIA: I have a couple of slides on the stock status before we get into it. What I'm going to do is just give the portion of the interim rule that pertains to winter flounder. As just a quick review for the stock areas, this red area is for the Gulf of Maine stock. This area over to the east is Georges Bank, and this light blue area is the Southern New England stock.

Most of the stuff that we're focusing on is for the Southern New England winter flounder. This is the spawning stock biomass from the GARM III assessment. You can see that we're very low. We're probably around 9 percent from the target. The target is about twice here. In the assessment we have this very small uptick here.

This is the fishing mortality rate and fully recruited fishing mortality rate. It has dropped somewhat since the late nineties but still remains well above Fmsy. In this figure here is the age one recruitment trend for the entire stock. You can see since we have done the assessment recruitment has dropped at a very high level. We probably have not had a year class above the median since about 1998, so it has been about a decade.

You can see that most of the recruitment is below the 25th percentile, so we have very few fish coming into the stock to allow the stock to rebuild. For the Southern New England stock, for the assessment they used a split survey. This represents the split runs, and so we end up with an F that is about 0.65 and biomass is about 0.9, but if you went to the base run you see the biomass really isn't that much higher.

It's not very sensitive to this, but you do see that the F has dropped a bit. The run that was selected at the GARM is the split run. In either case this stock, no matter how you assess it, or even if you just look at the survey indices, it is in very tough shape. One thing that is important to note is that for the Southern

New England/Mid-Atlantic stock, it is already in a rebuilding program.

It was scheduled to be rebuilt by 2014. New projections indicate that it cannot rebuild by 2014 even with an F that's equal to zero. So, apparently – and Pat can speak to this – NMFS has interpreted that the Southern New England/Mid-Atlantic winter flounder needs a rebuilding F as close to zero as practicable.

For the Gulf of Maine stock, it is a little bit unclear. The assessment model, the last couple of times we have looked at it, each time it has gotten worse. In this case the assessment is having difficulty tracking year classes. There seems to be conflicting trends between the catch and the survey, and so with the amount of catch that you have you can't account for the removals that the model needs.

They have probably the worse retrospective pattern of all the assessments that I have ever looked at. The review panel said that none of the models gave a clear picture of stock status. They also recommended that the proposed analysis could not be used to provide management advice. For one, the trends in the stock were troubling, biomass is highly likely to be below Bmsy, and a substantial probability of the stock is overfished.

So NMFS concluded that the ratio of F to Fmsy is about 1.5, so overfishing is occurring; and the B to Bmsy is 0.29, and so the stock is overfished. They released, last week, the proposed rules for the interim action, which is scheduled to go in place for May 1, 2009. The final rules may be different.

There was also a decision on the Framework 42 lawsuit relative to the use of the mixed stock exemption, and it is not clear what the impact that will have on the interim action or Amendment 16. For Amendment 16, right now that is scheduled to go in place for May 1, 2010. The measures for Amendment 16 may change from the interim action.

The one thing that Amendment 16 would have to do is develop a rebuilding program for Gulf of Maine winter flounder. At this point the interim action is only looking to end overfishing on Gulf of Maine winter flounder. Probably the biggest rule impact in winter flounder is a no-possession limit of winter flounder in the Southern New England/Mid-Atlantic stock area, which is this entire blue area.

For vessels, they can transit the area, fish on Georges, come back in, land winter flounder from Georges, but

if they fish anywhere in Southern New England, then they have to abide by the more restrictive no-possession limit. They are also proposing a relatively large closed area in which federally permitted groundfish vessels could fish, and that is in this brown area in here.

However, within this area they would allow small-mesh fishing and I believe also fluke fishing in there, but groundfish would not be allowed. There is a provision in the interim rule to take away the day-at-sea conservation tax that would allow permit stacking so vessels would be able to become more efficient.

There is elimination of the Southern New England/Mid-Atlantic Special Access Program, which would allow fluke vessels to land 200 pounds of winter flounder under a groundfish day at sea. That is gone. The elimination of the state waters winter flounder exemption, which would allow federally permitted groundfish vessels to fish within state waters with small mesh and land a small amount of winter flounder; that's also gone.

There would be no possession of winter flounder within the EEZ portion of the Southern New England/Mid-Atlantic stock area by party/charter vessels and private recreational anglers. In addition to this, there is an 18 percent proposed cut in the days at sea. In this blue area right here, that's all two-for-one counting of days at sea. So in addition to the 18 percent, if you fish in this area, your days at sea count two for one.

For Gulf of Maine winter flounder, you have the 18 percent cut in days at sea. You have the differential days at sea at two for one, which is status quo, although the two-for-one area extends further out into the Gulf of Maine. The Gulf of Maine winter flounder at one point was allowed to be landed on a "B" day. Now, because of its status, it's now considered a stock of special concern, and so it cannot be a target of a "B" day fishery.

There is an incidental TAC set at 19 tons with the entire TAC allocated to the "B" day program. That means if someone is fishing on "B" day, when the total "B" day catch of winter flounder comes up to 19 tons, then other actions in the area of the "B" program would close within that Gulf of Maine area.

For the recreational, the Gulf of Maine, there are no changes. As I said earlier for Amendment 16, the plan is to develop a rebuilding program for Gulf of Maine winter flounder and develop measures to achieve that rebuilding F.

CHAIRMAN AUGUSTINE: Are there any questions from any of the board members on Steve Correia's presentation up to this point? Everyone is clear on what is being presented? Okay, Bob, would you like to move ahead now with telling us what our potential management options will be based on the information that was just presented?

POTENTIAL MANAGEMENT OPTIONS

MR. ROBERT E. BEAL: This is similar to a presentation that I provided at the annual meeting in Rehoboth Beach, Delaware. It is more of the procedural options that are available to the board today rather than specific management measures that can be implemented. As Steve mentioned, we have the GARM III results that we have had for about six months now. We now have the National Marine Fisheries Service Proposed Interim Rule published last month. This will go into effect, as Steve mentioned, May 1 of this year. Amendment 16 is being developed by the New England Council for a May 1, 2010, implementation.

I think generally the management options that the board has today are either an emergency rule, a fast-track addendum or a standard track, regular addendum. The board always has the ability to initiate an amendment, but I think the flexibility that's in the current amendment and FMP to winter flounder probably provides this board enough latitude to just work through the addendum process rather than a lengthy amendment process.

As far as the emergency rule goes, the definition of an emergency from the ISFMP Charter is up on the screen. It's obviously up to the board to decide if the situation in winter flounder constitutes an emergency. An emergency is defined as apply in those circumstances under which public health or the conservation of a coastal fishery resource where attainment of fishery management objectives has been placed substantially at risk by unanticipated changes in the ecosystem, the stock or the fishery.

Those are the conditions that define an emergency under the ASMFC process. As Steve mentioned, there is a pretty dire situation in Southern New England. It is up to the board if it warrants emergency action or one of the other management options that is before them. For emergency rule it would require a two-thirds vote of all the voting members of the Winter Flounder Management Board.

It is valid for 180 days. It can be renewed for two 180-day periods, so you can essentially get about a year and a half out of an emergency rule if the board continues to extend that management program. This requires four public hearings in the next 30 days if it were approved today, and it can be valid immediately if that is what the board chooses to do.

If an emergency rule is implemented, it would allow for changes in the early 2009 fishery, essentially catch the remaining winter fishery of this year, and then it can go into the summer as well. It would provide time for the board to develop the longer-term management program through an addendum.

A fast-track addendum, if the board chose they could initiate an addendum today. They could approve that for comment through a special meeting in March, get the board together in March and have them review the draft that staff pulls together, and then that can be sent out to public comment. The public comment period, according to the FMP, needs to be 30 days long, and any state that wishes to have a hearing will be able to do so during that 30-day period.

Obviously, it can be longer than 30 days if the board chooses to do that. The final approval of that addendum could take place in May at the Spring ASMFC meeting. If the board chooses to do an addendum rather than a fast-track addendum, that could be initiated today. The staff could go back and draft that based on the input that we have, and the board could then approve that for comment in May; public comment period, again, June/July, with final approval in August.

Those are the three management procedural options that are in front of the board. What is up there now is essentially a graph. It was included in your briefing materials. It is a figure of the 2008 preliminary landings for the Gulf of Maine. The landings here are Maine, New Hampshire and Massachusetts. It is not necessarily broken out as to where those fish were caught. It is just the landings from those three states.

As you can see, the rate of landings increases as the year goes along. The highest activity in the fishery is from June through December. Since we learned about the SARC news, through the remainder of last year that's the landings that have occurred in the Gulf of Maine. This next figure is Southern New England. The landings here, again, the Massachusetts' landings are essentially double counted in these figures, so, again, this isn't necessarily split out as to where the fish were caught.

It is just where they were landed, and Massachusetts is included here through the landings that take place in New Jersey. A similar pattern here, as time goes on through the year the landings ramp up. This one has a little bit earlier increase in the fishery, and there are more landings in April and May than there are in the Gulf of Maine; the Gulf of Maine for the Southern New England stocks.

This is just to give the board an indication of what landings have occurred or how the landings' pattern occurred during 2008. This is preliminary data, but the trend will probably hold true. There may be some modifications a little bit from month to month and from state by state and stock area by stock area, but overall I think the trend will probably hold true. Mr. Chairman, that was just a brief summary of the options as well as the fishing pattern from last year that the board can use.

