

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
SOUTH ATLANTIC STATE/FEDERAL FISHERIES  
MANAGEMENT BOARD**

**The Crowne Plaza Hotel – Old Town  
Alexandria, Virginia  
May 23, 2013**

**Approved August 7, 2013**

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4. **Move to establish Option 2, recreational and commercial combined de minimis status at 1 percent** (Page 6). Motion by Mr. Robert Boyles; second by Mr. Bill Cole. Motion carried (Page 7).
5. **Move to recommend to the full commission approval of the Black Drum Fishery Management Plan as modified by the South Atlantic Board** (Page 7). Motion by Mr. Robert Boyles; second by Mr. Steve Meyers. Motion carried (Page 7).
6. **Move to proceed with the expedited process to develop an addendum to the Spanish Mackerel FMP to allow states to reduce minimize size to 11-1/2 inches for the fishing year 2013 and 2014, July through September, for the pound net fishery to eliminate waste of dead discards** (Page 10). Motion by Mr. Robert Boyles; second by Mr. Bill Cole. Motion carried (Page 11).
7. **Move for board approval of the black drum terms of reference** (Page 12). Motion by Mr. Bill Cole; second by Mr. Spud Woodward. Motion carried (Page 13).
8. **Move to approve Draft Red Drum Habitat Addendum I for public comment** (Page 14). Motion by Mr. Bill Cole; second by Mr. Bill Goldsborough. Motion carried (Page 14).
9. **Adjourn by Consent** (Page 15).

## ATTENDANCE

### Board Members

Russ Allen, NJ, proxy for D. Chanda (AA)	Louis Daniel, NC (AA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Bill Cole, NC (GA)
Tom Fote, NJ (GA)	Robert Boyles, Jr., SC (AA)
John Clark, DE, proxy for D. Saveikis (AA)	Malcolm Rhodes, SC (GA)
Roy Miller, DE (GA)	Spud Woodward, GA (AA)
Bill Goldsborough, MD (GA)	Patrick Geer, GA, proxy for Rep. Burns (LA)
Tom O'Connell, MD (AA)	Jim Estes, FL, proxy for J. McCawley (AA)
Jack Travelstead, VA (AA)	Kelly Denit, NMFS
Rob O'Reilly, VA, Administrative proxy	Ellen Cosby, PRFC
Kyle Schick, VA, proxy for Sen. Stuart (LA)	Bill Archambault, USFWS

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

### Ex-Officio Members

#### Staff

Bob Beal  
Kirby Rootes-Murdy

Toni Kerns

#### Guests

Steve Meyers, NOAA  
Tom McCloy, NJ DFW  
Jordan Zimmerman, DE

The South Atlantic State/Federal Fisheries Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 23, 2013, and was called to order at 11:07 o'clock a.m. by Chairman Louis Daniel.

### **CALL TO ORDER**

CHAIRMAN LOUIS DANIEL: Good morning! Welcome to the South Atlantic State/Federal Fisheries Management Board. We have a fairly aggressive agenda for the South Atlantic Board today, and I will try to get us through it as quickly as I can.

### **APPROVAL OF AGENDA**

We have got an agenda. We do not have proceedings, so the only question I would ask at this point is everybody comfortable with the agenda and can we move on by consensus? Toni is going to tell us why we don't have proceedings.

MS. TONI KERNS: The last time the South Atlantic Board met was at the annual meeting in Philadelphia, and that was the day that the recording wasn't going on, so we do not have proceedings from the October meeting.

### **PUBLIC COMMENT**

CHAIRMAN DANIEL: This is an opportunity for the public to comment on items that are not on the agenda. I don't think we have much public; so seeing nobody coming forward to speak, we will move on to our first agenda item, which is to consider the Draft Black Drum Fishery Management Plan for final approval. Toni is going to go through several items to get us to our discussion.

### **DRAFT BLACK DRUM FISHERY MANAGEMENT PLAN FOR FINAL ACTION**

MS. KERNS: As Louis said, we are going to go through the options in the Black Drum FMP, the public comment, the advisory panel comment and some comments from the Habitat Committee. As you may recall, the statement of the problem in the Draft FMP was that there is a

lack of consistent coast-wide regulations or goals for black drum.

The fishery may be targeting juveniles, and there was a desire for the South Atlantic Board to have the ability to address future challenges in the fishery, especially when the coast-wide stock assessment comes out. As a reminder, we are working on a stock assessment for black drum right now, and we will hear terms of reference later in the meeting.

The goals and objectives of the plan are to provide an efficient management structure to implement coast-wide management goals in a timely manner. The objectives are to have a flexible management system; promote cooperative collection of biological, economic and sociological data; to manage to protect both young individuals and establish a breeding stock; and to develop research priorities to maximize the biological, social and economic benefits of the fishery.

The management program for black drum is defined as the range of the stock from the U.S. waters Northwest Atlantic Ocean, from the estuaries eastward to the offshore boundaries of the EEZ, and it is from the east coast of Florida through New Jersey. This is just a list of the current state regulations. They range in minimum size from 10 inches up to 32 inches and has various bag limits in the recreational fishery and various trip limits and quotas in some states for the commercial fishery.

For recreational measures, there are a series of measures that were in the draft addendum. Minimum size limits; they range from 10 inches up to 32 inches for options. For slot limits, it ranges from 10 to 24 inches, up to 30 to 48 inches as the various sets of options for slot limits. There are options that looked at a trophy allowance; either to allow one trophy fish per day or not to allow trophy fish at all.

It had options to bag limits. The bag limit options range from one fish all the way up to fifteen fish per day. There is also a vessel limit to have a bag limit, which ranges from six fish per day per vessel up to twenty fish per day per vessel. The last option under the recreational

measures was to allow the states to maintain their current measures. All states have recreational measures for black drum except for North Carolina.

