

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

**Radisson Plaza-Warwick Hotel**  
Philadelphia, Pennsylvania  
October 22, 2012

Board Approved February 20, 2013

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2. **Approval of proceedings of August 7, 2012 by consent** (Page 1).
3. **Move to adopt in Addendum II Section 3.1, commercial measures, trip limits, Option 2; Section 3.2, recreational measures, seasonal measures, Option 2. Addendum II measures will sunset on June 1, 2013** (Page 2). Motion by David Pierce; second by Doug Grout. Motion carried (Page 3).
4. **Move to approve Addendum II as modified today, effective immediately** (Page 3). Motion by Bill Adler; second by Pat Augustine. Motion carried (Page 3)
5. **Move to delete language in Option 2, commercial accountability measures, and in its place “reduce the Gulf of Maine winter flounder trip limit set during the specification process to 250 pounds when either 75 percent, 85 percent or 90 percent of that state water ACL subcomponent is projected to be landed; and if the subcomponent is exceeded, begin the following year, May 1, with a 250-pound trip limit** (Page 6). Motion by David Pierce; second by David Simpson.  
  
**SUBSTITUTE MOTION:** Substitute under Section 3.2, Option 2, under accountability measures, “establish a trigger for state water commercial trip limits that would reduce the trip limit when the trigger is reached. A trigger is met when X percent of the estimated non-federally permitted state water harvest is reached” (Page 9). Motion to substitute carried as the main motion (Page 11).
6. **Move to amend Section 3.1, Option 2, to include under commercial measures that could be adjusted through board action; add Item 5, trigger trip limits** (Page 11). Motion by Doug Grout, second by Terry Stockwell. Motion carried (Page 12).
7. **Move to approve Draft Addendum III for public comment** (Page 13). Motion by Terry Stockwell; second by Pat Augustine. Motion carried (Page 13).
8. **Motion to adjourn** by consent (Page 13).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Lance Stewart, CT (GA)
Steve Train, ME (GA)	Rep. Craig Miner, CT (LA)
Doug Grout, NH (AA)	James Gilmore, NY (AA)
G. Ritchie White, NH (GA)	Pat Augustine, NY (GA)
Dennis Abbott, NH, proxy for Rep. Watters (LA)	Brian Culhane, NY, proxy for Sen. Johnson (LA)
David Pierce, MA, proxy for P. Diodati (AA)	Russ Allen, NJ, proxy for D. Chanda (AA)
William Adler, MA (GA)	Tom Fote, NJ (GA)
Jocelyn Cary, MA, proxy for Rep. S. Peake (LA)	Adam Nowalsky, NJ, proxy for Asm. Albano (LA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Roy Miller, DE (GA)
Rick Bellavance, RI, proxy for Rep. P. Martin (LA)	John Clark, DE, proxy for D. Saveikis (AA)
Bill McElroy, RI (GA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
David Simpson, CT (AA)	Peter Burns, NMFS

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

### Ex-Officio Members

#### Staff

Robert Beal  
Toni Kerns

Danielle Chesky

#### Guests

Tom McCloy, NJ DFW  
Peter Himchak, NJ DFW  
Derek Orner, NMFS  
Bob Ross, NMFS  
Charles Lynch, NOAA  
Kim Damon Randall, NOAA  
Raymond Kane, CHOIR  
Dan McKiernan, MA DMF  
Russell Dize, Ofc. Sen. Colburn

Mike Armstrong, MA DMF  
Nicola Meserve, MA DMF  
Jim Estes, FL F&W  
Janice Plante, Commercial Fisheries News  
Kelly Denit, NMFS  
Kyle Schick, Ofc. Sen. Stuart, VA  
Pam Lyons Gromen, Leesburg, VA

The Winter Flounder Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza-Warwick Hotel, Philadelphia, Pennsylvania, October 22, 2012, and was called to order by Chairman G. Ritchie White.

### **CALL TO ORDER**

CHAIRMAN G. RITCHIE WHITE: I'll call the Winter Flounder Board Meeting to order.

### **APPROVAL OF AGENDA**

First on the agenda is the approval of the agenda. Are there any changes or additions to the agenda? Seeing none, we will take that as adopted.

### **APPROVAL OF PROCEEDINGS**

Approval of proceedings from August 2012; any changes or additions to the proceedings from August 2012. Seeing none, we will take those as approved.

### **PUBLIC COMMENT**

Public comment; is there any comment on items that are not on the agenda; anybody from the public? Seeing none, final action; Toni.

### **DISCUSSION OF DRAFT ADDENDUM II FOR FINAL APPROVAL**

MS. TONI KERNS: I'm going to go over the options that were contained in Draft Addendum II, the public comment that was received and the advisory panel report. As a reminder to the board, Draft Addendum II considers changes to the Gulf of Maine commercial and recreational fishery measures based on new stock assessment results.

The new stock assessment was the SAW/SARC 52. The stock status changed to not overfishing but the overfished status could not be determined for the Gulf of Maine. As a response to this, the National Marine Fisheries Service took emergency action to double the remainder of the fishing year 2011 ACL and doubled the 2012 ACL.

The technical committee went through and gave us some more information on the Gulf of Maine fishery. The commercial harvest is mainly in the state of Massachusetts. It is 99 percent of all of the non-federal landings for the recent years. New Hampshire has less than 1 percent of the harvest since 2009 and Maine harvest has been zero in recent years.

Prior to the 250-pound trip limit, about 43 percent of the non-federally permitted landings came from 7 percent of the trips that landed more than 250 pounds, and about 19 percent of the landings came from 2 percent of the trips that landed more than 500 pounds. After the trip limit was put in place for the commercial fishery, 88 percent of the trips landed less than 99 pounds, accounting for 44 percent of the Gulf of Maine winter flounder harvest.

The trip limit essentially caused the fishery to switch from a directed fishery to a bycatch fishery. Participation in the Massachusetts commercial groundfish fishery cannot increase due to the limited entry nature of their state's groundfish permit endorsement. NOAA Fisheries harvest estimated about 55 metric tons per year for the recreational harvest since 2006.