CONSIDERATION OF MANAGEMENT OPTIONS FOR SOUTHERN NEW ENGLAND/MID-ATLANTIC STOCK

CHAIRMAN AUGUSTINE: Thank you, Bob, I appreciate that. Any comments from the board? Dr. Pierce.

DR. DAVID PIERCE: Either for Bob or for Steve; we have these figures, these landings' data for winter flounder in the different states. However, how much winter flounder is actually landed in the states by fishermen who are only fishing in state waters and they don't have federal permits? It is important to know that because that's really the universe that we have to deal with. Otherwise, they're taken care of by federal permit holders.

MR. CORREIA: We had an analysis that was done I think for 2004 and 2005 by the regional office. It indicated that only about 2 percent of the commercial landings are landed by vessels without federal permits, and so all those landings would be coming from within state waters. In essence, for this fishery most of the fishery occurs in the EEZ. The recreational components, which is mostly within state waters, should be 6 to 11 percent of the total catch. Commercial discards generally run 4 to 7 percent of the total catch, and about 85 percent of the landings or the rest are commercial landings.

DR. PIERCE: The last percentages that you gave, Steve, I wasn't sure – that was a percentage of what, the discards as well as the recreational take are –

MR. CORREIA: Right, for the total catch, so take all the landings, the recreational landings, recreational discards, commercial discards –

DR. PIERCE: For total catch of fishermen –
MR. CORREIA: Total catch of winter flounder –

DR. PIERCE: By whom?

MR. CORREIA: -- in Southern New England.

DR. PIERCE: By state permit holders?

MR. CORREIA: No, just across the board; 4 to 7 percent is commercial discards; 6 to 11 percent are total recreational catch, including discards; and about 2 percent of the total landings come from vessels without federal permits. Now there are vessels with federal permits that fish within state waters, but they will be impacted by the interim action. The only ones that would not be impacted would be this roughly 2 percent or less of the non-federally permitted vessels.

MR. GEORGE D. LAPOINTE: Mr. Chairman, we took an action at the December meeting, the fall meeting, which I think is kind of a follow-on to Bob's discussion about our options, which I think is important in the context of today's discussion, but if other people have technical questions I can wait on that.

CHAIRMAN AUGUSTINE: Any further technical questions from the board? Seeing none, Mr. Lapointe, would you go forward?

MR. LAPOINTE: Within the options that Bob discussed, we had a motion at the December meeting, and the motion in the minutes is that we move to initiate an emergency action in December to respond to, number one, the GARM III findings and panel conclusions; and, two, the NMFS interim actions affecting winter flounder commercial and recreational fishing, and that passed unanimously by this board. Clearly, we didn't meeting in December because we were waiting for the interim action, so we have a motion to proceed with an emergency action. It strikes me that is where we ought to start our discussion.

CHAIRMAN AUGUSTINE: Discussion on that motion.

MR. LAPOINTE: Well, no, the motion passed, so now we have to – you know, unless we decide we don't want an emergency –

CHAIRMAN AUGUSTINE: Well, that was why I asked if there was going to be any discussion on it. The motion was passed, but that is on the table. Does anyone want to change it or amend it or should we go forward? Seeing no questions from the board, let's go to the technical committee's recommendations at this point in time, and let's see what you can add to our information.

TECHNICAL COMMITTEE RECOMMENDATIONS

MR. CORREIA: Probably not a lot. The TC believes the Southern New England winter flounder is in serious trouble. There is no evidence of any year classes coming through. Projections indicate the stock is not going to be rebuilt for quite a bit even at very low Fs. That said, the portion of the stock that is under control from ASMFC is a very small fraction, so most of what has to be done has to be done in EEZ.

The concern that comes up is that where the fisheries occur within state waters, that they're occurring on the spawning groups, individual spawning groups as they're moving in and out of the estuaries, and so the inshore fishery could actually have a bigger impact on some of these spawning groups because they're getting ready to go in as opposed to the EEZ where they're mixed with various components.

The TC was also concerned that there may be other factors involved that we cannot control that may be contributing to the poor stock conditions; things like habitat degradation, power plant impingement, increased predation, perhaps warmer winters impacting survival of the young of the year.

They're concerned about the potential for vessels to give up their federal permits and redirect in state waters. The TC wouldn't want to see an increase in effort within state waters. For some states that option is cut off, but we don't know whether that is the case for everyone. Because the rule is only proposed, the TC wasn't sure where the board wanted to go. They only control a small portion of the stock. We were looking to get some specific guidance from this board.

The other issue that the TC brought up is they note that with a no-possession limit for winter flounder

means that your total catch and the characterization of the catch is going to come from at-sea observers, and so there is some concern that if you have a no-possession limit it's going to be difficult to assess this stock. That's another consideration that the board might want to consider, whether they go with a no-possession limit or go with some very low bycatch, but not allowing a directed fishery. The TC is just looking for guidance to go off and do their work from you guys.

MR. SIMPSON: Well, one observation with winter flounder is that this is a case where there is a local benefit to local conservation measures are disproportionate. It's not like taking action in federal waters. If we take action in Connecticut waters, for example, there is a benefit to resources that we believe spawn there and have fidelity to those sites, so it's something to keep in mind.

Even though we're only working with 2 percent, perhaps, of the commercial and a little bit more when you consider the recreational, except that our catch estimate was zero for last year in the recreational fishery, that's something to keep in mind. The question that was prompted is the comment that you made about the potential for federal permit holders to give up their permit to fish in state waters, and I wondered if that was still possible or if once they give up the permit, can they get it back?

MS. PATRICIA KURKUL: No, once an individual gives up a limited access permit, they cannot get it back.

MR. TOM FOTE: I keep thinking about bluefish and weakfish and now it's winter flounder. The question I asked many years ago from the technical committee when we basically were considering almost shutting down the bluefish fishery to rebuild the stocks was if we shut the fishery down completely will it make one bit of difference, and none of the scientists wanted to go on record to say it wouldn't make one bit of difference.

When we look at weakfish, Mr. Cole and I were talking about the meetings on weakfish years ago, we cut the commercial fishery by 90 percent. We basically eliminated the six- and seven-inch fishery. Every fish that basically is harvested now spawns, and we said we're going to rebuild the stocks, and we know weakfish is back in the tubes again with no stocks.

Before I close another fishery down and before I do drastic measures, I need to begin to see some results

or is this truly habitat, is it unforeseen circumstances, where we're going to put people and shut a fishery down completely that will really have no effect on rebuilding the stocks as it didn't seem to have any effect on bluefish and other species. You know, we have to be sure that what we're doing is going to have a result and not just destroy fisheries.

MR. MARK GIBSON: George has pointed out that we already made a decision to proceed with an emergency action. However, we did that before we had in hand a proposed rule and before we had a judge vacate Framework 42. It seems to me that now fishery management, including winter flounder, is all over the place right now.

I'm not nearly as supportive of the emergency action concept as I was given what has happened in the intervening time. I guess procedurally, if this board wanted to back away from that you would need a motion to reconsider and that would require a super majority to stop that emergency action and perhaps take a more deliberate – or put one of the other alternatives that Bob has laid out. I think that's an important question before we go much further. I don't know that I'm ready to make that motion yet, but I'd certainly like to hear what some other board members think about that.

CHAIRMAN AUGUSTINE: Yes, we would have to take it back on the table for reconsideration. Mr. Lapointe.

MR. LAPOINTE: The discussion about what we do in state waters is kind of what I'm revolving around. The fishery in state waters is about 2 percent commercially and then we don't know exactly for the recreational fishery, but it's a minor component as well.

MR. CORREIA: The landings by non-federally permitted vessels are 2 percent or less. It varies somewhat by state, and that was over a couple of years. The recreational catch is about 4 to 7 percent. In total you may be dealing with 10 or 15 percent of the total catch.

MR. LAPOINTE: And so the question in the context of whether this board takes action and the proportion of the catch in federal waters, is 10 percent significant? And when the stock is in this condition my sense is the answer to that is yes, it is significant and the state water component is important to move forward with.

MR. CORREIA: I think the big concern that was raised with the state waters has to do with the fact that the state waters' fisheries are happening on individual spawning units as they're going in and out the estuaries. They can have more of an impact and probably that stock is – that inshore component is the one that is having even a worse time than the stock in aggregate, and that in itself is really abysmal.

CHAIRMAN AUGUSTINE: Do you want to follow on with that, George, or are you satisfied with that answer?

MR. LAPOINTE: No, I just wanted to put it in context because we could sit on our heels and say we don't have an emergency and not take action. I don't think that is what Mark was saying, but my sense is it was to get me just to say that we think that action in state waters is necessary with the stock in this condition. And, again, that's my sense right now.

DR. PIERCE: Be it an emergency or not, I think the issue for us today is what could we do today regarding specific measures we would want to take to respond as quickly as possible to these concerns about winter flounder. With that said, I'm struggling with what we could do, for example, in the Gulf of Maine.

I look at this sheet that was passed out that shows the summary of the proposed interim actions for the commercial Gulf of Maine. I guess what I first need to get is a clarification from you, Steve, because the way it's worded here it confuses me. "C" and "D", we have for Gulf of Maine winter flounder, it would only be through interim rule for federal permit holders and incidental TAC at 19 tons, and all of that is allocated to the regular "B" days-at-sea program. But then "D" says you can no longer target them in the "B" days-at-sea program. Would you explain that?

MR. CORREIA: Yes, the "B" Day Program was designed to allow – vessels have "A" days and "B" days. The "B" days were designed so that you could go fish on stocks that were rebuilt. It was a few years ago where the advice was that this stock was rebuilt, so fishermen could go fish on winter flounder, use a "B" day and land it.