Next I will just quickly go through the commercial measures. There was a minimum size limit under commercial measures. They range from ten inches up to thirty-two inches. For slot limits; again it was ten inches to twenty-four inches for a slot as the smallest size and then the largest was thirty to forty-eight inches as the slot. There are a variety of others between those two size limits.

For trip limits, there are quite a few trip limit options. Some were as low as five fish per person per day, and then other trip limits reflected more of a pound limit; a minimum at 500 pounds per vessel per day and up to 10,000 pounds per vessel per day. There is also a bycatch allowance the board could establish as well through a trip limit option here of a certain percentage to be determined by the board.

Limited entry for the commercial fishery; the options were either to have no limited entry program or to establish a limited entry program. The board's intention in this was just to keep the current fishery at its level and not to allow an expansion of the black drum commercial fishery in the states.

Lastly under commercial measures was for all states to maintain their current measures. All states have some sort of management program for the commercial fishery except for North Carolina. There are also de minimis criteria that the board could establish through this management plan.

The plan has two options; one, that the recreational and commercial would be established as separate de minimis status. Option 2 is to combine the commercial and recreational landings to set the de minimis status. For both options the board could approve de minimis if the average of the preceding three years was a certain percentage less than the coast-wide landings.

That percentage would either be 1, 2 or 3, so the board would need to decide one of those percentages if the de minimis criteria option was to be adopted. The document also allows the board to make recommendations to the Secretary of Commerce when they feel necessary that those regulations should be put in place in federal waters. It has recommendations for monitoring requirements but does not have any required programs in the document. The document also has recommendations for habitat, research and protected species, but none of those are required elements of the plan.

We had five public hearings; North Carolina, Virginia, Maryland, Delaware and New Jersey. I think there were about 35 participants at all of the hearings. There was the largest turnout at the Virginia hearing. There were nine written comments that were submitted, One of those was from a group, the Cape May County Party and Charter Association, and eight individual letters as comments.

Most of the comment favored some sort of measures should be in place for all states within the coast. A lot of commenters stated that states have implemented good management programs for their areas, and they should not have to change them, but that North Carolina should have to put a management program in place.

For recreational measures; for those that did comment on specific size limits, they were in favor of either 14 inches or 16 inches. There was a mixture of recommendations for bag limits that ranged from one to three fish. For the slot limit, there was a recommendation for 14 to 27 inches.

There was a commenter that said that there should be no trophy fish, and then some other commenters that said we should have a trophy fishery, but that trophy should be a very large size since large black drum are much more of a trophy than not like an 30-inch fish but much larger than a 30-inch fish. One additional commenter favored five fish for the bag limit, and for a vessel limit they said either five fish per vessel or no coast-wide measure on a vessel limit.

On the commercial fishery there were comments in favor to either have an 8 to 10-inch size limit or a 14-inch size limit. A couple of commenters said that the size limit should just reflect that of the recreational size limit; they should be the same. If there was a slot limit put in place, there was favor for 14 to 27 inches.

For those that spoke in favor of a trip limit, they said 500 pounds per day. There was a mixture of support for the limited entry program. Some people felt that their states had already curbed their fishery and that it wouldn't expand from where it is now, and so there was no need for a program. Other folks felt that might not be necessary.

The advisory panel got together. We only had two members of the panel on the call. One was from North Carolina and the other was from Virginia. Jordan also joined the call. The AP expressed agreement to allow the states to continue with their current recreational measures. Although they did agree that North Carolina should put measures in place, they did not find consensus on a specific size limit, but they thought that there was a need to protect juvenile black drum through the sizes of sexual maturity.

Due to the range and the size of black drum juveniles may be before reaching Year One along the Atlantic Coast, the board may want to consider different size limits for each state or region. The AP did not reach a consensus on a specific slot limit to the varying sizes of black drum in the region. They thought that a slot limit, Option 2, may be possible. There was an agreement that the board should allow the take of one fish larger than the maximum size limit. They suggested that the board consider a vessel trophy limit of one or two fish per vessel.

They also suggested that a trophy fish should a very large fish, 32 inches or greater, and may be considered small for a trophy given that the biological data on black drum indicates that they can live up to 50 to 60 years old and grow to a very significant size. For bag limits, they were in favor of using the bag limit.

They suggested that the bag limit could be greater than ten fish. If states were implementing a larger size limit, then the board may want to consider a bag limit that is smaller, maybe five fish or less. For commercial measures, they expressed that the states are doing a good job with commercial measures that they have in place currently and that North Carolina should put measures in place.

They did not come to a consensus on a size limit for the commercial fishery, but did feel one should be used. One member felt that the size limit should consider the gear type used in the fishery so that there is a minimization of dead discards. They also felt that the commercial and recreational size limit should be the same.

For trip limits, there was also no agreement on a standard trip limit to supersede states already enforcing trip limits, although an AP member recommended that North Carolina should implement a trip limit possibly of 500 pounds per vessel per day since this was a trip limit that had been previously considered by the state.

The AP stated that de minimis landing criteria could be up 3 percent of the coast-wide landings. When Jordan was on the call, he suggested that recreational landings alone should not be used to set de minimis due to the high percent standard error in some of the states with the MRIP data. The AP concurred with this statement.

Lastly, there was also one member that was not on the call for the advisory panel and he had sent in specific comments, which were included in your meeting materials. I just wanted to point that out to you. Then Kent Smith send in comments from Habitat Committee, and the Habitat Committee recommended a few change in some of the figures and suggested adding additional source information for the habitat section of the document.

