PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

WINTER FLOUNDER MANAGEMENT BOARD

Crowne Plaza Old Town
Alexandria, Virginia
May 4, 2009

Board Approved November 2011

TABLE OF CONTENTS

INDEX OF MOTIONS

ATTENDANCE

Board Members

George Lapointe , ME (AA)
Pat White, ME (GA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Rep. Dennis Abbott, NH (LA)
Bill Adler, MA (GA)
Mark Gibson, RI (AA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)
David Simpson, CT (AA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)
Pat Augustine, NY (Chair) (GA)
Jim Gilmore, NY (AA)
Tom McCloy, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Gil Ewing, NJ, proxy for Asm. Albano (LA)
Craig Shirey, DE, proxy for P. Emory (AA)
Roy Miller, DE (GA)
Bernie Pankowski, DE, proxy for Sen.Venables (LA)
Harold Mears, NMFS
Wilson Laney, USFWS

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

Ex-Officio Members

Steve Correia, Technical Committee Chair

Staff

Vince O'Shea
Robert Beal
Kate Taylor
Chris Vonderweidt

Guests

Bob Ross, NMFS
Bud Brown, Georgetown, ME
Gil Ewing, NJ

The Winter Flounder Management Board of the Atlantic States Marine Fisheries Commission convened in Brenton Hall of the Hyatt Regency Newport Hotel, Newport, Rhode Island, November 5, 2009, and was called to order at 8:00 o'clock a.m. by Chairman Patrick Augustine.

CALL TO ORDER

CHAIRMAN PATRICK AUGUSTINE: Good morning, everyone, and welcome to the Winter Flounder Management Board Meeting. Welcome to the public, the few of you who are here. We have an agenda to follow. Remember if the item is on the agenda you can't bring it up. You can talk about it when we have motions on the table and so on. If you have something new that's not included, you're welcome to come to the microphone at the proper time and tell us about it.

APPROVAL OF AGENDA

CHAIRMAN PATRICK AUGUSTINE: We would like to look at the agenda. Are there additions, corrections or changes to the agenda? Seeing none, by consensus it's approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN PATRICK AUGUSTINE: Okay, approval of the proceedings from the May 4th, 2009 meeting. Is there any objection to approval of the May meeting minutes? Seeing none, they stand approved.

PUBLIC COMMENT

Is there any public comment at this time? Seeing none, we'll move on. Item 4, we'd like to talk about the approval of 2008 Winter Flounder Fishery Management Plan Review, and, Chris, I would like to have you please do that for us.

PRESENTATION OF THE 2008 WINTER FLOUNDER FISHERY MANAGEMENT PLAN REVIEW

MR. CHRISTOPHER M. VONDERWEIDT: This is a review of the 2007 state compliance, and it seems kind of old but that's because the reports are due in November. It's about a year since the states submitted their reports, and there have been numerous Winter Flounder Board meetings that we didn't really have time to put it on, including an emergency conference call. If you have any questions of why we're doing 2007 now, that's the reason why.

We went through this pretty thoroughly before, so I'm just going to go kind of quick. The Gulf of Maine Stock is likely overfished. The spawning stock biomass was 11 metric tons in 2007. The threshold is 2,050 metric tons. The target is 3,729 metric tons. Overfishing is probably occurring. The fishing mortality rate was 0.42. The threshold is 0.28 and the target is 0.21.

However, you'll notice that there is kind of unusual language there of "likely overfished and overfishing is probably occurring". I'm just going to read what the language was from the GARM. Biological reference points were generated, but the GARM III Biological Reference Point Review Panel recommended not using stock-recruit reference points due to uncertainty with the estimated recruitment.

They weren't a hundred percent approved. However, all models, both the VPA and SCALE Model, suggests spawning stock biomass is well below SSBmsy and is likely less than one-half SSBmsy. What this looks like graphically, on the right-hand side that's the spawning stock biomass. The number above that is the threshold, and the number above that is the target.

The Gulf of Maine landings have been decreasing since 1981. In 2007 there were 573,000 pounds of commercial landings, 81 thousand pounds recreational, which is about 14 percent recreational in the Gulf of Maine. Southern New England/Mid-Atlantic Stock, these reference points were approved. It's overfished.