Now that the stock is overfished it is now classified as a "stock of concern", which means that you cannot use a "B" day to direct on winter flounder. So for Gulf of Maine winter flounder, for a "B" day it's only going to be a bycatch. If you're in the "B" Day Program, you're not allowed to discard Gulf of

Maine winter flounder; so if it comes up on deck, you're supposed to land it.

So if a vessel is on a "B" day and they land their winter flounder, once the total catch of winter flounder on the "B" day hits 19 tons, then the stock area for winter flounder something is going to happen. You can't use "B" days in that area. That is really what that means. Other than that, winter flounder would be controlled – you only could target it on an "A" day on all the other restrictions that go with that, two-for-one counting and that kind of stuff.

DR. PIERCE: So you're saying, then, that – okay, in the Gulf of Maine fishing for winter flounder – catching and landing winter flounder on an "A" day is permissible?

MR. CORREIA: Right, in the Gulf of Maine you can land winter flounder – I don't believe there is a trip limit on it – just on an "A" day. And what you can't do, which you could do before, but I don't anybody was doing it, is use your "B" days to direct on winter flounder, so that option is closed. You can only direct on Gulf of Maine winter flounder using an "A" day in the Gulf of Maine.

DR. PIERCE: Okay, so that means in the interim action you can still target winter flounder with an "A" day, recognizing the number of "A" days has decreased dramatically, right, two-to-one day is the count, 18 percent cut in the "A" days, so that still is allowed. I can't recall if there is a trip limit for winter flounder on an "A" day in the Gulf of Maine.

MR. CORREIA: I don't think there is; I don't recollect one.

DR. PIERCE: All right, so therein lies a bit of a problem for us in that the interim rule, for the Gulf of Maine, anyways, is a bit confusing since I don't know how I'm to interpret that relative to what states might be expected to do to complement what is going to happen through interim action. There still is the "A" day. They can still target in the Gulf of Maine. Federal permit holders, they can still target winter flounder.

I guess there is no landing limit for those winter flounder, just by "A" days. And then there is a tweak to this and that is the "B" day-at-sea element of the program. So, states don't manage by days inside state waters. We don't have days-at-sea restrictions. We just manage by landing limits principally and other things, of course, closures. I wouldn't know what to do today to respond in an emergency action

in the Gulf of Maine to complement what the National Marine Fisheries Service is doing so far as proposed in the interim rule.

MR. CORREIA: Yes, for the interim rule for Gulf of Maine winter flounder, because that stock is newly classified as overfished, a rebuilding program needs to be developed for it. That is going to be done in Amendment 16. So probably what will happen is there will be like an eight-year or ten-year rebuilding and there will be some F associated with it.

In the interim, between now and Amendment 16, it looks as if the interim action is trying to end overfishing on Gulf of Maine winter flounder, and so the interim action measures are covering a broad range of stocks in the Gulf of Maine, and Gulf of Maine winter flounder gets carried on with all the measures that are going on. The stock in the Gulf of Maine, the situation there isn't as dire as it is for Southern New England.

MR. SIMPSON: I'm trying to figure out how fast we need to move and how much faster we could move with an emergency versus another process. Part of what I'm looking at is it is already February. As far as the recreational fishery, our season opens up April 1 and closes for the year May 30th. Everyone gets a 60-day season and that's when ours is. Could we move that fast under any scenario?

Secondly, Steve put up a graph that showed from SAFIS the 2008 landings by month, and that looks quite a bit different than another figure from '05 to '07. It's Figure 8 on Page 42 of the document that was provided on the CD. The difference for people, who can't see both, the one that is based on '05 to '07 landings peaks in June where the one you showed based on '08 peaks in September/October, which would suggest a little more time before the peak of the fishery to implement something. I guess I'm wondering is there a regulatory reason or some other reason why the difference between '05 to '07 and '08?

MR. CORREIA: Well, I didn't put these graphics together. One of the things that was implemented in between was I believe one interim action and Framework 42. I think that came in place in 2006, Pat, and so you had both of those things coming on, and there were a lot of changes relative to two-for-one counting coming in and closed areas being moved in the Gulf of Maine and that sort of stuff. For Southern New England I think there was a two-for-one counting area that was implemented in

Southern New England, so there were management changes that have occurred since 2005.

MR. SIMPSON: The first graph is from '05 to '07 and the second one that you put up, this one here that is on the screen now is for 2008. Now, the two-for-one counting and so forth, that would have been back in the '05 to '07 data, right? That didn't start in '08?

MS. PATRICIA KURKUL: The two-for-one counting started I think in 2007.

MR. SIMPSON: Okay, so I don't know whether that – I was looking for something like that, the two-for-one counting that might change the seasonality of the fishery; does that mean we have more time to affect a greater proportion of our state activity? And the other question I guess for Bob that maybe I missed; in terms of the process we use – right now we're committed to an emergency action.

I would like to make sure that we have an opportunity for some informed public input into how to do this particularly on the commercial side. On the recreational side I think I've already heard for years that we should close this fishery, so I don't think it is going to take a lot of information sharing and time to do that.

On the commercial side I don't want to do something that just turns these landings into discards as we're always worried about. I want to do something that's a little smarter and it's effective and we at least maintain the body count. If it's landed we know about it; if it's discarded, especially in state waters we don't, and I just want to make sure we're effective in what we do. So, to the timeframe and how quickly it might work, and then, of course, it's state implementation time, what can states around the table do in two to four months, say?

CHAIRMAN AUGUSTINE: Okay, thank you. To the question, let me ask Bob, but before that I want to mention that we're going to have advisory panel recommendation so you have an idea of what the public is thinking on the issue. Mr. Beal, would you respond?

MR. BEAL: I'll maybe go in the reverse order. The folks around the table know a lot better than I do about their state implementation and how long that will take, so they can probably answer that better than I can. I think the motion that was passed at the annual meeting, if you look at it, it says initiate an emergency action at a December meeting, so I think there is some room for the board to talk about

whether they really have approved an emergency action or if they just said, you know, based on what we expect to see from the GARM results and what we have seen from the GARM results and what we expect to see in the federal interim rule, we probably should get together in December and likely initiate an emergency action at that time.

So there is probably some room for discussion at the board whether that does or does not need a super majority. The board has not approved an emergency rule yet I think is a true statement. To fully answer the question, the timing of an emergency rule, if it was passed today, versus fast tracking an addendum or something that may be approved in May, I think that all relates back to how quickly the states can go home and implement those regulations.

If it takes three months for states to implement regulations, you may ultimately end up implementing regulations at about the same time either through an emergency rule or a fast-track addendum. The other side of that is if an emergency action occurs today and the states need three months, that gets you to May. But if there is a fast-track addendum that is approved in May and then the states still need three months, that kind of pushes you back another three months. So I think a lot of it comes down to how quickly the states can go home and implement the measures.

CHAIRMAN AUGUSTINE: Thanks for that clarification, Bob. Dr. Pierce.

DR. PIERCE: With that said, I would like to – all right, I'm going to assume, therefore, based upon what Bob said, that we are not wedded to the need for an emergency rule. Indeed, we said we would consider it and, frankly, I don't think it's needed in the context of what has been provided to us by the technical committee.

For example, in the technical committee conference call summary the committee says that delaying action until the May meeting does not provide a significant risk to stock rebuilding, et cetera. So, if it is appropriate, Mr. Chairman – and, again, you can be the final judge on this with staff – I would move that we request the technical committee to develop recommendations for additional management measures within state waters for non-federally permitted fishermen. Those measures would be number two, three and five listed in the January 23rd technical committee conference call summary.

CHAIRMAN AUGUSTINE: Dr. Pierce, I would hope that we don't get a second at this instant and hold it so we can at least have word from the advisory panel report, which we have not had any information on the table yet. As soon as that is given, I would then entertain a second I guess by Mr. Lapointe.

MR. LAPOINTE: I think procedurally we have to deal with the deal that we passed in December. We moved to initiate an emergency, and I think Bob's question is that if we move to uninitiate an emergency we can do that, and I think his read of the motion – and I think it is correct – is that it doesn't require an emergency action, but it would require board consideration before we take other actions. I agree that we should listen to the results of the advisory panel's conference call first.

CHAIRMAN AUGUSTINE: All right, thank you. Hold that thought, Dr. Pierce. Chris, please present the advisory panel recommendations.

ADVISORY PANEL RECOMMENDATIONS

MR. CHRISTOPHER VONDERWEIDT: Bud Brown, the advisory panel chair, had made plans to attend this meeting. Unfortunately, he got very sick late last week, and he wasn't able to attend, but I was on that call so hopefully I can provide you with a summary. I am just going to go over the Southern New England to follow the agenda. There are also recommendations for the Gulf of Maine.

Basically, the advisory panel thinks that 9 percent biomass warrants emergency action. They think that there is going to be fishing on the spawning grounds between now and May, commercial fishermen setting their nets on the spawning grounds. They feel that the proposed rule is appropriate and that we need complementary state action. They think that the board should act today to prohibit possession or landing of all Southern New England, recreational and commercial, until the next stock assessment.

They feel that this closes any loopholes. Being that it's a proposed rule and not a final rule, things could change. The rules are going to get more restrictive; it's going to become less restrictive; and if it becomes less restrictive, this provides protection of the stock. They also noted that this should have a basically minimal economic impact because fishermen aren't catching their limit at all. They might catch one or two here and there, but as a general rule they're not catching winter flounder, so it was a pretty easy call.