I have those edits from the Habitat Committee, which, if it is okay with the board, I can make those before we finalize the document. It is just a couple of pieces on new information on some of the life stages at the larval, juvenile and adult section. Those are all the comments.

CHAIRMAN DANIEL: Are there questions for Toni? Yes, Ellen.

MS. ELLEN COSBY: Toni, on Table 2 of the document, PRFC was inadvertently left out.

MS. KERNS: We will make sure you get added in.

MS. COSBY: Page 15 shows our regulation.

CHAIRMAN DANIEL: Are there any other questions or clarifying comments for Toni? Seeing none; thank you, Toni. If there is a motion ready, we can take those. Rob.

MR. ROB O'REILLY: Well, I didn't have a question on the information, but I did want to comment my appreciation for Toni fitting in the Virginia hearing. I hope she had some fun over on the Eastern Shore. I wasn't able to attend. As she indicated, it was well attended. It is very tough for a state to see one hearing like smooth dogfish where there is no attendance in a central location; but going to the Eastern Shore, it is the area where this fishery is most appreciated both recreationally and commercially.

I also wanted to comment that there really is no evidence – at least there has been some really careful attention paid to black drum over the years. Through Old Dominion University and through a cooperative agreement with VMRC, we do see ages out to 64, which is the oldest age so far. The truncation in age distribution is not there, which is a good sign. However, I think this is good that there will be a stock assessment as something we should all look forward to.

**With that, I would like to offer a motion. I move adoption of Option 6 under recreational measures and Option 5 under commercial measures, so that states maintain all current recreational and commercial measures, except that all states shall establish a minimum possession limit and possession size limit by January 1, 2014, and a minimum size limit that shall be no less than 12 inches by January 1, 2014, and no less than 14 inches by January 1, 2016. On the recreational measures there is a companion possession limit for the size limit.**

DR. MALCOLM RHODES: I just want clarification, because you have a minimum possession limit; wouldn't it be a maximum possession limit?

MR. O'REILLY: It should be a maximum possession limit, but the possession limit is there just as a catchall on the commercial; and I think what I was going to say on the commercial some states do have a possession limit actually like you would for recreational fisheries. If you look at Table 2, other states have annual quotas or trip limits. It is a catchall word and it doesn't necessarily mean that any state would have to have, per se, a possession limit. It might be some other type of measure. But on the recreational fishery, obviously the companion is the possession limit and the size limit. I hope that clarified it.

CHAIRMAN DANIEL: Second by Mr. Cole. Is there discussion on the motion? Yes, sir.

MR. JOHN CLARK: I just had a question in terms of the 12-inch size limit is not actually in the options that went out to public hearing and neither is the time limit; so is there any problem with that or is that okay?

CHAIRMAN DANIEL: That is okay because it is within the range of alternatives, so it is not more or less restrictive than what went out to public hearing. I don't believe we will run into a problem with that. Tom.

MR. THOMAS O'CONNELL: Just for understanding; so under this motion states that already have possession limits will have to maintain those and states that do not have a possession limit would have to establish one by January 2014?

CHAIRMAN DANIEL: That is correct; that is my understanding. Is there any further discussion on the motion? Bill.

MR. WILLIAM GOLDSBOROUGH: I guess this is a question for Rob. Since with this stock we have established fisheries on smaller fish to the south and big fish to the north, it seemed to me – and sometimes we have had wastage of big fish in the north and yet I think everyone would



agree you don't need more than one of those in a day; it seemed to me from looking at all the options, that some kind of slot allowing one big fish would be the preferred way to go. I was wondering if that was considered, Rob.

MR. O'REILLY: Well, again, I think we would have to look at all the distribution of landings at size, which are not going to be complete to know just what effect the smaller size limit in the southern areas have compared to, say, a 16-inch limit in Virginia. I know I heard yesterday that very large fish are certainly present even below North Carolina.

This could be an interesting situation because we're getting a foothold for all the states to have something in place, a minimum size limit, and to get that increase; but this is a fishery from experience that even having a 16-inch size limit in Virginia, you wouldn't find a lot of 16-inch fish that are taken.

I don't know the southern states' landings quite as well by size, but I assume that is the case. I think that is the reason not to have the slot limit. I think the other part here is this is consistent with the advisory panel when they looked at that. The third part might be that if a slot limit is something for the future, we should go through the assessment process, see what that looks like, see if other areas are shaping up the way at least my familiarity with the Virginia area is that things do look pretty good. I think we need to go through that process.

MR. ROY MILLER: Mr. Chairman, let me state up front that I intend to support the motion and thank the makers of the motion. However, I wondered if they might consider a friendly amendment of adding a maximum possession limit. When I look at the chart of existing possession limits, all the states with the exception of Georgia that have a possession limit, their possession limit is five or fewer fish per person per day.

Begging the indulgence of Georgia, it sort of leads me to the conclusion that a reasonable possession limit as a precautionary measure in lieu of a stock assessment hasn't been conducted on this particular stock, if the makers of the

motion might consider inserting a maximum possession limit of five? Thank you, Mr. Chairman.

CHAIRMAN DANIEL: For the recreational fishery, Roy?

MR. MILLER: Yes, that is for the recreational fishery.

MS. KERNS: Roy, I think the intention, in my discussions, was that this would encompass both the possession limit or a trip limit, some sort of limit for both the recreational and the commercial fishery; and so do you have a suggestion, then, what would be needed for the commercial fishery? This was to put regulations in place in North Carolina because all states have a possession limit or a trip limit of sorts for both the commercial and the recreational fishery except for North Carolina. This was to just have North Carolina establish some sort of possession limit for both fisheries.