You might remember the spawning stock biomass was estimated to be 9 percent of the target. It was 3,368 in 2007 with the target being 38761. Overfishing is occurring. It was about 250 times the target, 0.649 in 2007, and the target is 0.19 with a threshold of 0.25, so severely overfished. On the right-hand side there, the spawning stock biomass – and the scaling is different on this one, on the access, so way up at the top is the target, and below that is the threshold, but that's what 9 percent looks like.

For the landings in the Southern New England/Mid-Atlantic stock, they have decreased since 1981 as well. They're only 7 percent recreational, and the

commercial fishery landed 3.5 million in 2007. The recreational management measures – and I'm just going to point out that the Addendum I to Amendment 1 that board approved on a fast-track timeline was not in effect for 2007, so we're not considering those regulations when going through and reviewing state compliance.

If these seem different than what you remember, it's because we are looking back. The Gulf of Maine is 12-inch minimum size limits. There was an eight-fish creel limit. There were no closed seasons. The recreational management measures in Southern New England/Mid-Atlantic were a 12-inch minimum size limit; slightly higher, ten-fish creel limit. There is a maximum 60-day open season, which can have no more than two weeks closed during March or April, and you can't split that into more than two blocks.

The commercial management measure in the Gulf of Maine is a 12-inch size limit. You need to have consistent regulations with the adjacent EEZ mesh size, which is 6.5 inches stretch mesh, and maintain the existing seasonal closures, including federal closures. In the Southern New England/Mid-Atlantic commercial, there is a 12-inch minimum size limit and 6.5-inch size mesh in the cod end of the net – if you wanted to use smaller size mesh, there is a hundred pound mesh trigger or a bycatch allowance for smaller mesh – and also maintain the existing seasonal closures.

Monitoring requirements, there are the monitoring requirements. Amendment 1 requires states to continue their surveys of annual juvenile recruitment and spawning stock biomass. Massachusetts, Rhode Island, New York and Delaware all have surveys that collect juvenile recruitment information; and spawning stock biomass, Massachusetts, Rhode Island, Connecticut, New Jersey.

This is more detailed in the report going through what they caught in these surveys and the specifics on each survey. *De minimis*, landings have to average less than 1 percent of the coast-wide fishery for the last three years. It can be achieved in the recreational and/or commercial fishery based on catch from each sector, so you could qualify for recreational but not commercial or vice-versa.

It only excludes you from monitoring requirements. There is no exclusion for management measures. The Gulf of Maine compliance, all states meet or exceed the requirements, and there were no *de minimis* requests. Southern New England-Mid-Atlantic, all states meet or exceed all requirements of the FMP. Delaware qualifies for that less than 1 percent commercial and recreational for the last three years, so that would be 2007, 2006 and 2005 in both their commercial and recreational fisheries.

The states that have annual assessment requirements as part of Section 3.1 and 3.2, -- and this includes the spawning stock biomass requirement – all have continued their surveys. The action for consideration would be to improve the FMP Review and approve *de minimis* for Delaware recreational and commercial.

CHAIRMAN AUGUSTINE: Thank you for that report. Doug Grout, do you want to make a motion?

MR. DOUGLAS GROUT: No, sir, I do have some questions. First of all, just for clarification, this is the 2007 fishing year review, but the cover on this says January 2007 to December 2008 Fishing Year. It probably should be 2007.

CHAIRMAN AUGUSTINE: Yes, would you correct that, Chris?

MR. VONDERWEIDT: I will.

MR. GROUT: Page 4 under Section 2, the second paragraph I think is out of date. It says 46th Northeast Regional Stock Assessment Workshop began assessing stocks with a data-poor workshop in 2008; the final independent peer review will be available in late 2008 or 2009. I think that whole paragraph can probably be struck.

CHAIRMAN AUGUSTINE: We'll strike that.

MR. GROUT: Then on the two graphs that you have biomass, I'm a little bit confused about how that graph can be both total and spawning stock biomass. How can you have both on that graph with a bar graph? Isn't that spawning stock biomass?

MR. VONDERWEIDT: Yes, that's a good question; I'm not sure. I took these from the GARM Report, but I will look into that. I think you're right; it should be spawning stock biomass and not total biomass.