It was pretty unanimous; everybody felt this way, so those are the Southern New England recommendations.

CHAIRMAN AUGUSTINE: Any questions on that report? Dr. Pierce.

CONSIDERATION OF MANAGEMENT ACTION FOR SOUTHERN NEW ENGLAND/MID-ATLANTIC STOCK

DR. PIERCE: Was the entire advisory panel on that conference call? I noticed that there were just a handful of people; nobody from Massachusetts or Rhode Island and some of the other states, New Jersey. What was the percent of attendance through the conference call?

MR. VONDERWEIDT: Well, I don't have a list in front of me. It wasn't as many as you would hope for. The advisory panel hasn't met in a number of years. It hasn't been necessary. Actually Tina I think is going to go over as the last agenda item asking for more members of the advisory panel. It is listed on the top of the conference call, so there were four members. This represents their opinions. Bud Brown did call every single member and tracked down who wanted to stay active and all that, so they were definitely notified. It's just whether or not they're still active in the fishery. It seems like a lot of them are not.

CHAIRMAN AUGUSTINE: Does that answer your question, Dr. Pierce? To move forward, we've got the determination that although we stated in December it would be an emergency action to be taken, it appears now it doesn't have to be considered as an, quote, quote, emergency. It can be treated somewhat differently than that. Unless I'm stating this wrong, I think we should look forward to either a motion to reconsider or just go forward with the motion that Dr. Pierce started to put on the table. I would ask the board for your direction, which way would you like to proceed at this moment? Dr. Pierce.

DR. PIERCE: Well, if a motion is required to deal with the decision at the last meeting for emergency action, then I will make that. My intent is to get the ball rolling regarding an addendum that would deal with the points that I mentioned a little bit earlier in the motion that I made that is on hold right now. I think that is a better way to go. It will be better thought out.

I'm a bit confused because of what our chair said about the emergency action. Do we have to reconsider that? Okay, I would move that we reconsider the decision at our last board meeting to initiate an emergency action regarding winter flounder management.

CHAIRMAN AUGUSTINE: Thank you; do I have a second to that? Motion by Dr. Pierce and seconded by Mr. Gibson. Mr. Fote and Ms. Kurkul.

MR. FOTE: After looking at who attended the advisory called meeting, New Jersey was absent, a number of the states were absent. I really think we need to go to a public process before we make any other changes to the rules, and that's what we need to do with an addendum.

MS. KURKUL: I am opposed to the motion. I was supportive of taking emergency action at the last meeting, and I think, if anything, the information that we have available to us now would indicate there is more of a need to take emergency action. We knew at that point what the GARM results were in terms of needing to reduce to as close to zero as practicable.

What has happened in the interim is we've put out an interim rule or proposed an interim rule that suggests a zero possession limit for Southern New England winter flounder for all sectors. And a correction from a comment that was made earlier; Framework 42 was not vacated. Framework 42 was temporarily suspended until we do the analysis on the mixed stock exception, but I fully expect it to be back in place once we have gone through that process.

Arguably, if it were suspended, then there would be even more reason to take action for this stock, and we can't rebuild by 2014 even at a zero possession limit. We can't achieve as close to zero as practicable without the states taking action as well. I think 10 percent is quite significant in a fishery that's in this particular state. I am opposed to the motion.

MR. LAPOINTE: I share Pat's concerns. We have a significant proportion of the fishery in state waters. We're at 7 percent of Bmsy or something, and so I think the action we took at the annual meeting is appropriate, and we were waiting for time to see what was in the interim action.

I think that we've got enough information, and we've got the information we need to take action. I don't think it will be any more comfortable if we take extra time. And as David Simpson pointed out, some

states may need extra time, but we've got the information we need to move ahead.

CHAIRMAN AUGUSTINE: Okay, any further questions or comments from the board members? Dr. Pierce.

DR. PIERCE: Again, I'm just referencing technical committee advice regarding the fact they believe that delaying action until the May meeting does not provide a significant risk to stock rebuilding, and so they have already spoken on this issue. In addition, I don't know what to do at this point in time regarding emergency action to be initiated that would respond to what happens in your waters, George, or New Hampshire waters or Massachusetts' waters north of Cape Cod.

It is uncertain to me. If there is something that can be offered up by those that would be affected through an emergency action that would be likely quite severe, then that would be appreciated but as it stands right now I'm not sure what that would be. I suspect that a zero possession limit in the Gulf of Maine is nonsense because that would put the state waters' fishermen at a tremendous disadvantage to those who have federal permits.

That's where I'm coming from and that's why I think it is not necessary to have – why it's necessary for us to reconsider the emergency and to move ahead then with a better thought-out addendum that would actually get us in better shape to deal with Amendment 16 when Amendment 16 comes on line that would be a consequence of what the New England Council wishes to have adopted.

MR. LAPOINTE: You know, we have the option. We pride ourselves in being able to select what we do at the Atlantic States Commission, and so I don't know quite what to do in the Gulf of Maine either. We may have a little bit more time although I think the stock is in pretty awful condition based on not just what is in the advisory panel report but what we know, but the advice in Southern New England is clear.

We can take an emergency action that doesn't encompass the entire range of winter flounder, and so we could move to do a zero possession limit in Southern New England and Mid-Atlantic stock. Yes, there would be implications on data gathering, but we can't just let the need for data gathering say that we can't take action. I mean, I think that's worth considering.

MR. SIMPSON: I certainly didn't mean to imply I was looking to delay anything. I was trying to figure how we would do something that mapped one for one or as close as possible to what the Service did. I think we could move ahead, and there is ample justification for a no-possession limit as soon as possible.

I have been warning fishermen, commercial and recreational, in our state of that likelihood for the entire winter. I have telling them if it is not a complete closure, it's going look and feel a lot like one, and hopefully that message has been getting out to the public. I was wondering more about the subtlety of – Long Island Sound, just to be specific, my issue is groundfish permit vessels can't even trawl in there.

We don't have an analog in our licensing system to identify a ground fisherman. We can look at the calendar and know what they're fishing for at that time, but we do have things like the squid fishery and some other things where we have bycatch thresholds and so forth, and so is there a further step for the commission to take that would be analogous to the groundfish gear out of the water type of scenario?

We have that in Connecticut now for six weeks. From March 1st to April 14th there is no trawling in state waters with the exception of what we call a flynet for herring, so we could extend something like that in Connecticut further into the year potentially to include the squid fishery. I am prepared now to move forward with a prohibition on landings, and I am actually looking for how do we do the next thing.

MR. FOTE: I wasn't here for the October meeting because I wasn't a commissioner. There has been no discussion really in the circles that I travel in New Jersey about basically understanding there would be a complete closure of the winter flounder fishery from the fyke net fishermen, but also from the recreational sector.

I mean, they're still asking why we were closed in the first place and why we lost our winter fishery on winter flounder, because we have been seeing winter flounder still in New Jersey in the area. And as you said before, this is a localized fishery and a lot of it basically is benefiting locally.

So, now you're going to tell me again that we're not going to do anything up in the Gulf of Maine at this time, but we're going to put an emergency action which is going to affect New Jersey. Now, it's easy for Maine to basically put on New Jersey, but if we

were going to close the fishery completely in Maine, at least the fishermen would have an opportunity to basically discuss the facts and basically at least hear it and at least hear the statistics. We have not done that in New Jersey. We have not brought that out to the public.

MR. LAPOINTE: I am willing to consider zero possession in the Gulf of Maine. The data are just less clear. I'm just saying that the data that was presented to us in the interim action is much clearer in Southern New England than in the Gulf of Maine. I am saying that if you want clear recommendations, a zero possession limit, a zero fishery is a very clear recommendation. I am not trying to pick on another jurisdiction. I'm saying there are distinctions.

If in fact we want to consider a zero possession limit in the entire fishery, I am willing to consider that as well. This fishery is in the toilet. It is far more down the flusher in Southern New England than it is in the Gulf of Maine, but my guys – you know, Bud Brown has almost given up on us. He thinks he is going to die of old age before there is winter flounder in the Gulf of Maine again, so I am not picking on the Southern New England/Mid-Atlantic area. I am just saying the advice is much – the assessment is clearer and the advice is clearer.

CHAIRMAN AUGUSTINE: Okay, I don't want to get into a back and forth. Mr. Fote, you made a very solid point, and I appreciate it. Mr. Lapointe, you made a very solid point. I am putting my referee's shirt on. Let's go to the audience. Mr. Cursio, you have been waiting a long time, thank you.

MR. PHIL CURSIO: Phil Cursio, United Boatmen, New York; New York Fishing Tackle Trade Association; RFA, New York. Thanks for the opportunity to comment on this. Obviously, we have an extreme situation here; there is no doubt about it. I don't think that you would get anyone to disagree with that situation. There are a few things I would like to point out.

First of all, I was reading the definition of the conditions that need to exist for an emergency action, and it caught my eye that the stock condition that is being reacted to would need to be unanticipated. I would just put out to the board that if anybody wasn't anticipating this three years ago, then you haven't been paying attention.

This is not an unanticipated stock condition, and thus from a legal perspective an emergency action may not be the most appropriate action at this time. An

addendum or a fast-track addendum may be a better approach from a legal standpoint. I would like to briefly address the AP comments or position that was taken.

The gentleman that represents New York on this panel has no economic interest in this fishery whatsoever, and I have no doubt that he was part of the group that opined as to the fact that there would be no economic impact because nobody catches these fish. However, I come directly against that opinion and say that even if people don't catch them or catch very few of them, they still fish for them.