MR. MILLER: I have no specific suggestion for the commercial possession limit, so the wording that is up there would be adequate to cover the commercial. For recreational let me just suggest a possession limit of five to see if the makers of the motion would agree with that.

CHAIRMAN DANIEL: I will let them think about that for a minute and go to Tom.

MR. THOMAS FOTE: I think on this fishery, which is not a fishery that is in trouble, the states should be allowed to decide what their recreational bag limit is for the population that wants to fish in their states and the use they have for their fish at this time. In New Jersey we decided that after talking to our fleet, they only want three fish.

That is what they basically came up with and they can live with that. I don't know what other states basically do, how they basically promulgate their fishery or whether they take fish home to eat, and I don't really want to decide on putting a bag limit in arbitrarily just because I think it is right for New Jersey or for another state without really going through what that state feels about it and what their anglers

feel about it. We're not dealing with a stock that is being overfished or anything like that. We're just looking to put some regulations and guidelines in place.

MR. O'REILLY: I'm in a similar camp and really to just right now think about what that possession limit or bag limit should be, given the range where you have five to fifteen within the states south of North Carolina, makes it a little tough to do. Certainly, ten might be the place to look at, but I'd prefer that since the size limit is the big issue right now, that this should be revisited. I don't know what plans North Carolina has in terms of when it looks for a bag limit, but I think five might not be the right choice right now. I would not support it.

CHAIRMAN DANIEL: To that point, if the motion carries and the plan is approved, then I will be taking that information to my commission next week. I am expecting that I will get recommendations on how to move forward with a bag limit and a commercial trip limit to implement concomitantly with the new size limits.

That is my intent. I think you're right – I'm not trying to speak for or against Roy's suggestion, but just the opportunities that we have, we're trying to move precautionarily. That is what we've said all along. We've got a stock assessment coming. This is the original plan, but there is nothing that would prevent us from doing an amendment or an addendum in the future.

If North Carolina comes back with a hundred fish limit or something or a 20,000 pound trip limit that the board doesn't feel is appropriate, I don't anticipate that happening. I anticipate somewhere in the five to ten range with a 500 pound trip limit. That is what I expect, but they surprise me all the time, so it is hard for me to guarantee what we will do; but having that flexibility right now is probably good. Roy, did you have your hand up?

MR. MILLER: No, I accomplished my goal in stimulating discussion on this, so I'm not going to offer an amendment to the motion. I'll let the motion stand. Thanks.

CHAIRMAN DANIEL: Yes, we're usually pretty good at working things out around the South Atlantic Board. **Is there anything else on the motion? Seeing none; all those in favor of the motion raise your right hand, 11; all those opposed same sign; null votes; abstentions. The motion carries unanimously.**

MS. KERNS: The only other issue in the documents is the de minimis criteria. The board can consider allowing for de minimis. Because there are no monitoring requirements, typically de minimis gets you out of a monitoring requirement in the plan. Maybe in the future you will put in monitoring requirements, so you could go ahead and set those de minimis provisions now and then later on say what they would be letting you out of.

There were two options for de minimis, either to combine the commercial and the recreational landings or to have them separate and then 1, 2 or 3 percent of the last three years' landings for the board to consider. The technical committee did recommend to combine the landings due to the high PSEs in the recreational landings.

CHAIRMAN DANIEL: And I believe our technical committee recommended if we select a de minimis to use recreational/commercial combined; is that correct?

MS. KERNS: Yes.

CHAIRMAN DANIEL: What is your pleasure? We don't have to do it right now but we can.

MR. ROBERT H. BOYLES, JR.: **Mr. Chairman, I made a motion that we establish Option 2, recreational and commercial combined de minimis status at 1 percent.** That is what we have done typically, 1 percent.

CHAIRMAN DANIEL: Okay, motion by Robert Boyles; second by Bill Cole. Discussion on the motion? Is there any objection to the motion? **Seeing none; the motion carries unanimously.**

MR. BOYLES: Mr. Chairman, are you ready for a motion to recommend approval to the Policy Board?

CHAIRMAN DANIEL: That's where we are.

MR. BOYLES: **I would like to make a motion that the South Atlantic Board recommend the Commission approve the Draft Interstate Fishery Management Plan for Black Drum.**

CHAIRMAN DANIEL: Second by Mr. Meyers. Okay, move to recommend to the full commission approval of the Black Drum Fishery Management Plan as modified by the South Atlantic Board. Motion by Mr. Boyles; second by Mr. Meyers. All those in favor signify by raising your hand. This is a roll call vote; I'm sorry. Does anybody object? **Okay, without objection it passes to the full commission.** I'm going to recess the South Atlantic Board and turn it over to our Chair so that we can do the full commission action; and then those folks that stayed back can head home.

(Whereupon, a recess was held.)

CHAIRMAN DANIEL: I will reconvene the South Atlantic Board. All right, the next item on our agenda is a white paper from the state of North Carolina regarding Spanish mackerel and Toni will review the information that was provided by North Carolina.

#### **NORTH CAROLINA WHITE PAPER ON SPANISH MACKEREL**

MS. KERNS: North Carolina sent in a white paper for the South Atlantic Board to consider. There is a portion of the Spanish mackerel entering their estuarine pound nets during the months of August and September that are just under the 12-inch minimum legal size. When the nets are bunted and the fish are bailed, the undersized Spanish mackerel are difficult to release alive because they die very quickly unlike some other species that are caught in these pound nets.

An allowance for an 11-1/2 inch minimum size for these pound nets in estuarine waters during August and September could reduce the dead

discards. The majority of the North Carolina harvest for Spanish mackerel is in state waters. Less than 5 percent occur in federal waters. The majority of their landings are from their gill nets that averages about 92 percent.