A doubling of the recreational catch is unlikely given the expected reduction from the implementation of the 11 percent reduction in the recreational harvest from the closed seasons that were put in place; so even if those seasons were lifted, we don't think that we would have a doubling of that harvest. As a reminder, these measures are being proposed because of the increase in state water sub-component and also to provide relief to state water groundfish fishermen under other restrictions.

Then it would also put in place if the seasons were removed from the three states, then everyone would have completely consistent regulations because each of the states have different seasons currently. The two measures that are proposed in the document; first looking at commercial measures, the first option, status quo, would leave in place the 250-pound trip limit. Option 2 would propose to change that commercial vessel trip limit to 500 pounds.

For the recreational measures, Option 1, status quo, is to keep in place the 11 percent reduction in F for the recreational fishery. The season closures; Maine's season closure is from October 1<sup>st</sup> through June 30<sup>th</sup>; New Hampshire is May 15<sup>th</sup> through May 24<sup>th</sup>; and Massachusetts is September 1<sup>st</sup> through October 31<sup>st</sup>. Option 2 is to remove those requirements for an 11 percent reduction in F and then states would be able to open up their seasons to year round.

For the public comment that we received, we had three hearings; one in Maine, New Hampshire and

Massachusetts. At those hearings no one attended the Maine hearing. We only had participants at the New Hampshire and Massachusetts hearings. We had three written comments that were received, and the majority of the commenters favored increasing the trip limit and removal of the recreational season. One commenter favored status quo measures.

For the advisory panel, we had a conference call. There were only three members on the call. There were two recreational fishermen from New Hampshire and Maine and one commercial fisherman from Maine. The members did not think that the current science actually reflects the current status of the stock in the Gulf of Maine fishery.

They feel that they're not seeing any winter flounder fish in their waters, and the group that was on the call favored status quo options. Bud Brown did ask me to say he apologizes for not being able to be at the meeting. He had previous scheduled work where I think some area around a dam was being drained specifically for him so he could not change that. Are there any questions?

CHAIRMAN WHITE: Are there any questions for Toni on her presentation? Doug.

MR. DOUGLAS GROUT: Not so much a question but more of a comment. I was reading through the AP Report and one of the concerns I had, Toni, is that he specifically put editorial comments on that. I feel that is not something that is appropriate for a formal AP Report.

I think if he wants to make personal comments on the addendum in a written form, I think he can do that individually; but to have that included as an AP Report, that may not have been the view of the other two people on the report. I would just like to, if something like that comes up again, see if we can separate those.

CHAIRMAN WHITE: Are there any other questions of Toni on her report? Seeing none, does anybody have a motion? David.

DR. DAVID PIERCE: Toni has done a good job summarizing the background and why the request was made and why this board at our last meeting decided to bring this forward to public hearing for comment. It was a request made by my agency. There was a letter attached to that request describing exactly why we wanted to do it. I will make a motion specific to this addendum with an understanding that we are going to I believe

initiate an additional addendum, Addendum III, to deal with other specific issues that I believe are quite consistent with some technical committee concern regarding accountability measures, which we didn't bring to public hearing, but still we can do that through the next addendum relative to technical committee concerns.

The technical committee has not raised any objection regarding these particular options that are in the addendum; certainly not with reference to the recreational fishery; with reference to the commercial fishery, just as I stated, their preference for some accountability measures. With that said and with an understanding that we will get to Addendum III fairly soon, **I would move to adopt in Addendum II, Section 3.1, commercial measures, trip limits, Option 2; and Section 3.2, recreational measures, seasonal measures, Option 2.**

Those are the only options we have apart from status quo; Option 2 on the commercial measures, the trip limits being the 500 pounds and not status quo, 250 pounds; and then the seasonal measures, Option 2 being no specific seasonal restrictions on the recreation fishery.

CHAIRMAN WHITE: Is there a second to the motion; Doug, thank you. Is there any discussion on the motion? Terry.

MR. TERRY STOCKWELL: I don't have any problem with the motion on the board for this fishing year only; but reflecting back on our discussion at the summer meeting, I raised a number of issues of concern that are going to be in the next addendum. I know staff was extremely short-staffed and these measures couldn't be included in this addendum, but my hope was to bundle them together into a single addendum.

I'm concerned about the uncertainty of the assessment. I'm concerned about the potential for an increased directed fishery. I'm concerned about the impacts on the federal waters fishery. **I don't know whether I need to make a motion to amend or whether Dr. Pierce would accept as a friendly that this motion would sunset on 6/1/13.** If that is acceptable or I get a second, I will provide my rationale.

CHAIRMAN WHITE: Terry, before you make that a motion, David, would you accept that as a friendly?

DR. PIERCE: Because I believe we're going to move forward with Addendum III that will deal with Terry's specific concerns and my own concerns and I'm sure concerns of others around the table, I have no problem with the sunseting. I believe we can get the addendum done well in time before the sunseting; so if that will give Terry a greater sense of comfort, then I would accept that as a friendly.

CHAIRMAN WHITE: Okay, is there anymore discussion?

MR. STOCKWELL: Just a quick follow-up, Mr. Chairman; thank you, David. I think that this sunset will provide the motivation to get the next addendum done in a timely manner. Having it in June will allow this board to meet at our spring meeting for final action, and it will allow us to review the fishing year and know whether or not we're chasing our tails or not.

CHAIRMAN WHITE: Is there any further discussion on the motion? Is there a need to caucus? I will read the motion: move to adopt in Addendum II Section 3.1, commercial measures, trip limits, Option 2; Section 3.2, recreational measures, seasonal measures, Option 2. Addendum II measures will sunset on June 1, 2013. Motion by Dr. Pierce; second by Mr. Grout. Pat.

MR. PATRICK AUGUSTINE: Are you going to ask the public, Mr. Chairman?

CHAIRMAN WHITE: Are there any members of the public who would like to speak on this motion? Seeing none, is there any need to caucus? **All those in favor please raise your right hand, 7; any opposition; any null votes; any abstentions, one abstention.** Bill.

MR. WILLIAM A. ADLER: Mr. Chairman, is it appropriate at this time to just make a motion to accept or approve the addendum as chose?

CHAIRMAN WHITE: I'm sorry; I was having a sidebar; could you say that again?