The fact of the matter is, and it has been said many times that the partyboat industry in particular is a fishery giving an opportunity more so than guaranteeing bringing fish home. I have been here a couple of times already today watching my clients have their fluke fishery removed, having scup not come up nearly to what we had hoped or anticipated. We already know that the blackfish spring fishery is gone.

Basically, you're looking at these guys now staying tied to the dock probably until the 1st of July or the very end of June, if we're fortunate enough to get away with even that situation. There are several partyboats that still make a living at this. Even though they don't catch a lot of fish, they're providing the opportunity for people to come out in the spring and wet a line. There is an economic impact here.

Don't close us down; lower the bag limit; lower the size limit; something in the interim while you're considering what I would suggest should be an addendum or fast-track addendum, but don't shut us down. I mean, we're looking at something where right in your own documents it says, "Projections indicate that the stock is unlikely to rebuild to Bmsy with F equals zero.

Why are we shutting down this fishery when we know it is not going to make a difference? It is not going to affect the stocks. We have had scientists speak about this for years, public comment for years that it's not the fishery that is impacting this or the fishing pressure that's impacting this. It is other factors that are outside the control of this board. I would support this motion and I would support, as well, all the comments that Dr. Pierce put on the record as well. Thank you very much.

MR. CORREIA: A couple of clarifications. When we say that it's not projected to rebuild, that really is

sloppy language. What it means is it is not going to rebuild to Bmsy by 2014. It is actually projected to rebuild to about I think 15,000 tons in 2014. The other part in terms of whether this could have been anticipated or not, the stock would not have been rebuilt at this assessment, but I think what is probably a little bit different is that the stock size is much lower than what was expected.

It was projected to rebuild more than it did, and it was also projected to have the F somewhere around 0.25 instead of around 0.75. So, yes, the stock wasn't going to be rebuilt when we looked at it, but I don't think there was expectation that it was going to be this bad except for those who saw recruitment indices and didn't see the recovery.

CHAIRMAN AUGUSTINE: Back to the motion; any comments or questions; further discussion on the motion. Question from the audience; Mr. Leo, please.

MR. ARNOLD LEO: Arnold Leo, consultant for commercial fisheries, Town of East Hampton. First I want to echo something that Phil Cursio mentioned, and that is that the advisory panel, two of the members who were on that conference call belong to Coastal Conservation of America, not known to have a sympathetic view of commercial fishing, and the other two were recreational representatives.

There was not a single commercial voice on the AP conference call, so I am not sure that can really be counted as legitimate advice that you got. The other point is – again, maybe I'm slightly echoing Phil here – you know, if there is a 1 percent probability of a rebuild, I can't see how you can be justified as managers in initiating a 100 percent closure of the commercial fishery where there has been no limit whatsoever either in state waters or in federal waters up to this point.

To suddenly go to a 100 percent closure is, to say the least, an extreme step. It would seem as though prudent management, taking into account the fishermen as well as the fish, might look at more of a 50 percent reduction to begin with and also examine more seriously the other aspects that might contribute to the flounder problem, the predators. We all know in the spring that the juvenile flounders in the estuaries are the perfect Hors d'Oeuvre for striped bass ravenously hungry after their migration. We know about degradation of those estuaries as spawning grounds. There is no eelgrass or very little eelgrass for them to hide in.

That's a sanctuary that they need as tiny juveniles. I think that there are other aspects of this that should be seriously considered. Here is a stock where it might help to experiment a little with stock enhancement in these estuaries, but none of these things have been considered, economic impact, predators, the environment, the stock enhancement. It is a "BAMM" on the commercial fisherman again. I don't call that fair or decent fishery management. Thank you.

CHAIRMAN AUGUSTINE: Thank you, Mr. Leo. We would like to ask you if you might want to consider again being on the Winter Flounder Advisory Panel, so I'll talk to you about that later. Mr. Brame, please.

MR. DICK BRAME: Dick Brame with the Coastal Conservation Association. This sort of reminds me of one of the first ASMFC meetings I went to about 30 years ago on striped bass. The arguments are roughly similar. One of the things that I want to bring out that hasn't been brought out is the recreational catch of summer flounder in state waters, and I think it's important.

If you look at the catch A plus B1 plus B2, not just the harvest but the catch, in the Southern New England stock, in the early eighties, mid-eighties, it was around 16 or 17 million fish and now it is a few hundred thousand. In the Gulf of Maine it was about 9 million fish, and now it is less than a hundred thousand.

If the recreational catch is a proxy for abundance, then the inshore area of this stock has collapsed. I mean, this is a collapsed stock, in our view. And especially given that they spawn in these estuaries and you're actually harvesting those spawning fish when you allow fisheries in state waters, I think it argues for a closure. The final thing I will ask you is if not now, when?

CHAIRMAN AUGUSTINE: Thank you, Mr. Brame. Any further questions or comments from the board? If not, let's go back to the motion at hand. The motion is move that the board reconsider the action taken at the annual meeting to initiate an emergency action for winter flounder management and instead initiate an addendum. Motion by Dr. Pierce; seconded by Mr. Gibson. Okay, 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN AUGUSTINE: Ready to vote? Okay, all in favor of the motion please raise your hand, 3 in favor; opposed, same sign, 6; abstentions, none; null votes, none. The motion fails. Back to the board; Mr. Lapointe.

MR. LAPOINTE: I guess the question now, Mr. Chairman, is do we start with a complete closure or do we split the discussion of the Gulf of Maine and Southern New England/Mid-Atlantic? That's a question at this point rather than a motion.

CHAIRMAN AUGUSTINE: Why don't we split it that way and address it separately. Let's put the first one on, which would be the Gulf of Maine. Do we want to have this apply to that?

MR. LAPOINTE: Well, no, if we're taking emergency action, it would be do we take emergency action in the Gulf of Maine as well as Southern New England and Mid-Atlantic? Given the comments that have been made, my answer would be, yes, let's take action on both.

CONSIDERATION OF MANAGEMENT ACTION FOR GULF OF MAINE STOCK

CHAIRMAN AUGUSTINE: Thank you. The advisory panel had also made comments on the Gulf of Maine and we have not heard that report, so why don't we hear that quickly and then maybe we'll take it in one action. You looked at the one for Southern New England/Mid-Atlantic. There was another one for the Gulf of Maine. Chris.

MR. VONDERWEIDT: Hopefully this will give you some more information for your decision. The advisory panel looked at the Gulf of Maine Stock Assessment, and they feel that it's in basically as poor of a shape as the Southern New England/Mid-Atlantic stock. They thought that even if it's greater than 9 percent it is generally moving in the direction that the Southern New England and Mid-Atlantic stock is, and they feel that this warrants emergency action.

They don't want to let the shortcomings of the split Gulf of Maine VPA hinder rebuilding. They think that the writing is on the wall. Because of that, they would like the board to act today to prevent stock collapse like what is happening in the Southern New England stock. They feel that the proposed rule is insufficient, so they would also like the board to take action today to prohibit commercial and recreational possession or landing until the next assessment. This

will provide protection for federal waters as well because they can't land or possess winter flounder in state waters. Again, the fishermen aren't catching their limit. They rarely catch winter flounder so the economic impact should be at a minimum. That's it.

CHAIRMAN AUGUSTINE: There is the answer to the question. Mr. Lapointe.

MR. LAPOINTE: I don't take much more comfort in the report than anybody else does because it was four people. It is a report; they got together, but it is a small number of people. I will move for the Gulf of Maine, that we close the state water fisheries for winter flounder, commercially and recreationally.

CHAIRMAN AUGUSTINE: Motion by Mr. Lapointe; seconded by Mr. Simpson.

MR. LAPOINTE: And obviously this is in the context of an emergency action.

CHAIRMAN AUGUSTINE: In the context of emergency action; please include that in the motion. The motion is up on the board. Mr. Simpson.

MR. SIMPSON: For efficiency sake, was the intent to prohibit landings or have a zero possession limit? When you say "close the Gulf of Maine", that could mean different things to different people.

MR. LAPOINTE: I think I said to close the state water fisheries for the Gulf of Maine Winter Flounder Fishery.

CHAIRMAN AUGUSTINE: That's a better clarification.

MR. SIMPSON: And does that mean "prohibit landing" or does that mean "no gear in the water"?

MR. LAPOINTE: I don't know exactly how we would play this out at this point so that's a good discussion. Clearly, we have talked about the contribution – or my thought was we have talked about the contribution of the state water fishery being, resource-wise, something in the nature of 10 percent and that we need to take action. There are clearly federal actions in federal waters, and it is to mirror those actions. Exactly how we play that out, I think is open for discussion.

DR. PIERCE: Well, once again, I'm getting a mixed signal from George. He wants to take quick action, shut it all down, but he says parallel to federal action and the federal action is just unclear to me in the Gulf

of Maine. Sure, far clearer to the south but not in the Gulf of Maine, differential days, the 18 percent cut in days, the incidental TAC of 19 tons, the directed fishery still is allowed.

I don't see what this will get us in the Gulf of Maine except something that looks really good, the states are supporting a federal action but the federal action doesn't seem to be that clear. In addition you say the state waters' fisheries for winter flounder – well, winter flounder is taken as a bycatch in other fisheries, so the word "fisheries" is awful sloppy. This is not a good motion.

It doesn't send a clear signal to those who will have to abide by these rules; and, of course, to us, we have to develop the regulations to be implemented. I don't know what I would be required to do if this motion was to pass.