Pound nets average about 6.7 percent of the landings. Their largest landing months in pound nets are in June and July. Their fishermen have reported an increased presence of fish a quarter to a half inch below minimum size, and these fish are dying in their pound nets. As a reminder, the most recent stock assessment for Spanish mackerel came out in 2012 through the SEDAR process and the stock is not overfished and overfishing is not occurring.

North Carolina is requesting that the board consider allowing their estuarine pound net fisheries for August and September to reduce the size limit to 11-1/2 inches to reduce or eliminate these dead discards that they're seeing. We would need to do an addendum to allow for this to occur. I don't know if you have anything to add, Louis.

CHAIRMAN DANIEL: Nothing really to add; just a clarifying point that this has been occurring now for several years. They are dead fish. The estimated pounds of fish that may be caught in this operation are around 10,000 pounds. It is possible there could be about 10,000 pounds.

The fish that are harvested under this provision would count against the coast-wide quota, so they would be counted against the quota even though they were undersized. That is the issue. There is really no other way that I know to address the problem. They're so small and bycatch reduction devices and other mechanisms that we have tried to come up with to avoid this have not worked. This is the one option that we tried to come up with and would like to get your approval to move forward with an addendum. Rob.

MR. O'REILLY: Michelle Duval contacted me and we had some e-mails back and forth. In the late eighties Virginia had a 5 percent tolerance for under 14 inches. I guess with the changes in the South Atlantic Plan at that time we removed

that 5 percent. That was done in 1995. Although when I spoke to Michelle Duval, she indicated that at least in the records it indicated it went off the books in 2006. It has been quite a while.

Virginia is not going to have the same situation that North Carolina has. There are only certain nets where that could happen. I think there is enough of a difference there regionally that I wouldn't want to say that this is something that should be looked at pretty closely in Virginia yet, but I certainly want to find out.

I certainly support what is trying to be done in North Carolina given the way the pound net operation is, and I would to just kind of look into this myself as we're going through this process to see if things have changed. We have lost a lot our pound nets over time, and it may be that this is not the issue it once was back in the late 1980's in Virginia.

CHAIRMAN DANIEL: Is there any objection to moving forward with an addendum to address this issue with the understanding that Virginia may add on to any document. Robert.

MR. BOYLES: Maybe not objection; I just need to know a little bit more about it. You have got a gear conflict that results in mortality of undersized fish with a minimum size on it. I just want to think about it.

CHAIRMAN DANIEL: Sure, and obviously I don't want to put staff through the addendum process if this is not something that the board would be interested in approving. If everybody is in objection to this, then obviously there is no need for staff to take the time to make this happen. I want to make sure everybody is comfortable with it. I don't know the solution.

It is not a directed fishery for Spanish. It is a multispecies gear. This particular pound net area; it is fairly isolated, right behind the Outer Banks. It is an age-old problem; a lot spot, a lot of butterfish, a lot of croakers; that type of fishery and just not knowing how to account for those. Just bailing those out has raised concern from the fishermen.

I don't know a whole lot more I can add to it, because it is hard to know precisely how much because they're discarded. We know through some very little observer work that it does occur and it is fairly substantial, a couple hundred pounds, and that is a lot of fish at that size. Spanish aren't very heavy-bodied. That is about all I can add to the issue at this point. Robert.

MR. BOYLES: Tell me what percentage of your quota or your allocation we're talking about.

CHAIRMAN DANIEL: It would probably result in about – I would probably less than 1 percent. Ninety-two percent I believe is gill net so the pound net – and they would not be allowed to retain those fish – only 6.7 I think it was percent of the entire North Carolina Spanish mackerel harvest comes from pound nets. This is less than 6.7 percent and it is probably down in the – below 1 percent would be my guess, but that is a guess.

MR. BOYLES: Okay, thank you, I'm comfortable.

MS. KERNS: I would need to know the timing. If the board does move forward with this, what the timing of this addendum would be. The white paper, as it was put on the meeting materials, is somewhat similar to an addendum if you take notice. In discussions with North Carolina, there was an interest in fast-tracking this addendum in order to try to have this measure in place for the 2013 fishery.

There is a possibility to turn this white paper around quickly and for the board – we really wouldn't make any changes to the document as it was besides putting a cover on it and a timeline. The board can consider approval of this white paper as an addendum to move forward and then for final approval in August; or, we slow it down to a regular addendum pace and it wouldn't be in place until the 2014 fishery.

MR. MILLER: Mr. Chairman, instead of embarking on the step that Toni mentioned, we just brought up the plan and there is a phrase in there regarding adaptive management and

specifically it references bag limits and size limits. I recommend we do this in the easiest way possible, and it seems a full addendum seems somewhat cumbersome for this particular change.

MR. ADAM NOWALSKY: I believe you had indicated that this was primarily an issue in the summertime, July and August, so is final approval of this in August going to help your fishermen?

CHAIRMAN DANIEL: It is specifically for August and September, so we would lose the first half of August, but then we would be able to implement – I could implement in 48 hours after the board approved the addendum in August, and that would give us the remainder of August and all of September. It is just specifically for August and September. It would only be allowed during that time of the year. I don't know of any other way to do it and not do something unusual.

MR. BOYLES: Mr. Chairman, based on the document here, the latest SEDAR the stock is neither overfished nor is overfishing occurring. I would make a motion that we proceed with the expedited process to develop an addendum to make this one specific change to reduce that minimum size of Spanish mackerel in the pound net fishery to alleviate and prevent wastage of dead discarded fish.

CHAIRMAN DANIEL: Second from Mr. Cole. Rob.