MR. ADLER: Is it appropriate for me to make a motion to approve the addendum with the things that were decided.

CHAIRMAN WHITE: Okay, first, I think I did say "motion carries seven, zero, zero, one", so that needs to get on the record. Do we need a motion; didn't we just do that, Bob?

ACTING EXECUTIVE DIRECTOR ROBERT E. BEAL: Yes, I think you do because the way this is worded "move to adopt in Addendum II" and then it goes through and it doesn't really say "move to adopt Addendum II" and it is probably worthwhile to have a discussion about the effective date, which I assume is immediately, but I don't know that for sure.

CHAIRMAN WHITE: That would be appropriate, Bill, if you'd like to make a motion.

MR. ADLER: Yes, I'll make the motion to accept Addendum II with the parts chosen.

CHAIRMAN WHITE: Second by Pat Augustine. Is there any discussion on the motion? Bill, would it be okay to change "accept" to "approve"?

MR. ADLER: Yes, that's okay.

CHAIRMAN WHITE: Bill, was your intent to have this effective immediately?

MR. ADLER: Yes; since you're going to end next June, we might as well do it now.

CHAIRMAN WHITE: And is it acceptable to have that part of the motion?

MR. ADLER: Sure, add it all in.

CHAIRMAN WHITE: **Okay, I'll read the motion: move to approve Addendum II as modified today, effective immediately.** Motion by Mr. Adler; seconded by Mr. Augustine. Is there a need to caucus? Seeing none, all those in favor raise your right hand; any opposition; any null votes; any abstentions, 1 abstention. **Motion carries eight, zero, zero, one.** Okay, next on the agenda is consider Draft Addendum III. Toni.

### CONSIDERATION OF DRAFT ADDENDUM III FOR PUBLIC COMMENT

MS. KERNS: At the last board meeting, board members expressed interest to have an addendum that would address the specification process and accountability measures for the winter flounder fishery. This addendum is specifically looking at that task. It considers changes to the specification process for both commercial and recreational

fisheries as well as considers in-season accountability measures for the commercial fishery.

When the New England Fishery Management Council and NOAA Fisheries set specifications for the winter flounder fisheries, they are usually three-year specifications that are subject to review especially in the third year. The council and NOAA Fisheries set sector and sub-sector ACLs. All federal ACLs are subject to accountability measures.

In setting their specifications, they estimate what they believe will be the state water harvest and take that off of the ACL. They do not consider this to be an ACL and they are not subject to accountability measures at all. The state water harvest then is controlled by the states using output controls, including trip limits, season, size and bag limits.

In order to respond to changes in the federal ACL, an addendum must be initiated to change any state water management measures. Potentially at times we may not be able to respond fast enough and so therefore we are not able to fully utilize state water harvest. An example can be what we have gone through in the past couple of months where the fishing year 2012 state water harvest was estimated to be 272 metric tons and the commercial trip limit was still at 250 pounds, where we just increased it to 500, but the fishing year has already been going on, so therefore we may not fully utilize that harvest level.

Also, for the state water harvest the board does not adopt a specific quota and there are no accountability measures to make sure that we do not go over what NOAA Fisheries estimates will be caught in state waters. If there is an overage of what they estimate will be harvested in state waters, they will just increase the harvest level for state waters for what they take off of the ACL, but there is on payback provision of that quota amount within their plan.

If the ACL is exceeded overall, those fish have to be paid back in a future year, but it is not specifically coming from any state waters quota. The technical committee recommended for the board to put in place accountability measures to control harvest to the federal estimated state water harvest level.

The options that are proposed in this document first look at commercial and recreational measures. The first option is status quo; use the addendum process to change any commercial or recreational measure. Option 2 is to put forward a specification process, and we would set annual or multi-year specifications based on the federally estimated state water harvest.

The technical committee would annually review the best available data in order to make recommendations to the board on any changes to commercial or recreational management measures. Commercial measures that could be adjusted through board action would be trip limits, size limits and seasons. Recreational measures that could be adjusted through board action would be size limits, bag limits and seasons.

The next issue is looking at accountability measures. Option 1 is status quo; not to have any accountability measures in place for state water harvest. Option 2 is to put accountability measures in for the commercial fishery; establish a trigger for state water trip limits that closes state water fisheries when the trigger is reached. A trigger is met when a certain percentage of the estimated state water harvest has been hit, and we propose 85, 90 and 95 percent.

The board may want to consider how timely the commercial landings are done in each of the states when considering these percentages. There are no specific commercial or recreational monitoring requirements for harvest in the FMP, and so a lower percentage may be better utilized with no harvest requirements because the data will not be as precise.

As a side note, the technical committee did recommend paybacks; but because the board does not adopt a quota, the plan development team could not put in place an accountability measure of paybacks for a quota that has never been adopted. If the board does want to look into that recommendation from the technical committee, they would also have to consider setting an annual quota as well.

CHAIRMAN WHITE: Thank you, Toni. Are there any questions for Toni? David.

DR. PIERCE: Well, not so much a question; I wanted to add something to what Toni has provided regarding background information since most people around this table don't know how the New England Council in particular went about developing the so-called set-asides of in this particular case winter flounder for the non-federal permit holders.

I'm on the New England Council, Terry Stockwell, Doug Grout, Mark and David, we're on the New England Council and so there is a

history here that is quite fascinating and we need to remember what that history is. A few years ago the council had to come up with hard quotas for all the different groundfish stocks with winter flounder Gulf of Maine being one notable example.

The problem in setting aside the amount of fish that would be caught by non-federal permit holders was that the database wasn't that great. Actually, it was quite poor in most cases for the groundfish stocks. For some stocks the data were better than others; for example, Gulf of Maine cod, Gulf of Maine winter flounder, perhaps, so much of the numbers that were selected for these so-called state waters ACL subcomponent – that is the annual catch limit subcomponent, the set-aside, was, best guess, best scientific information available, back-of-the-envelope calculations.

I believe that most of the states, if not all of us, were uncomfortable with the numbers, but something had to be comfortable, something had to be adopted and put in the plan to deal with some amount of state waters catch by non-federal permit holders. We ended up with the amounts that we now see in the Federal Register announcement every year relative to what is there for non-federal permit holders, and it can change from one year to the next subject to the specification process.