CHAIRMAN AUGUSTINE: Ms. Kurkul, could you clarify for us?

MS. KURKUL: Sure. I think that Dr. Pierce has correctly pointed out that it is more complicated an issue anyway for the board in the Gulf of Maine, but I would certainly agree with the technical committee and the AP panel's assessment that the proposed interim action is insufficient with respect to Gulf of Maine winter flounder.

The reason for that is because we made a determination that since we need a new rebuilding program for this stock, that it was more appropriately dealt with by the council in Amendment 16. Now, that doesn't change the status of the resource in the Gulf of Maine, and I don't think it should preclude the commission taking action to get a jump start, in a sense, on what needs to be done for the entire range of the resource in the Gulf of Maine.

CHAIRMAN AUGUSTINE: Thank you for that clarification. George, does that help you either clarify or should we add something more to this so that it is more succinct and does cover the areas that Dr. Pierce had mentioned as possible considerations of loopholes, if you will?

MR. LAPOINTE: Well, I guess if David has questions about what this would do in the context of those other actions, we could consider a zero possession limit or he may have some other ideas. I was trying to get the ball rolling, and so if there is a perfection to the motion or an alternative, I'm happy to consider that as well.

CHAIRMAN AUGUSTINE: Excellent! Dr. Pierce, do you want to play with the words of the motion?

DR. PIERCE: I had an idea but it was shot down. I wanted to go with an addendum at least for the Gulf of Maine so we could do something, as I said use the technical committee advice regarding what we want them to look at, and I said two, three and five on the list in the report, maybe one through five, I don't know, but now we can't go the addendum route. We have to do the emergency route in the Gulf of Maine as well as Southern New England and it leads us to a real mess because we have to make those decisions today regarding what we want to do, and that doesn't do the job.

CHAIRMAN AUGUSTINE: Mr. Beal, could those three elements – was it one, three and five of that report – could those be captured in this emergency rule so it would be a more complete document, going through this process as having to go back and do an addendum? To that point, Mr. Simpson.

MR. SIMPSON: Yes, two, three and five, five gets – let's see, it was three, I guess, is awful complicated and would require all kinds of analyses. I mean, it talks about the measures to address discards in small-mesh fisheries within state waters, including gear restrictions such as drop chains, raised footropes, small-mesh fisheries, area season closures. That's too complex for us right now.

That's a year or two out I think before you can figure that out and implement it and actually expect a boat to rig a trawl – we're talking state waters, small-boat fishery. The fish would drop our chains. Half of them don't even know what they are. I think it is impractical to include that in an emergency action.

CHAIRMAN AUGUSTINE: Mr. Simpson, could you think of anything through the dialogue that Dr. Pierce put on the table that might capture within a sentence or so what we need to clarify this so there won't be a lot of ambiguous questions come out of it at the end of the day?

MR. SIMPSON: Well, actually I was going to suggest that I think it would be easier for us and more logical if we started with Southern New England, so I was going to make a motion to table this until we developed a course of action for Southern New England and Mid-Atlantic and then follow with Gulf of Maine because, again, the guidance is clearer in Southern New England, and I certainly wouldn't want to end up with the commission recommending – I don't know that this would happen but

recommending something more restrictive in the Gulf of Maine than Southern New England. I think that would be illogical for us to do.

CHAIRMAN AUGUSTINE: Hold that for a moment then.

MR. LAPOINTE: We have a motion; we have to deal with the motion.

CHAIRMAN AUGUSTINE: Yes, we have to deal with this motion. Is your question to the point, Mr. Fote?

MR. FOTE: Yes. I mean, my concern here is – and when I was sitting on the commission three years ago or four years ago when we were doing these, there was a lot of complaints that NMFS was not addressing and the New England Council was not addressing the catch that was going on in the EEZ; that we were basically restricting the catch that was going because they were doing days at sea, all these things, and that was four years ago.

And, basically, we have progressed to this point and I'm still not sure what they're going to do in federal waters. I mean, if you're going to do this, then it should be a possession limit for everybody, and that means landings. Otherwise, you're going to let anybody land fish because if they're not caught in state waters, then they can land them. I mean, if they're caught in federal waters, they're going to be able to land them in the state.

So if we're going to shut the fishery down, if that's what you really want to do is emergency action, then you make no landings allowed. That shuts down the recreational, it shuts down the commercial, and at least it is fair to everybody and at least that's what you go out to the public with. Unless you are going to go through a process or an addendum process where you would allow for public hearings and basically go out and do it through a proper chain, but if you're going to do emergency action, then that is an emergency action.

CHAIRMAN AUGUSTINE: Thank you. Mr. Simpson, I think you wanted to make a motion to table?

MR. SIMPSON: I do; I would like to make a motion to table this previous motion until we dispense with Southern New England and Mid-Atlantic and then pick it up immediately afterwards.

CHAIRMAN AUGUSTINE: We have a second from Mr. Lapointe. No discussion. All in favor of the motion to table temporarily, please raise your hand, 7; opposed, same sign, 1; abstentions, 0; null votes, 0. The motion carries to table temporarily. Mr. Simpson, you have the floor.

MR. SIMPSON: Okay, for Southern New England, given that we're trying to move ahead with emergency action, all of the recreational fishery occurs in state waters, the commercial component that are non-federally permitted vessels is only 2 percent of the total TAC, and out of a desire to support the interim action, what the National Marine Fisheries Service is trying to do to conserve winter flounder, I would move that the commission proceed with emergency action to implement a zero possession limit for winter flounder in the recreational and commercial fishery in state waters.

CHAIRMAN AUGUSTINE: Dr. Pierce seconds that motion. Discussion on the motion. Dr. Pierce.

DR. PIERCE: All right, if this motion passes I would hope that the National Marine Fisheries Service, Pat in particular, would view this as a very significant step by the states to support what she intends to do through the interim action; that is the no possession of winter flounder throughout the Southern New England/Mid-Atlantic area.

I would hope that the support we would be providing for that would in some way influence her, during the course of the public comment period on the interim action, to seriously consider some alternative to the large closed area in the Southern New England/Mid-Atlantic area for all federally permitted groundfish vessels; that is, the complete closure of the entire Southern New England/Mid-Atlantic area with the primary intent being to deal with Southern New England/Mid-Atlantic winter flounder.

It is a huge step by the Service to move in that direction. Obviously it is proposed and they may change their mind. Time will tell, but I hope that if this passes, again, it is viewed as a good-faith effort on our part to support her objectives for the interim action but not necessarily for the whole interim action.

CHAIRMAN AUGUSTINE: Thank you. I don't think Ms. Kurkul knows how to handle that because it is the first time in my lifetime that I have been involved that Dr. Pierce supported the National Marine Fisheries Service 300 percent. I think she needs some smelling salts or something to recoup on

that. Let's get back to the very serious matter at hand. Mr. Fote would like to make some comments on that motion.

MR. FOTE: I am looking at the dates for my commercial fishery, and my commercial fishery in New Jersey shuts down February 19th. The recreational fishery shuts down May 19th. By the time this emergency rule goes in place the fishery is going to be over in New Jersey. The word is going to go out that we shut the fishery down, we've got a fishery that is going to go on.

There is no way that New Jersey is going to be able to put a rule that basically could shut the commercial fishery down or the recreational fishery in that short period of time because we haven't passed the emergency rule by the time it comes back. I think that is the wrong message. I think the addendum would have been the proper method, but you already voted against that.

But, to do this in this year at this time – because most of the fisheries I think are going to be – because I remember the dates – most of them are shut down by May, so it really has no effect in 2009, but it sends the message to the public that they are cut out of the process, and that is really what I'm upset about.

I mean, when you have an AP meeting with four people on it – yes, you said you were going to do this in December. I didn't know you were going to do it in December. Sorry, I just didn't. I wasn't at the commission meeting in October. Basically, you know, most of my fishermen don't know that. You know, with the lack of outdoor writers since they have been – like all the fisheries' people they have been laid off and so have the outdoor writers and all the columnists in New Jersey.

I mean, you know, we used to have a bunch of outdoor writers to keep people informed. They have all been cut back or fired. I mean, that's just the sense here. The other problem is, you know, the federal government is going through a huge economic stimulus package. We're basically bailing out banks; we're bailing out everybody.

The only industry that nobody is even talking about bailing out is the fishing industry, both commercial and recreational. As a matter of fact we're going in the opposite direction. We're making it tougher for these guys to make a living. We're putting boats out of business in hard economic times.

Everybody is supposed to have sympathy for mortgages and everything else, but we have no sympathy for the boats that are going under because they can't pay their mortgage, and we just make it harder and harder on the industry. I find that very troubling. This is not what we should be doing.

We should be going to public hearings since it is not really going to make any difference for this year, and we would have went through a process. Right or wrong, the people would have yelled or screamed, but that is their opportunity to basically do that at public hearings and basically go through the proper amendment when this is not going to be make any difference this year, and it just looks ridiculous.

MR. GIBSON: It's not a question. I am opposed to the motion, and it is awkward for me to be in that position because I do believe we need to have fishing mortality reductions across the entire range of the fishery in Southern New England. I am not opposed were we to end up with this measure, but I'm just opposed to the vehicle we're using.

I don't see the urgency any longer relative to what the technical committee said to have a more deliberative approach and afford some public comment, and, frankly, see what the final rule is that takes effect on May 1st and see what suspension of some of the elements of Framework 42 means in terms of groundfish management. I am opposed to the vehicle but not necessarily where it ends up if that were to come to pass in an addendum action. Thank you.