MR. O'REILLY: It seems open-ended. Are we going to target a timeframe for that as a suggested friendly amendment here? Most of the information was for the summer months.

CHAIRMAN DANIEL: Yes, the request from North Carolina was for August and September, and it is in the document. We can add that or not but it is in the document – it is in the addendum. Robert.

MR. BOYLES: Mr. Chairman, can you tell me what kind of report you will get out of the fishery; what you may be able to bring back to us in October?

CHAIRMAN DANIEL: Yes, we'll continue to sample the pound nets at the dock, so we will have length frequency distributions and be able to determine what percentage of the fish are those small fish and the disposition of those fish. We will have that information. I doubt we will have observer information between now and next year, but we may have it after that, and then we'd have even more information, but certainly the length frequency distributions of the catches. We'd be able to expand out and determine exactly how much – you know, account for all those fish that were retained at that size. Toni.

MS. KERNS: And North Carolina has committed to providing that information in their compliance reports to be reviewed by the technical committee and the PRT.

MR. O'REILLY: I want to make sure that North Carolina – when you mentioned the size, you had talked about 11-1/2 inches, I think. I'm not necessarily sure that has to be stated right now, but I am thinking again about the Virginia situation. There are undersized fish. It is just so limited compared to 15 years ago or so, but we do have sites down near Lynnhaven that you're familiar with, Mr. Chairman, and that has always been an area where you have some undersized Spanish mackerel.

What I'm wondering is when Virginia eliminated the 5 percent tolerance, it was because of the plan change or the amendment to the plan is the way I remember it back in 1995. It was a situation where it just had to be done, and there was nothing else to do. Now there seems to be – North Carolina seems to be, given the status of the stock, able to at least have this approach.

I just want to be sure that Virginia can come back under this motion – and I would think the timing is right, that if it is August and September, that would fill in as well for Virginia. Again, I will report back on that, but would like to be included at this time as Virginia representative.

CHAIRMAN DANIEL: So ordered. I think we can do that. Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Just a question probably to you, Mr. Chairman, on content of the addendum. Do you want options in there to allow this to sort of be a one-year pilot program with an extension by the board; do you want it to be an open-ended approval and then it goes on; or do you want to draft in there first and then you can see what it looks like?

There seems to be some discussion on let's potentially try it this year and see what length frequency distribution you guys come up with in your sampling and then the board wanted to look at that. I'm just thinking of different ways to give the board some more flexibility as they move forward and we don't get tripped up later on by folks saying we wish we had this flexibility in there when we go to final approval in August.

CHAIRMAN DANIEL: I would feel more comfortable with it as a pilot program, but I would ask for it to be for '13 and '14 since I'm only going to get a partial year this year. If we could do a pilot for 2013 and 2014 with a report back to the technical committee on the length frequency distributions, the impacts, the amount of harvest, et cetera, et cetera, that may give some folks that may have a little discomfort more comfort. Then if it was to continue, it would have to be at the order of the board.

EXECUTIVE DIRECTOR BEAL: Louis, we have set up other addendum where the board can take action to extend. We don't have to go back through the addendum process. Is that what you had in mind?

CHAIRMAN DANIEL: Yes, if that is okay with the board. Robert.

MR. BOYLES: That's fine. Rob, this is a very ambiguous motion. Would you like to try to perfect it a little bit? May I try?

CHAIRMAN DANIEL: You certainly can. I would rather you do it than me.

**MR. BOYLES: I would move to proceed with the expedited process to develop an**

**addendum to the Spanish Mackerel FMP to allow states to reduce minimum size to 11-1/2 inches for the fishing year 2013 and 2014. I will ask Rob is that too specific?**

MR. O'REILLY: For the pound nets.

MR. BOYLES: For the pound net fishery to eliminate the waste of dead discards.

CHAIRMAN DANIEL: Rob, are you comfortable with that, giving you the flexibility and latitude you need and are you comfortable with the pilot provision?

MR. O'REILLY: I think that's fine. Again, if in the document it is talking about August and September, then at least if we could say summertime or something like that, it would be a help, too, because it is a little open-ended on the timeframe. The reason I say that, if I may, Mr. Chairman, is I'm fairly sure that it might be even in late July to late August is more the Virginia time. I haven't thought about it for a little while, but we do sample those nets down there.

CHAIRMAN DANIEL: Yes, how about a parenthesis after 2014; July through September; and that way it kind of gives that latitude to factor in Virginia if it is a little earlier. That does set a limit. It is three months but we only requested two, but it might not be a bad idea to include July. Does that do it for the board? Robert.

MR. BOYLES: Rob, I'll ask the same question to the Commonwealth I did to Louis. You will be able in the compliance report to give us kind of a postscript on how this worked and what kind of landings you saw just to give us a sense of how the pilot program worked?

MR. O'REILLY: Yes, and I think right now we can tell you about the harvest aspects for Spanish mackerel. We also have sampling data; but again I wasn't kidding, it all depends on what kind of mood the fisherman is in whether he cooperates, but we will have some of that as well.

CHAIRMAN DANIEL: All right, is everybody comfortable with the motion while we're making all these friendly amendments? **Okay, the motion is move to proceed with the expedited process to develop an addendum to the Spanish Mackerel FMP to allow states to reduce minimize size to 11-1/2 inches for the fishing year 2013 and 2014, July through September, for the pound net fishery to eliminate waste of dead discards. Motion by Mr. Boyles; seconded by Mr. Cole. Is there any objection to the motion? Seeing none; the motion carries.** All right, the next item on our agenda is the technical committee report. The first part is the Florida Red Drum Recreational Measures.