Frankly, it can be a bit strange in terms of how those numbers are handled by the National Marine Fisheries Service, and this is not a criticism. Gulf of Maine codfish, for example, just recently for the current fishing year, in order to provide for about a 6,700 metric tons for the Gulf of Maine cod, in order to provide for that number, to keep the commercial fishery in particular viable, NOAA Fisheries had to take away Gulf of Maine cod that had been set aside as part of the state waters ACL subcomponent, and it was done without any consultation with the states.

It was done, taken away and given to the federal permit holders. I think most of us, if not all of us, said that is fine, hey, federal permit holders are awful important, so if that is what has to be done, then do it. So, it is a dynamic thing. That is why I offer this information as an indication of why it is not a hard quota, why these numbers are a bit squishy; some squishier than others.

So that is just a little bit of background relative to how these numbers were derived. They're not hard quotas. They're assumed amounts of catch that would occur from non-federal permit holders. Thank

you, Mr. Chairman, for allowing me to provide that explanation.

MR. DAVID SIMPSON: My question or point is more about the term "AM" or "accountability measure" that was in the slide. If I understand the way you described it, Toni, it is not an AM in the sense that the federal government uses that term. It sounds more like it is a quota management measure or a harvest control measure, and I want to make sure that we don't use the term for different things and cause confusion among ourselves and with the public.

MS. KERNS: I can change the language. If the board does move forward with the document, I can change it to a harvest control. I am not sure quota management would be the best description since there is no quota unless the board goes in that direction.

MR. GROUT: Well, I can see it being called proactive because we're talking about establishing a trigger for state waters commercial trip limits, but we would close state waters when it reaches a certain percentage, so that is a proactive accountability measure. That is just sort of my aside; I think it is an accountability measure.

My bigger concern here with state waters non-federally permitted is our ability to collect data and have that data in hand that will tell us when that trigger is hit. What is the reporting requirement? I assume we might do this with dealer data. What is the reporting requirement within I have to say primarily state? Do you have like state dealers; do they have weekly reporting, monthly reporting? What is the timeliness of the reporting for dealers on this as to whether we could even implement something this as an in season? Do you have any idea; does Toni have any idea?

CHAIRMAN WHITE: David Pierce, could you answer that?

DR. PIERCE: Yes, in Massachusetts' waters for those non-federal permit holders we have trip-level reporting, trip-level reporting that is supposed to be done I believe every month. It is timely. We know what is going on obviously not on a daily basis, but we do get that reporting so we know what is happening on a monthly basis.

Depending upon on how things evolve in the future regarding ASMFC management of winter

flounder – and never mind that, council management of all the groundfish species, we may have to modify that so that the reporting period is even more timely, but for now it seems to be fine with the monthly reporting.

MR. GROUT: If the data comes in monthly, I think we might have to look to potentially a more conservative option here than 85 or 95 percent because a lot of landings can come in a month. A lot of landings can come in a week. I have no idea how quickly that comes, but we might want to be looking at maybe closing at 75 or changing a trip limit or closing it at 75 percent. Just a thought and if we need a motion, I will do that.

MR. ADAM NOWALSKY: We're talking specifically about Gulf of Maine measures here or would this apply to all three sub-stocks?

MS. KERNS: From the guidance that I received from the board, this would apply to all three sub-stocks. It doesn't have to be done every year, but it gives the tool in the toolbox to be done for all the stocks.

DR. PIERCE: I agree with Doug in terms of the need to be more cautious as to how we move forward as to when the trigger would be pulled. With winter flounder, of course, the fishery is seasonal in nature so it is not as if it is every day, every day, every week. It is seasonal in nature, so that does help us out.

But, anyways, regarding a motion, Mr. Chairman, I would like to make one that references one of the options in the addendum. Actually it is a substitute for – I assume this is how you want to proceed. Okay, under Section 3.2 where it says accountability measures, Option 1, status quo; then Option 2, commercial accountability measures; for Option 2 it says very specifically that we would close state waters when the trigger is reached, and I think that is inappropriate.

It makes no sense to bring that out to public hearing. It makes no sense to close down state waters especially because the 250 pounds that we discussed earlier on and at our last meeting as noted by Toni is basically a bycatch amount. Why not reduce the fishery down to a bycatch amount as opposed to closing the fishery and then having bycatch occurring while they're fishing for something else and then throwing the flounder over the side.

It seems to me that it makes more sense to go in a different direction and to have a number of options regarding the degree of caution we would adopt and bring out to public hearing for comment. **I would move that we delete the language in Option 2, commercial accountability measures, and have in its place “reduce the 500-pound trip limit back to 250 pounds when either 75 percent, 85 percent, 90 or 95 percent of the Gulf of Maine” – this is for all stocks – okay, “when 75 percent of the winter flounder state waters ACL subcomponents are projected to be landed.”**

I will read that again and there is something else I've got to add to that, so move to delete the language – reduce the 500-pound trip limit to 250 pounds when either 75, 85 – okay, good, **and if the subcomponents are exceeded, beginning the following fishing year, May 1, with a 250-pound trip limit.** That is my motion, Mr. Chairman, which is an in-season accountability measure and a measure that would deal with any attainment of the – or exceeding, that is – and the exceeding of the ACL subcomponent, with the emphasis being on 250 pounds as a bycatch. Let's not talk about shutting down the fishery entirely; let's focus on bycatch with the alternative being that which we just did, increase it up to 500 pounds consistent with the most recent assessment information.

CHAIRMAN WHITE: Is there a second to that motion? David Simpson seconds. Toni has raised some concern that this motion is pretty specific to the Gulf of Maine stock and would this give the flexibility of tools in the toolbox for other stocks? I guess I throw that out there as a question.

DR. PIERCE: Let me clarify. I made the motion with the intent to deal with all of the stocks because that is what Toni said initially; that this was an addendum that would deal with all of the components, all the stocks. My initial thinking was to keep it specific to the Gulf of Maine cod stock. Now if that is a preferred way to go, maybe that is the preferred to go especially in light of some recent notification from the National Marine Fisheries Service about the Southern New England stock, and I can't recall the exact language.