CHAIRMAN AUGUSTINE: Any further comments from the board? Any comments from the public on the motion on the board? Seeing none, let's take a moment to caucus and we will read the motion: Move to establish an emergency action to implement a zero possession limit for recreational and commercial fisheries for the Southern New England/Mid-Atlantic stock in state waters. Motion by Mr. Simpson; seconded by Dr. Pierce. Let's take a moment to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN AUGUSTINE: It takes a two-thirds vote. Let me remind the board it takes a two-thirds vote in order to pass this motion. I have been reminded by Mr. Beal. Mr. Simpson.

MR. SIMPSON: Wait a minute; we had a motion a while ago to reconsider the action taken at the annual meeting to initiate emergency action. That motion to

reconsider failed three to six, so we're still in the emergency action mode is my understanding. That's why I made this motion as an emergency action because that is what is on the table now.

I mean, the wording "not establish" but I said – well, we read back the words, but I didn't mean "establish" because there is one already established – use the emergency action to implement; so we already have one is my understanding.

MR. BEAL: The point I made earlier, I meant there was room for discussion on whether the board did or did not establish an emergency rule at the annual meeting. The motion that was passed at the annual meeting said "to initiate an emergency action at a meeting in December to respond to X, Y and Z."

As I said earlier, I think there is room for debate whether the board actually has or has not established an emergency action. The way I remember the annual meeting, while the motion passed unanimously I don't think the standard was in place to have a two-thirds vote on that motion to initiate an emergency action.

If that actually established the emergency action, then it would have been a two-thirds hurdle, but I think it was passed – you know, it could have been passed by a simple majority at the meeting to have another meeting in December and go through the emergency action process. Again, I think there is room for debate whether the board did or did not establish an emergency action at the annual meeting.

CHAIRMAN AUGUSTINE: Thank you for that clarification. Mr. Simpson.

MR. SIMPSON: My notes, when you were talking, say it passed ten to nothing.

MR. BEAL: Yes, that's what I said, it did pass unanimously, but I don't think the board chair at the time established the need to have the two-thirds vote. It could have passed by a simple majority. In other words, if that vote was six to four at the annual meeting that motion still would have passed. The deliberations leading up to that ten to nothing vote did not indicate that they were taking final action on an emergency rule at that time.

CHAIRMAN AUGUSTINE: Well, in any case, are we ready to vote and we will see what the final outcome is. If we don't like the outcome, then we can put another motion on the table and go again. All right, with a show hands, those in favor of the motion

as presented on the board, please raise your hand, 3; opposed, same sign, 4; abstentions, 0; null votes, 2. The motion fails; three, four, zero, two. We're ready for more action from the board. What is your pleasure? Let's take a five-minute break to recoup.

(Whereupon, a recess was taken.)

CHAIRMAN AUGUSTINE: We're going to try to clear up this cycle, recycle and recycle again of motions and so on, and I think through the work of four of our board members in a little side conversation, we think we have got it ironed out. Please bear with us. We're going to try to incorporate the comments that were made in the last 15 minutes relative to concern about the public, relative to concern about full closure relative to impact on the fishermen and so on. Mr. Lapointe is going to make a new motion.

MR. LAPOINTE: With your indulgence, Mr. Chairman, I am going to explain what we want to do and then I will make a motion. Our dilemma is we had a motion at the annual meeting to initiate an emergency and then we had a motion here to change that to an addendum. We voted that motion down. We voted to take emergency action; and then when we put the emergency provisions in, we voted them down.

Not our most shining moment, but how do we dig out of it? **What I'm going to propose to do is first a motion to reconsider the motion for emergency, funky as that is, and then if that passes – and I think I hope it does because otherwise we will be bollixed up for the rest of the afternoon and we will look worse than we do now.**

I will then or somebody else can make a motion for a fast-track addendum for action in the winter flounder fishery. We will have to have a meeting in March, and we will have a final decision in May. That fast-track addendum will have a closure of the fisheries of Southern New England – I think the entire fisheries – closure to fishing and possession. It will also have a provision of the suggestions by the technical committee.

We will bring those out to the public. What we will lose is saving the fishing mortality in February, March, April and May. That will be the sacrifice. With that, because I was on the affirmative side, I have a motion to reconsider the motion to initiate an emergency action from the annual meeting.

CHAIRMAN AUGUSTINE: Thank, Mr. Lapointe, and we have a second by Dr. Pierce. Discussion on the motion. It should be rather straightforward. Mr. Correia.

MR. CORREIA: In the TC report we have that limit of five bullets, but what the TC was really looking to try to get at is where does the board want to go? Are you looking at a moratorium? Are you looking to do no possession? Are you looking to have some possession? We're trying to get an idea of what the board wants to do given the status of that resource.

CHAIRMAN AUGUSTINE: Steve, that's where Mr. Lapointe is going to go, so if you want to respond to that, George.

MR. LAPOINTE: Well, that's for the next motion I think, depending on the outcome of this vote, and then we will get into that because that exactly the right question to ask.

CHAIRMAN AUGUSTINE: Thank you. Do we need a caucus? All right, all in favor a show of hands, please, 10 in favor; opposed, zero; null votes, zero; abstentions, zero. **The motion carries.** Mr. Lapointe, your second motion.

MR. LAPOINTE: I have a motion, Mr. Chairman, and it would be move to initiate a fast-track addendum for winter flounder – I haven't done this before so I am going to ramble for a minute – for a final decision at the May 2009 commission meeting; and included in the fast-track addendum will be a provision for a complete prohibition on landing and possession of winter flounder and recommendations from the technical committee for – I don't know the exact percentages, but I will just shoot for a 50 and a 75 percent reduction in fishing mortality. That's a little chunky, but it gets things started.

CHAIRMAN AUGUSTINE: All right, thank you, that's a good start. Dr. Pierce seconds that.

DR. PIERCE: No, he does not.

CHAIRMAN AUGUSTINE: Well, we need a second. Gil seconds. Okay, discussion on the motion.

MR. CORREIA: I think there are some technical problems with this in that you could shut the entire state waters' fishery and you're not going to get a 50 or a 75 percent reduction, because the total catch coming out of state waters is going to be on the order of 10 or 15 percent.

MR. LAPOINTE: I think that is valid. I was trying to respond to Steve's comment that the technical committee needs to know what the target is, and so I am – the zero possession option has got to be one of them, and so I would entertain other people's ideas about how we suggest a significant impact on winter flounder fishing that is not a zero possession. If the 50 and 75 percent reduction in fishing mortality are wrong, let's bracket those and I'm sure we can craft an amendment to get the right advice for something tough that is less than a hundred percent or zero possession limit.

MR. SIMPSON: I would suggest a perfection of the motion for a 50 and 75 percent reduction in state waters' landings.

MR. LAPOINTE: Mr. Lapointe, is that okay with you? Please add.

DR. PIERCE: I wasn't sure – we didn't discuss in our impromptu meeting over here on this side of the room 50 or 75 percent. We certainly discussed the fast-track addendum. That made a great deal of sense, and that's the way we're going, but I had thought that what we were going to do was have a series of options to be part of this addendum.

That would be the complete prohibition or possession, and then some of the measures that are listed in the technical committee's report regarding trip limits – in other words, two, four and five in the list. They would evaluate those measures and that would be the full complement of measures to be part of the fast-track addendum. Recognizing that doesn't target a specific mortality reduction, still my thinking was that those particular measures, certainly number two and number four, would relate to our minimizing mortality to the extent that we can.

CHAIRMAN AUGUSTINE: Would number two and number four be okay with you, Mr. Lapointe?

MR. LAPOINTE: I'm certainly shooting from the hip on this, and what I was just trying to respond to was Steve's concern that we need to give specific direction. If that embodies specific direction and other options in the addendum, I'm fine with that as well.

CHAIRMAN AUGUSTINE: Steve, would you respond to that, please?

MR. CORREIA: I think this may be difficult at least with the data that we have on hand. We might be

able to get a little bit better. For instance, if you asked the question how much landings come out of state waters, that becomes a very difficult thing to answer because you can have vessels with federal permits moving in and out of state waters, and you've really got to do some bending over backwards to try and get that estimate done.

Now, again, with the interim actions, the federal will be taken care of. Now when you go to the state waters, you've got to kind of like separate again for the vessels that don't have permits. Some of that analysis, at least in the past, has been again difficult to do. I guess the kind of guidance that the TC was looking for was in terms of do you want put measures in to end any kind of directed fishery.

Are you looking to have a zero possession limit? Are you looking to have no directed fishery but a small bycatch in other fisheries? I think the TC may have difficulty really trying to do something like if we change F to a catch there, we could have difficulty trying to do that because in state waters really the only mechanism we're going to have is either a trip limit or a quota or closed seasons or something like that. I don't think we're going to have a lot of data to do those kinds of analyses.

MR. LAPOINTE: Steve, I think responding to David's guidance, which was good, if you go to your technical committee report, on the conference call summary there are five measures in there, and David has suggested bullet point number two and number four and number five as having the technical committee flesh out what those would look like as an alternative to the complete closure; is that doable?

MR. CORREIA: I think what we probably could do is we probably could look at sea-sampling data and say something like, okay, if you wanted to lower the trip limit down to something that matches what is being discarded, we could probably do something like that. If you asked for an analysis that said give me a trip limit for non-federally permitted vessels, to drop the catch X amount in state waters, I don't think we're going to have the information to do that.