#### TECHNICAL COMMITTEE REPORT

MS. KERNS: A while back Florida had changed their recreational measures for red drum. In November of 2011 the Florida Fish and Wildlife Commission moved forward with regional regulations and created three management zones; the northwest, the northeast and the south. They increased the number of red drum that the recreational fishermen can take per day in the two northern regions from one fish to two fish.

Then they established a state-wide vessel limit of eight red drum and a limited number of red drum that could be transported on land to six red drum per person. The South Atlantic Board has asked the technical committee just to review the change in those measures since they were taking place before the technical committee had an opportunity to review them.

The technical committee did review the change from one fish to two fish back in December and found that it would not threaten the status of the stock as was presented by the Florida Fish and Wildlife Commission information. The board did see the report from Florida I think back in August of last year, so the technical committee was fine with that change in bag limit.

CHAIRMAN DANIEL: So we don't need to do anything; it is just a piece of information.

MR. JIM ESTES: So we didn't follow the rules. I just learned about this the other day. I wasn't a part of this, but I'm responsible, though, so I was kind of like set as the lamb. I'm bearing my throat. I would like to give you a satisfactory explanation about why this happened, but I can't. We got in a hurry apparently. All I can tell you is that at least while I'm the administrative proxy, that I don't think this will happen again.

CHAIRMAN DANIEL: Thank you very much for that clarification. I don't think there was any harm. Robert.

MR. BOYLES: Louis, just a question and clarification for Toni. Doesn't the Red Drum FMP require the board to approve changes?

MS. KERNS: It was my understanding that you had approved the changes contingent upon the technical committee's review, but I will go back and confirm that. That was my understanding from the notes left from the last coordinator.

CHAIRMAN DANIEL: Is there anything else?

Okay, next is the black drum terms of reference.

MR. JORDAN ZIMMERMAN: I understand you guys have seen terms of reference for the tautog assessment earlier today, so this may look very similar to you. Essentially we have nine terms of reference here; the first one being characterize the precision of fishery-dependent and independent data used in the assessment, including the following but not limited to descriptions of each data source, a summary of biological data; describe calculation and potential standardization of abundance indices; discuss trends and associated estimates of uncertainty; justify inclusion or elimination of all available data sources and discuss the effects of the data strengths and weaknesses.

TOR Number 2; review estimates and PSEs of recreational fishing from MRIP; compare historical and current data collection and estimation procedures; describe data caveats that may affect the assessment.

Term Number 3 would be to develop simple empirical indicators of stock abundance characteristics and fishery characteristics; maybe possibly incorporating a spotlight approach for this. By the way, I should have mentioned that these are essentially the same for the stock assessment peer review terms of reference; the only difference being primarily that the peer review will be an evaluation of the same terms of reference.

Develop models used to estimate population parameters; for example, fishing mortality, biomass, abundance and biological reference points and analyze model performance. Through this we will describe stability of models; perform sensitivity analyses for starting parameter values and conduct other model diagnostics as necessary; clearly and thoroughly explain model strengths and limitations; describe history of model usage, its theory and framework; and document associated peer-reviewed literature.

We have considered multiple models to date and we will provide justification of the choice of the preferred model and an explanation of any differences in results among models. Also state assumptions made for all models and explain the likely effects of assumption violations on synthesis of input data and model outputs.

Characterize uncertainty of model estimates and biological or empirical reference points; recommend stock status as related to reference points, if that is possible and if available; develop detailed short- and long-term prioritized list of recommendations for future research, data collection and assessment methodology; also highlight improvements to be made by the next benchmark review.

Finally, recommend timing of next benchmark assessment and intermediate updates, if necessary, relative to the biology and current management of black drum. With that, if anyone has any questions.

MR. NOWALSKY: With respect to TOR Number 2, the recreational catch estimates based on MRIP, the black drum fishery is often a prosecuted recreational fishery at night, which

has had limited to no sampling, and that sampling effort through MRIP is going to get underway in the future, so you're not going to have that data to look at. How is that going to be incorporated here, if at all, into the assessment?

MR. ZIMMERMAN: We are aware of the concerns with nighttime sampling in MRIP, and the discussion so far by the technical committee have been that the coast-wide estimates – if you look at the PSEs of the coast-wide estimates, we're more confident with that, so it will probably be a model that looks at these coast-wide estimates as a whole as opposed to breaking it down to regions. I would like to add to that the issue as you pointed out with the PSEs are largely in the northern part of its range. I think we have a lot better estimates in the southern part of its range.

CHAIRMAN DANIEL: Are there any other questions on the TORs for the black drum assessment? Bill.

**MR. COLE: Mr. Chairman, I'm going to move board approval of the terms of reference.**

CHAIRMAN DANIEL: Motion by Mr. Cole; second by Mr. Woodward. Okay, move for board approval of the black drum terms of reference. **Motion by Mr. Cole; second by Mr. Woodward. Is there any objection to the motion? Seeing none; the motion carries.**

#### **PROPOSED RULE THAT DESIGNATES BEACHES AS CRITICAL HABITAT**

The next item on the agenda is just an item that I wanted to make sure everybody was aware of – and I'm sure they all are – the potential or the proposal to designate beaches as critical habitat for loggerhead sea turtles essentially from Beaufort Inlet, North Carolina, all the way down through Florida.

What I've done is instead of getting into a discussion and conversation about this, what I did was the Department of Environment and Natural Resources in North Carolina has put together a very good briefing document on this



issue that was done by multiple divisions in our department. I have sent that letter to Toni and Bob so that they can get them out to the board members in the affected states. Anybody else that wants them, you're welcome to get that information, but I just wanted to make sure – at the time I put it on the agenda, it was fresh and now I think everybody is familiar with it. I really don't have any more to add to that other than we will get you the letter from North Carolina for your information. Robert.