If I may, Mr. Chairman, in order not to complicate matters, I think it would make more sense to make this specific to the Gulf of Maine cod stocks since it does follow up logically on what we just did

with Addendum II. I would say move to delete the language in Option 2, commercial accountability measures, and in its place reduce the 500-pound Gulf of Maine winter flounder trip limit to 250 pounds when either 75 percent, 85 percent, 90 percent or 95 percent of that state waters ACL subcomponent is projected to be landed.

Of that, get rid of the winter flounder; of that state waters ACL subcomponent is projected to be landed; that is right, is projected to be landed not “are”; is projected to be landed and if the subcomponent is exceeded – all right, that makes it specific to the Gulf of Maine stock. If anyone cares to make any reference to the other stocks, then, fine enough, but that may become more complicated, as I said, in light of the more uncertain status of that Southern New England stock status.

CHAIRMAN WHITE: Are those changes okay with the seconder? You’re nodding in the affirmative. David Simpson, you want to speak to that?

MR. SIMPSON: Yes, I think this makes good sense because recall that in Southern New England in state waters we have a 50-pound bycatch or 38 fish, whichever you prefer, limit already, so I don’t know what more we can do. We arrived at that 50 pounds as the lowest level of unavoidable bycatch that is probably going to get thrown over dead, anyway.

If you look at the stock assessment and the number of dead discards in federal waters, it is substantially above that. With the greater latitude we have in the Gulf of Maine, I think this makes perfect sense, 500 pounds but drop down to 250 and make sure we’re not undermining the federal management plan. I think this makes perfect sense.

ACTING EXECUTIVE DIRECTOR BEAL: Just a question maybe for my own clarification, but the motion starts out and it is working on the assumption that the Gulf of Maine winter flounder trip limit is 500 pounds. As the board moves forward and sub-ACLs change over time, is 500 pounds always going to be the initial trip limit? At some point is this board going to say, well, you know, at 500 it really switched to a targeted fishery, so 400 or 350 is the right initial trip limit or go the other way where the subcomponent for state waters has gone up quite a bit and the board says, well, you know, we could even go to 750 or a thousand pounds, whatever it may be, but is that 500-pound trip limit the starting point for all seasons?

CHAIRMAN WHITE: David, would you like to respond to that?

DR. PIERCE: Yes, I was thinking that if this motion passes, then another option would be to provide flexibility for the board to make a change in the upper number during the specification process, so that would give us the flexibility to depart from 500 pounds if indeed that was necessary.

Although I find it hard to believe that we would be 500 or 250 – when we start to slice the pie a little bit thinner, one begins to wonder what it means, especially because of what happens in federal waters and in state waters by federal permit holders who fish with no trip limits and no at-sea sampling coverage or very little observer coverage, maybe 25 percent of all the trips, and perhaps an inadequate amount of monitoring of what they’re actually landing.

So what happens in state waters, frankly, is relatively, I think, minor compared to what may be happening in federal waters with our not really understanding what is happening in federal waters. Again, I understand Bob is saying, but it may not be necessary for us to get too fine tuned on this.

MR. AUGUSTINE: Mr. Chairman, would it be too open if you were to take the 500 pounds out and it read commercial accountability measures and in its place reduce the Gulf of Maine winter flounder trip limit as appropriate. In other words, as Bob suggested, why put a cap on it? This way you don’t need another option. It gives the board the flexibility to either go up or down.

That would follow through then when you had a trip limit of 250 pounds. Could we not either use percentages as opposed to putting in a top number or a bottom number, because it goes on to say and if the subcomponent is exceeded, begin the following year you want to start with the 250-pound trip limit when in fact you may not be able to start with a 250-pound trip limit if in fact you have far exceeded the subcomponent quota. It is very self-limiting on the one hand but it is guaranteeing a minimum of 250 pounds on the other hand when in fact you may not even be eligible to catch that if the subcomponent has been surpassed by a great number. Does that make sense, Mr. Chairman?

CHAIRMAN WHITE: Pat, I think that makes a lot sense. David Pierce, would you consider that?

DR. PIERCE: I would and in consideration of that suggestion, if the seconder doesn't object, it could read "and in its place reduce the Gulf of Maine winter flounder trip limit set during the specification process to 250 pounds." Would that do it?

CHAIRMAN WHITE: Toni would like to comment.

MS. KERNS: David, in order to get your concept of the reduction to 250 pounds specifically; I think it would be cleanest if we had sort of two issues to consider under this harvest control. One is to establish that tool in the toolbox that says when we hit a certain trigger, we're going to reduce the trip limit; and then, secondly, for fishing year 2012, since that is how long that 500-pound trip limit is in place for, we would set that trigger at whatever it is we deem for fishing year 2012; and that trip limit would be reduced to 250 pounds.

First is establishing the tool in the toolbox that just says when you hit a certain trigger, you would reduce the trip limit; and then, secondly, for the fishing year we're going to reduce to 250 pounds. Annually when you did the specifications, this trigger and amount that the trip limit lowers to would be set. Under the annual specifications I would need to add an additional option that said trigger percentages.

DR. PIERCE: If I may, Mr. Chairman, I'm not quite following all of Toni's logic relative to how I would have to change this motion to make it consistent with her logic, so I'm tempted to leave it as it is because it is specific to the specification process when we would determine whether it is going to be 500 pounds or maybe some other number. The 250 pounds would stand because that is the bycatch amount.

Then we would have again the 75 percent, the other percentages that would enable us to drop it down from whatever is set during the specification process to 250 pounds if we deem it necessary because the catch rates happen to be higher than what they should be. I prefer to leave it as is.

CHAIRMAN WHITE: Are there any other comments on the motion? Peter.

MR. PETER BURNS: Mr. Chairman, I appreciate Dr. Pierce's efforts to add some teeth to the accountability measures here for this and adding the triggers that are in place. I think the only thing that gives me a little bit of concern is waiting until 95

percent to make these adjustments given the uncertainties with reporting and such.

I think we need to keep in mind that this isn't a TAC. This is just an estimate of what the council believes that the states will catch; so that if this is exceeded, any overages are going to be paid back pound for pound against the entire ABC for the fishery, which will cut into probably the federal quota for this stock. It wouldn't necessarily go against or lowering any fish that might be available for the state in the following year. Just something to keep in mind that maybe we could be a little bit more conservative on the trigger percentage. Thank you.