MR. GROUT: I believe so, too. Then the only other thing that I had a comment on is I was looking at the pattern, if you could put that back up there, particularly for Gulf of Maine, and maybe somebody can explain this but the graph that's here is different than anything I've found in the GARM Report, at least the trends in the last four years.

Maybe Steve can explain it, but if I look Page 69 of the GARM, which is the SSB graph, propose the base and VPA and split VPA – we don't have this sharp drop off in SSB and then it increasing. The only thing I'd ask is if you would take a close look at that and compare it to this graph. Maybe there was another graph someplace in here that shows that, but I couldn't find it in GARM III.

MR. VONDERWEIDT: Well, there were different models used, and these were the final numbers that they came up with from the GARM. I mean it's directly taken from there.

CHAIRMAN AUGUSTINE: More questions, Doug, or is that okay?

MR. GROUT: I couldn't find it.

MR. GEORGE D. LAPOINTE**: I was going to make a motion if that's acceptable to approve the 2007 plan review and to approve *de minimis* status for Delaware's commercial and recreational winter flounder fishery.**

CHAIRMAN AUGUSTINE: Seconded by Jim Gilmore. Any questions on the motion? Mr. Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, this isn't a question on the motion, but it's a question on one of the graphs. The graph on Page 5 showing the Southern New England stock, it just seems very strange to me that if you look at the graph on top of that, which shows Gulf of Maine where you're up and down from the targets and the threshold and the biomass, millions of pounds, is like at nine.

Then you look at the Southern New England and the target is way up at 80-something, and the threshold is way up above – anywhere, from 1981 it's never reached it, and I'm just wondering how they came up with such a high target and a high threshold for the Southern New England area. It looks like you'll never be able to get up to the threshold given that one; whereas, the other one, the Gulf of Maine, you know, you're flexing near it, but the other one seems way out of whack. When did that ever get put that high?

MR. STEVE CORREIA: Well, the history of this particular reference point, they started off using a surplus production model in 1988, and the biomass reference points were fairly low from that model, but the model wasn't stable. They had some properties that were less than desirable in terms of monitoring where you are in the reference points.

I believe in about 2001 they had a workshop where they reviewed all the reference points, and they went to a model that used a spawner/recruit relationship and their relationship between the F and how much spawner per recruit you get. Then, based on the asymptotic recruitment in the system, if you multiply all those things out you end up with X sort of a threshold.

At the GARM III the reference points were reviewed again. They took out the spawning stock per recruit relationship and they used the average recruitment on the time series, which you then multiply by the spawning stock biomass per recruit that is expected under the F that's in the system for the reference points. That's how you get those lines.

Now the Winter Flounder Fishery in Southern New England is a very old fishery, and we're only getting the time series back to '81 because of the recreational component on there. In order to rebuild up to that SSB, not only do you have to achieve the Fs to rebuild the SSB, but you're also going to have to get the types of recruitments that we saw early in the series, and we haven't seen those recruitments in 25 years.

CHAIRMAN AUGUSTINE: Okay, thank you, Steve. Does that help you, Bill?

MR. ADLER: Well, sort of. It was just that if you look at the two charts, the Southern New England target and threshold is way higher than the target and threshold of the Gulf of Maine thing. It looks like – you know, it has been put up there and it could never ever get reached. It just seems very strange to me, and that the target is up near 80 to 90 whereas the target for Gulf of Maine is only at about nine. For whatever reason, I just want to make that clear that I just find that very strange, but I'll stop here.

CHAIRMAN AUGUSTINE: Thank you, Bill. We have Mark Gibson.

MR. MARK GIBSON: For Bill' sake, I wanted to amplify Steve said. It's something that has been very interesting to me in my career with Southern New England Winter Flounder. I have been looking at for a long time and hope before I retire to put a fairly substantial report together. But as Steve said, the Southern New England Winter Flounder has a very long exploitation history.

In fact, they were building hatcheries at the turn of the 20th Century at Woods Hole and Bar Harbor, because it was a perceived decline in abundance, and

that decline in abundance reached such a status in the 1930's that they convened a massive tagging exercise. In fact, they released about 5,000 fish right near Woods Hole.