MR. BOYLES: Mr. Chairman, there has been a lot of chatter in the last couple of days because the deadline for comments is tomorrow. I'm not clear and can you share with me what the implications of this designation might be.

CHAIRMAN DANIEL: Yes, and I'm going to read some provisions of the letter. The state of North Carolina supports the protection and recovery of the turtles, but also has significant concerns related to the process used for this designation and the lack of clarity regarding regulatory impacts and the potentially significant economic implications.

It is not clear to us what the requirements may be from this critical habitat listing. It certainly will have impacts on any federally funded actions that occur. At least in North Carolina we have a lot of beach renourishment issues and those types of things that have got the local communities and towns extremely concerned about the opportunity.

What we have tried to do is put forward all of the things that we have been doing to protect sea turtles through our department. NMFS states that the designation of critical habitat in areas currently occupied by the loggerhead sea turtle may impose nominal additional regulatory restrictions to those currently in place and therefore may have little incremental impact on state and local governments in their activities.

The Department of Environment and Natural Resources disagrees and anticipate that the proposed rule impact a wide variety of coastal projects involving federal actions, including but not limited to coastal management activities; i.e., navigation and beach nourishment projects that

are permitted, funded or implemented by the U.S. Army Corps, hurricane recovery activities funded by the Federal Emergency Management Agency and federal grants for public access and infrastructure projects.

Those are some of the main concerns, Robert. It goes into CZMA consistency and various other issues as well as – and this was what kind of surprised me. They asked about economic impacts, and I didn't know that they ever considered economic impacts in the ESA issues, but they are here.

We have worked with the local communities basically from Beaufort Inlet to the North Carolina Line – at least North Carolina/South Carolina Line to estimate the potential impacts and the value of the beaches to coastal North Carolina and the potential impacts that may have if those beaches were closed or whatever.

I don't if it is a Chicken Little issue or not, but my biggest concern is the lack of access that has come from the National Parks Service in North Carolina off of Dare County. We have lost the driving on most of our Dare County beaches and that has had catastrophic economic impacts on the tackle shops, on the commercial fishermen, on a lot of folks in North Carolina.

That was done primarily through the court system to protect turtles and birds. There is this kind of sense that this is all kind of migrating south from Dare County and that they're going to start looking at core banks and then they're going to start looking at these areas and it may impact activities that are currently allowed. Now, the majority of the activities that I'm aware of occur outside of the turtle nesting time periods, so it may not have that substantive an impact, but there is that potential and we're very concerned about it. Are there any other questions on this issue? Is was really more for information, and, again, we will get that letter out to you ASAP. The next is Melissa or Toni or somebody us going to do the SEAMAP Report.

## SEAMAP REPORT

MS. KERNS: SEAMAP has not received information on funding as of today. We are hoping that we will get information soon. Once Melissa does get that information, what we will do is send an e-mail out to the South Atlantic Board. We can have that information and then provide an update if it is still pertinent at the August South Atlantic Board Meeting.

CHAIRMAN DANIEL: The South Atlantic members from the South Atlantic; do we want to take this opportunity as a board to request the SEAMAP information be handled and treated like the NEAMAP information to try to generate some indexes on Atlantic sturgeon? It is the SEAMAP Board.

We're not getting anything – it doesn't sound like we're getting a whole lot on the South Atlantic, and I think we're all equally concerned about this. The fact that they've done an analysis on NEAMAP, I think they could do one on SEAMAP and provide us with that information to at least to give us a hint on what it looks like.

I think one of the DPSs is exclusive to the South Atlantic, and so I think it is important for us to get that information for the South Atlantic states. Without objection, perhaps we could submit a letter requesting that analysis be done for SEAMAP data as well. Okay, do you have a preference on requesting SEAMAP, whether it comes from you or me?

MR. PAUL DIODATI: I think it should probably come from you.

CHAIRMAN DANIEL: Okay, thank you. Is there anything else on SEAMAP? Okay, the last item I have is to consider Red Drum Habitat Draft Addendum I for Public Comment. Toni.

## RED DRUM HABITAT DRAFT ADDENDUM I FOR PUBLIC COMMENT

MS. KERNS: The Habitat Committee, working with an intern that was at the Florida Fish and Wildlife Commission, put together a revision to

the habitat section of the Red Drum FMP. Typically what we do with these revisions to the habitat sections is do a 30-day public – or has the addendum out for 30 days if approved by the board for public comment with no hearings.

This habitat section has information on the spawning habitat, the eggs and larvae habitat, juvenile habitat, sub-adult and adult habitat for red drum. It also identifies and describes habitat areas of concern, the present conditions of habitat areas of concern specific to coastal spawning, estuarine spawning nursery, juvenile and sub-adult and adult habitat.

The document has a section that would identify habitat bottlenecks although there are currently no habitat bottlenecks identified for red drum. It then also discusses any ecosystem considerations that should be taken under red drum. What we're looking for is approval of this addendum for public comment.

**MR. COLE: Mr. Chairman, I move approval of the draft addendum for public comment.**

CHAIRMAN DANIEL: Second by Mr. Goldsborough. All right, move to approve Draft Red Drum Habitat Addendum I for public comment. Motion by Mr. Cole; second by Mr. Goldsborough. **Is there any objection to the motion? Seeing none; the motion carries.**

## ADJOURNMENT

All right, this takes us to other business. Is there any other business to come before the South Atlantic Board? Seeing none; we are adjourned.

(Whereupon, the meeting was adjourned at 12:25 o'clock p.m., May 23, 2013.)