CHAIRMAN WHITE: Peter, would you have any suggestions on what would be the top limit you would be comfortable with?

MR. BURNS: I would say the 85 percent is a good ending point.

DR. PIERCE: I only have 85, 90 and 95 in the motion because that is what is before me. Toni offered that up. I likely would never support the 95, but this is to go to public hearing and public comment. We would get comments at that time, but I'm sure the comments would reflect – many of the comments would reflect the specific concerns that Peter has offered up. It's up to you, Mr. Chairman, a wide range of percentages or strike the higher values out. I am open to any suggestion on that but subject to your guidance.

CHAIRMAN WHITE: I am going to take the next three in the order of which people have not spoken. Terry Stockwell.

MR. STOCKWELL: Thank you, Peter; and following my train of thought I would like to know if Dr. Pierce would consider dropping the 95 percent. It is just a non-starter to me from the very beginning. I realize we don't want to cherry-pick our options here during the public comment period, but why take out something to public hearing that is not going to ever likely go through this board?

DR. PIERCE: He speaks to my heart, Mr. Chairman, and I would strike out 95 percent.

MR. GROUT: Mr. Chairman, I think this has been clarified for me but those three percentage options are ones we're going to take out to public hearing; and then when we approve the addendum

after the public hearing, we will choose one of those to go into the final document; is that the understanding?

The second question I have, and it sort of gets to some of the discussion that we were having about setting a trip limit at the beginning of the season; and then if we find out that we've hit whichever trigger we're going to hit, we're going to reduce it.

What happens if we – in this case it says we're going to reduce to 250 pounds – well, what happens if the state-level ACL in the future gets so low that we decided we're going to set the trip limit at the beginning of the year to 200 pounds? It says if we hit the trigger, we will go to 250.

That is where I think Toni was coming from here that we need to have something set in the specifications that says at the beginning of the year we're going to set a trip limit of some amount; and if we hit that 75, 80 or 90 or whatever percent, we're going to reduce it and we will set ahead of time what we're going to reduce that by.

Now, the only way I could see this motion going forward is if it is the board's intention here that we never go below 250. If this goes forward and we're going to set a specification of a trip limit, we're clearly going to stay at 250 and we will never go below that even if we're approaching – we won't even have an accountability measure, if you see what I mean at that point, because you won't go below 250.

Unless our intent is never ever to go below 250, I think we have to make a modification here to just to say to set in the specification process the trip limit at the beginning of the season and what the trip limit will be reduced to when we hit that accountability measure, which could potentially make it below 250, but that would be up to the board at the specification process. I would like to make a motion to change that.

CHAIRMAN WHITE: First, Doug, could we see whether David would take a friendly on that?

DR. PIERCE: I would rather see what Doug has to offer as a motion to amend.

MR. GROUT: All right, my motion would be to amend that we would reduce the Gulf of Maine – give me a minute here to look at this.

CHAIRMAN WHITE: Do you want to work on that? I had Pat Augustine who wanted to make some comments while you write something down.

MR. AUGUSTINE: Doug, you're doing exactly what I suggested we try to do, but just change the language in there to set during the specification process to a level as recommended by – if it is the technical committee or whoever is going to do it for us. That way it leaves an open door. It could be down to a hundred pounds; it could be closed; or it could be significantly higher. I think taking the 250 out will give us that flexibility that you're looking for, Mr. Chairman.

CHAIRMAN WHITE: Thank you, Pat; I think that makes sense and let's wait for Doug to fine tune his wording. Do you have something, Doug?

MR. GROUT: I'll see if this works and I'm a little bit concerned about the parliamentary procedure on this. The cleanest way that I can see to do this is in two phases; one, that we would essentially go back to the original language that is in Option 2 and then we have to add another specification item up in the specification, so what **I'm going to try and do here is start with under Section 3.2, under Option 2, a motion to substitute with the wording that says, under commercial accountability measures, to establish a trigger for state waters commercial trip limits that would reduce the trip limit when the trigger is reached.**

And then another sentence – and this goes back essentially to the original motion that says a **trigger is met when X percentage in one of the options below of the estimated harvest is reached.** Then we would still have – but now the percentages, the board is considering triggers at the following levels and it would be 75, 85 and 90 percent based on the discussions before. Then I will have a follow-up motion that in the setting of the specifications, under commercial measures that could be adjusted through board action; we would add a five, to set a trip limit associated with the trigger.

CHAIRMAN WHITE: Doug, would you add 80 percent in there, too, just so you have –

MR. GROUT: Did we have 75, 80 and 85; is that what was up?

CHAIRMAN WHITE: Okay, you were matching —

MR. GROUT: Yes, 75, 85 and 90; that is what it should be, yes.

CHAIRMAN WHITE: All right, David, would you comment whether you would take that as a friendly?

DR. PIERCE: Well, I have a suggestion for Doug to see if it makes matters simpler because that is a lot of language and it is not quite clear what is meant. The same word is used a number of times, and your intent is not clear. Perhaps, if I may, Mr. Chairman, just make a simple suggestion to Doug to see if it is consistent with his intent.

That would be if you could scroll back up to the motion that I made; how about after 250 pounds, “set during the specification process to 250 pounds, in parentheses, or a lower amount if appropriate, and then close parentheses. That would give us the ability to not go to 250 if something happens. If we get some additional information, a new ACL subcomponent to set the state waters that is much lower, that would then enable us to not go with the 250 pounds but to some lower number; or a lower amount, if appropriate.

CHAIRMAN WHITE: Doug, does that meet your needs?

MR. GROUT: Personally I think that makes it more complicated and actually gives us less flexibility, David, because I think what if we have a situation where we decided that based on experience down the road – and again we’re looking at this a little bit beyond the immediate future – that we set an initial trip limit at 800 pounds because the stock level has gone up again, then we are going to be lowering it to 250.

I’m just thinking by doing it the way I was suggesting, that give the board at the time of the specification process the ability to set whatever the initial trip limit is and then the trigger – whatever the trip limit would be when we hit the trigger. It gives us much more flexibility.