MR. LAPOINTE: And with that clarification, included in the draft addendum will be a provision for a zero possession limit, recommendations on trip limits that reduce catch but – I don't want to allow small catches; we want to make it a bycatch fishery, I think is the point, and so it would be trip limit measures that reduce the fishery as low as possible; changes to recreational bag limits and seasons and

measures to prevent an influx of fishing effort into state waters.

That embodies those I think so we would have zero possession; we would have trip limits to reduce it to a bycatch fishery; we would have recreational catch limits; and then the influx issue as well. Does that make sense to people? I am seeing heads shaking yes.

CHAIRMAN AUGUSTINE: George, that is going to apply both to the Gulf of Maine and Southern New England/Mid-Atlantic, all of them?

MR. LAPOINTE: I believe that, yes, we need to do that.

CHAIRMAN AUGUSTINE: Make sure that is stated in there, please.

MR. LAPOINTE: And so who is my second; Mr. Ewing, is that all right with you?

MR. GIL EWING: Yes.

MR. LAPOINTE: So we have a friendly amendment. Thank you for your indulgence.

MR. EWING: Thank you, Mr. Chairman, I was just agreeing with the friendly amendment.

MR. FOTE: To the motion, I think in New Jersey you will be able to track pretty much the catch because basically it is a fyke net fishery and we know it is all in state waters, so we basically can do that. The recreational fishery is almost all in state waters, also. The commercial fishery, almost all our commercial fishermen that fish for winter flounder have federal permits so they will be covered under the federal permit thing. I don't know if it is going to be that difficult. It might be more difficult in other states that have a large state fishery that doesn't have federal permits, but in New Jersey it should be pretty simple.

CHAIRMAN AUGUSTINE: Anymore comments from the board? If not, I would like to go to the audience. Any comments from the audience? Seeing none, let's read the motion and then move forward and be ready to caucus right after that. Move to initiate a fast-track addendum for winter flounder for final action at the May 2009 Spring Meeting Week.

Included in the draft addendum will be a provision for a zero possession limit, trip limit measures that reduce the fishery as low as possible, options for

bag/size limits and seasonal closures in state waters for Southern New England, Mid-Atlantic and Gulf of Maine stocks. Motion by Mr. Lapointe; seconded by Mr. Ewing. Mr. Lapointe.

MR. LAPOINTE: I believe the last provision was measures to prevent an influx of fishing effort into state waters rather than the seasonal closures.

CHAIRMAN AUGUSTINE: Thank you for that clarification. Okay, move to initiate a fast-track addendum for winter flounder for final action at the May 2009 Spring Meeting Week. Included in the draft addendum will be a provision for zero possession limits, trip limit measures that reduce the fishery as low as possible, options for bag/size limits, and measures to prevent an influx of effort in state waters from South New England/Mid-Atlantic and Gulf of Maine stocks. **Motion by Mr. Lapointe; seconded by Mr. Ewing. The motion stands as corrected.**

MR. CORREIA: I guess the question for the Gulf of Maine winter flounder, which as I read this here, you're looking for it to get as low as possible. Now that may be very different from what is going to become – you could get in a situation where you're going to have very restrictive limits in state waters to try and get as low as possible while in the EEZ there will be no trip limit. That's the implication of something like that.

And just to make it more complicated, again, for Gulf of Maine winter flounder you have a proposed action in the interim that says you want to get like an 11 percent or 12 percent reduction in F in order to end overfishing. In Amendment 16, which will be a year later, you're going to have some different type of F, and we don't know what that is because you're going to have to do projections to figure out what the rebuilding is.

As long as you're comfortable with having disparate measures going on in the EEZ and the state waters, that's fine, but just recognize, again, here you will be having as low as possible in state waters in the Gulf of Maine with a mixed fishery going on in the EEZ.

CHAIRMAN AUGUSTINE: George, do you have a response to that?

MR. LAPOINTE: Well, in putting this forward I believe Pat Kurkul had said that the measures put forward in the interim don't go far enough for winter flounder, and it is a recognition that we've got this

less than optimal assessment, but also a recognition that the resource is in pretty grim condition.

CHAIRMAN AUGUSTINE: Ms. Kurkul, would you agree with that or do you care to respond on the record so we all know that we're all excited about this?

MS. KURKUL: I'm excited.

CHAIRMAN AUGUSTINE: Thank you, Ms. Kurkul, I'm glad.

MR. G. RITCHIE WHITE: Could you explain to me what "as low as possible" means? I mean, is that not zero?

CHAIRMAN AUGUSTINE: I'm not the maker of the motion, but I would ask the maker of the motion if he would describe "as low as possible".

MR. R. WHITE: How is "as low as possible" different than zero?

MR. LAPOINTE: It would be just what Steve has said; we might take action in state waters to have reduced trip limits to reduce it to a bycatch fishery, and we might a hundred pound possession limit – I'm just making that number up – and because the bulk of the fishery is in federal waters, we could close state waters and we would still have fishing mortality occurring. I think that would be my answer.

CHAIRMAN AUGUSTINE: Ritchie, does that help? Maybe. Okay, any further questions? I think we're there. All right, Mr. Simpson, before we caucus.

MR. SIMPSON: I think just for completeness "reduce the fishery as low as possible and options for bag/size"; we might as well put "season limits" in there because that's the usual three sets of tools that we have for the recreational. I think it would only make sense to do that.

CHAIRMAN AUGUSTINE: Does the maker of the motion or seconder have a problem with that? Neither one of them; approved, so please add it. All right, do we need a caucus or are we satisfied with the motion. We have debated it and discussed it quite well. Seeing none, all in favor of the motion as stated, please raise your right hand, 10; opposed, same sign, 0; null votes, zero; abstentions, 0. The motion carries. Thank you all for that. What is the next action item we have here? Mr. Beal.

MR. BEAL: Just real quickly now that the motion is passed. I guess the next step will be that staff will work with the plan development team to pull this together, but we'll start planning for a Winter Flounder Board Meeting outside of our meeting week, sometime probably in mid-March so the document can be finalized and we'll have the 30-day comment period most likely the full month of April.

We will need to schedule the hearings quickly and those sorts of things; the point being that we're probably going to have to do a series of things pretty quickly between now and May to get everything to line up with the timing and be able to take final action in May, so be on the lookout for e-mails and correspondence from staff to move things forward.

CHAIRMAN AUGUSTINE: Terrific? The board did yeoman's work today on this. It is a very, very touchy business, and we came through I think with flying colors. Mr. Miller, please.

MR. ROY MILLER: Mr. Chairman, would that necessitate an actual face-to-face meeting or could this be handled with a conference call?

CHAIRMAN AUGUSTINE: Mr. Beal, what do you think?

MR. BEAL: Well, based on how smoothly things went today, a face-to-face meeting might not be a bad idea. I think there are going to be some pretty complicated issues in this document and the board may want to weed out some, and it may be difficult to do over the phone.

MR. MILLER: I just point out the obvious that a number of states, mine included, are facing travel restrictions, and some of the folks that are considering travel restrictions have no appreciation for whether those trips are reimbursed or not.

CHAIRMAN AUGUSTINE: Very good point, thank you.

MR. BEAL: We can see how the document shakes out; and if it turns out pretty simple and maybe we're able to circulate an earlier draft and folks are fairly comfortable with that, we can try a conference call or a web-based call or something along those lines. If that doesn't appear the right solution, then we can put together a face-to-face meeting.

CHAIRMAN AUGUSTINE: Okay, is that acceptable to the board? Seeing nods, we're okay with that.

ADVISORY PANEL NOMINATIONS

CHAIRMAN AUGUSTINE: Well, I think we're getting close to the end of our agenda. Ms. Berger, you have some advisory panel nominations, we understand.

MS. TINA BERGER: Before you are advisory panel nominations for Donald Swanson and Eric Anderson. Before I move forward on Shawn Bouchard, I think Mr. McCloy had a statement.

MR. THOMAS McCLOY: I have been unsuccessful in getting hold of Mr. Bouchard on a number of different occasions, so I would just like to hold up on his nomination until we touch base with him and make sure he is still involved.

CHAIRMAN AUGUSTINE: Thank you for that; we can do that. Ms. Berger.

MS. BERGER: I am just waiting for a motion on those two nominations.

CHAIRMAN AUGUSTINE: Mr. Grout would like to make a motion; seconded by Mr. Adler.

MR. DOUGLAS GROUT: I would like to move that Don Swanson and Eric Anderson be added to the Winter Flounder Advisory Panel.

CHAIRMAN AUGUSTINE: And Mr. Adler seconded. Any discussion? Is there any objection? Seeing none, congratulations to the two gentlemen and letters to follow. Ms. Berger.

MS. BERGER: One more point. You will notice that the Winter Flounder Advisory Panel has not been active for several years. The last time they were really active was with approval of Amendment 1 back in 2005, I believe. Some people are participating and others are not. I would like just to put before the board the notion that they please look at their advisors and let me know if you want anybody replaced.

I will be happy to send you their previous attendance record as well as the attendance record from the meeting that Chris just had. The other thing I wanted to put before you is whether you wanted us to move forward with soliciting non-traditional stakeholders for this advisory panel as we revitalize it.

ADJOURN

CHAIRMAN AUGUSTINE: Comments from the board on that, moving forward with non-traditional folks being on the advisory panel. Seeing a nod of heads, yes, let's do that. Is there any further business to come before this board? Seeing none, the meeting is adjourned at 3:58.

(Whereupon, the meeting was adjourned at 3:58 o'clock p.m., February 3, 2009.)