DR. PIERCE: Mr. Chairman, subject to your approval, it would be useful if Doug would read his motion out loud because I don’t think it says what he intends. It is confusing to me; so if he would read it, if you’re satisfied with it, fine, but I don’t think it makes sense.

CHAIRMAN WHITE: Doug, would you read your motion to amend?

MR. GROUT: I will be glad to, and again keep in mind there is a follow-up motion that is going to be to amend the specifications process. Okay, this is only dealing with the accountability measure. We are going to move to substitute under Section 3.2. Option 2 under the commercial accountability measures; establish a trigger for state waters commercial trip limits that would reduce the trip limit when the trigger is reached.

Then the second sentence is a trigger is met when X percentage – and there are three percentages that we will have the option to choose from in the addendum, when we approve the addendum – when X percentage of the estimated state waters harvest is reached.

MR. AUGUSTINE: Point of information, Mr. Chairman.

CHAIRMAN WHITE: David Pierce, I need to know at this point whether this is gone to – we’ve gone beyond stretching the friendly where I’m comfortable so either you accept this as a friendly or I’m going to ask for a second.

DR. PIERCE: Well, I think it should be a motion to substitute; however, the language is incorrect at the end. I suggest it should be of the estimated harvest by non-federal permit holders; because federal permit holders catch fish in state waters, so if you could clarify that, Doug.

MR. GROUT: I would definitely take that as a clarification, estimated non-federally permitted state waters harvest.

CHAIRMAN WHITE: Okay, is there a second to this motion to substitute; Pat Augustine. Is there any discussion on the motion? Peter Burns.

MR. BURNS: Mr. Chairman, again, I appreciate the efforts of the folks here on the board to add some strength to the accountability measures here in Option 2, but I just want to point out – I think this is going in the right direction, by the way, but I just want to point out that we have sort of deviated a little bit from Option as it was written in the initial document where when the trigger was reached, the percentage, that would call for the states to close the fishery.

Here we have introduced the use of trip limits, which is good, but it only reduces the trip limit and it doesn’t really close the loop on how the

fishery would be closed or what kind of projections would be made to maybe make a date for closure when a certain percentage trigger is reached. I can see if 90 percent was chosen and we reduced the trip limit by however much we want to reduce it by, given unaccounted for landings and other things, that could get us into a sticky situation for the following year.

CHAIRMAN WHITE: Are there any other comments to the motion? Are there any comments from the public on the substitute motion? Seeing none, any need to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN WHITE: Okay, are we ready? All those in favor to the substitute motion please raise your right hand; opposed; null votes; abstentions, 1 abstention. **The motion passes seven, zero, zero, one. Doug.**

MR. GROUT: Okay, I have another motion, Mr. Chairman.

CHAIRMAN WHITE: Sorry, **we now have to vote on the main motion now that the substitute becomes the main motion.** Is there any discussion on the main motion now? Seeing none, is there any need to caucus?

(Whereupon, a caucus was held.)

MR. SIMPSON: In terms of process, when we decide what the trip limits were and all that; when will the board decide those things?

MS. KERNS: As Doug indicated before, he would have a two-part motion and we would do an annual specification of these measures following the release of the federally set ACLs. I think Doug plans on adding to the annual specifications the trip limit amount for the trigger.

MR. AUGUSTINE: Mr. Chairman, to Peter's point, we're assuming that when we reach that trigger, the states, if they have to close the fishery, will close the fishery; is that what we're assuming? That was the question he asked; and I went to according to your original option, under 2 it said establish a trigger for state water commercial trip limits that would close state water fisheries when the trigger is reached, and then we went on to say the trigger is met when X option – so, Doug, in our motion were you inferring that or were you just referring that we would go to a

reduction? Mr. Chairman, can we get an answer on that?

MR. GROUT: No, the motion that I made referred strictly to the trip limits, so adjustment to trip limits. I thought the original amendment that Dr. Pierce was making was to get away from closing the fishery and just reducing the trip limit to try and avoid moving forward. That is one of the reasons that I think it is important that we have 75 percent level in there. Quite frankly, I don't support a 90 percent level either with this kind of – but it strictly the trip limit.

MR. AUGUSTINE: That was why I agreed with the motion at 75 percent, but again is the language strong enough to indicate that we would shut the fishery down if we had to? I know it is not in this motion, but I guess I want to beat it to death because it is a public document that is going to go out there. Do we want that as a part of the public document or let the public come back to us and say there is nothing in there that would indicate if you reached your X number that you wouldn't close the fishery down. Just clarification, Mr. Chairman.

MS. KERNS: No, there is nothing in this document if this main motion passes to close the fishery. One of the reasons the plan development team did make that recommendation to have those triggers, the percentages there was because we will not be able to account for in-season recreational harvest. When that state waters harvest is estimated, it is estimated for both the commercial and the recreational harvest, and so therefore we tried to add a buffer in there for the recreational harvest.

CHAIRMAN WHITE: Pat, I think there is – in this we certainly could lower the number so low that in essence it is a closing. We could mirror Southern New England. Okay, are we ready to vote? All those in favor raise your right hand; opposed; null; abstentions, 1 abstention. **The motion passes eight, zero, zero, one.** Doug, are you ready for another motion?

MR. GROUT: **Yes, my second motion is to amend Section 3.1, Option 2, to include under the commercial measures that could be adjusted through board action; add an Item 5, trigger trip limits.** If that is clear to people, we're talking about the trip limit that we would be reducing to.

CHAIRMAN WHITE: Is there a second to this motion; Terry Stockwell. Is there discussion on the motion? No discussion; are we ready to vote? Is there a need to caucus? Seeing none, all in favor raise your right hand; those opposed; null votes; abstentions. **The motion passes eight, zero, zero, zero.** Doug, go ahead.

MR. GROUT: Just one more question and it brings up something that was brought up by Pat. When we pass this addendum, no matter what is in here, we don't have specifications right now. When would we be developing specifications; at the time this motion passes because otherwise we won't have anything in place for the 2013 fishing year?

MS. KERNS: Because I'm new to winter flounder, I do not recall off the top of my head if the ACL specification included the 2013 and 2014 fishing year.

MR. GROUT: Yes, I think the point is in federal waters we've already set – well, we're going to be setting the specifications here soon, but our recreational measure trip limits and commercial trip limits have not been set by us because right now we have an addendum with a 500-pound trip limit that is going to sunset in June.

We will need either in this addendum or somewhere in the process before June to set the trip limit for 2013 and the trigger, and so we might, just to be complete on this – and I'm asking you as a staff member that maybe we should have a second section in here, another section in here that says the trip limit and the trigger trip limit will be X for the fishing year 2013 beginning in May.

DR. PIERCE: I would turn to Terry on this as chair of the groundfish committee. I think that in the next framework we have the specifications for state waters ACL subcomponents for 2013 and 2014 as well, so we know what they are. I think they're status quo for Gulf of Maine winter flounder, but I would have to look at the table to verify that.

If nothing changes via the framework that the council is working on and if nothing changes subject to the National Marine Fisheries Service review and then implementation, I don't think there will be a need for us to make any wholesale changes in the numbers.

MR. STOCKWELL: I don't remember the specifications off the top of my head either, but we are scheduled to vote on them in November. The

vote might be delayed until December because of staff issues, but, Toni, I can get back to you.

MS. KERNS: If we don't have the actual specifications and the board wants to release this document for public comment for the winter timeframe, I think that we could delay the document for going out for public comment to a certain time period; but if we don't get the specifications before that, I think it would be best to have the board not include those specifications in this document.

If you approve annual adjustment through specification, then after you approve this document, you could then set the specifications for the 2013/2014 fishing year after approval of this document because you would have that ability to do so through board action. I think probably we wouldn't want to delay the release of this document any later than December 10<sup>th</sup>, probably. I wouldn't release it any later than that because we want to have it out for at least 30 days prior to the February board meeting and be able to establish public hearings, et cetera.

MR. GROUT: I'm fine with that as long as we keep that in mind when we pass this, that we need to have an action item on the agenda before June 1<sup>st</sup> that we're going to set the specifications.

CHAIRMAN WHITE: Okay, are there any other additions or changes to the addendum? Adam.

MR. NOWALSKY: Mr. Chairman, I just need to go back to my earlier question about the intention of this. Going back to the summer meeting when Addendum II was initiated, the request at that time was to initiate an addendum specifically to address Gulf of Maine commercial and recreational measures.

That was specifically what that request was at that time. I understand the decision to go ahead and split this into two pieces in Addendum II and III and it looks like we're going to get more flexibility here. I have to ask the question still about going through this entire process for the other stocks as well and how we got to that point.

Going back to Addendum I basically got us to 12 inches and two fish recreationally and now we're basically saying, well, Southern New England is also going to implement an annual specifications process, which is basically what this addendum says. I had heard earlier the comment that we

may specify but this addendum says the board will annually set commercial and recreational specifications.

I am just trying to get clear in my mind if there is a need to apply all of this to Southern New England at this time; and if so, how we got to a point where the charge from the summer meeting was to develop this addendum for the Gulf of Maine and then it became we're going to apply it to all of the stocks and how this is actually going to work with the Southern New England component here as well.

CHAIRMAN WHITE: How this transpired, Toni and I had discussions about going forward with this addendum, and I felt it might make sense for Southern New England to have the tools in the toolbox for the time when the stock recovers and you're going to be able to increase things. We don't have to do it that way; so I guess if Southern New England is uncomfortable with that, this could be just for the Gulf of Maine. David Pierce.

DR. PIERCE: I would suggest that this board would not be in the position to deal with that Southern New England issue at this time largely because of what the National Marine Fisheries Service has just announced regarding the Southern New England stock. I can turn to Peter or Bob for elaboration but I think it is kind of bad news for Southern New England winter flounder.

We're already extremely restricted with that Southern New England stock; so if there is any suggestion that we should make some modifications on how we deal with that stock in anticipation of some positive news, that is not forthcoming, and I suspect it won't be forthcoming for quite a long time. Again, I think I stated it correctly regarding what the Service has just released on that stock.

CHAIRMAN WHITE: Does someone want to make a motion to – is there agreement around the table that this will apply only to the Gulf of Maine stock? I'm seeing all heads nodding in the affirmative. Okay, Terry.

MR. STOCKWELL: Mr. Chairman, given that agreement, **I would make a motion to approve Draft Addendum III for public comment.**

CHAIRMAN WHITE: Terry Stockwell made the motion; seconded by Pat Augustine. Is there any discussion on the motion? None from the board; is there any member of the public that would like to make comments on this motion? Seeing none, do we

need to caucus? Seeing no request for caucus, all those in favor please raise your right hand; any opposition; any null votes; any abstentions. **The motion passes nine, zero, zero zero.** Toni, do you want to talk about timing going forward on this?

MS. KERNS: I will discuss further with Terry what we think may be – or get in touch with the New England Fishery Management Council just to confirm whether or not we could include the 2013/2014 specifications. If we can, then I need to delay a little, but I will do so. We release the document this winter. I will contact the states to see who would like to have public hearings and then we will review the public comment at the February meeting and consider final action at the February meeting.

CHAIRMAN WHITE: Okay, thank you, Toni. The next agenda item, election of a vice-chair. Are there any nominations? David Simpson.

#### **ELECTION OF A VICE-CHAIR**

MR. SIMPSON: I would nominate Mark Gibson.

MR. AUGUSTINE: **Move to second and close nominations and cast one vote, Mr. Chairman.**

CHAIRMAN WHITE: Congratulations, Mark. Is there any other business to come before this board? Toni, you have something?

#### **OTHER BUSINESS**

MS. KERNS: Several board members have been alluding to the Federal Register Notice that the Southern New England stock of winter flounder is no longer overfishing but remains overfished, and the stock's rebuilding plan has not resulted in adequate progress towards the rebuilding of this stock. That notice was included in your briefing materials. I just wanted to let everybody know that it was there. That's all.

#### **ADJOURNMENT**

CHAIRMAN WHITE: Okay, thank you, Toni. Seeing no other business, a motion to adjourn.

(Whereupon, the meeting was adjourned on October 22, 2012.)