The exploitation rate on those fish at that time was about three times what the reference point is, so the bottom line is this thing has been overexploited for many decades, so it's likely that it existed at very biomass levels at one time and it has a huge history of overexploitation. It has been overexploited virtually continuously except for a couple of years during World War II and maybe another time in the late sixties and early seventies.

It is not surprising to me that the biomass reference points are very high given what this thing has produced in the past. It has just been overexploited for so long it can realize those anymore. That's view of it. Thank you.

MR. G. RITCHIE WHITE: Mr. Chair, Mark made the point I was going to make much more eloquently. In layman's terms to me, Bill, it's that those lines are high; it's that the population is low, I guess. That's the way I took it.

CHAIRMAN AUGUSTINE: Thank you for that, Ritchie. Do you rest your case, Bill? Okay, you gave up, that's good. All right, George, would mind including in your motion the fact that we made some changes to the document – we're taking something out – with corrections as noted this morning.

MR. LAPOINTE: That's fine.

CHAIRMAN AUGUSTINE: Any further discussion on the motion? David Simpson.

MR. DAVID SIMPSON: Doug brought up a question about is the graph right and Bill has asked, and it does look odd to me. I'm happy with approving it if Chris will just go back and double-check that figures are accurate.

CHAIRMAN AUGUSTINE: Absolutely! Any further comments or questions. The motion is on the table? Move to approve the 2007 FMP Review as amended today and *de minimis* status for Delaware. Motion by Mr. Lapointe; seconded by Mr. Gilmore. Are there any objections to the motion as presented? Are there any objections to the motion as read?

Seeing none, the motion carries. Okay, we're on to the next item, which would be discussion of the New England Fishery Management Council Amendment 16 and the ASMFC management. Mr. Correia, I know you love to give us all the history, but can you keep it clear and brief this time. David Simpson.

DISCUSSION OF THE NEW ENGLAND FISHERY MANAGEMENT COUNCIL AMENDMENT 16 AND THE ASMFC MANAGEMENT

MR. SIMPSON: Yes, just one thing before Steve gets started. I was looking if the package included Addendum I for Winter Flounder. Page 7 talks about commercial possession limits, 50 pounds for winter flounder in Southern New England, and we have had a conference call where there was an alternative "or 38 fish" that should be in here, right?

CHAIRMAN AUGUSTINE: Who are you asking, Chris or Steve? It would be Chris.

MR. VONDERWEIDT: It was a board motion to accept 38 fish as well as 50 fish, but that wouldn't include going back and changing the actual addendum itself.

MR. SIMPSON: Just how will we keep the record of that, then? I've already adopted regulations that say "either/or", and I'm going to need something to refer back to. Well, Bob has an answer.

CHAIRMAN AUGUSTINE: Thank you for that point, David. Any comments from the board relative to that? Bob Beal, please.

MR. ROBERT E. BEAL: I think it's kind of our standard practice of how we approve conservation equivalency proposals, which is essentially what this is. The motions from that board meeting are basically the record.

CHAIRMAN AUGUSTINE: Thank you, Bob. Does that satisfy your need for information, David? Thank you. Okay, now we'll move on to Steve Correia.

MR. CORREIA: All right, I guess what I'm tasked with today is to give a summary of Amendment 16 and Framework 44 as it relates to winter flounder. The amendment is quite complex, so I'm going to go over the details – not the details; I'm going to hit the highlights of it. The details will be in the amendment.

Amendment 16 has been submitted in the final document. It's out for comments right now, but it is

proposed, and some of the things may change when it becomes a final rule. For the ASMFC action in Addendum I was to try and mimic the reductions that were seen in the interim action for Southern New England and Mid-Atlantic Winter Flounder.

We have a two-fish bag limit for the recreational side, which was seen as a 46 percent reduction, approximately; and a commercial 50-pound trip limit, which is approximately a 65 percent reduction. For Gulf of Maine Winter Flounder, the interim action was trying to get down to the Fmsy level. That was an approximate 11 percent reduction.

For the commercial, because of the uncertainty in the analysis, we ended up with a 250-pound limit, which comes out to about 31 percent reduction, which was more than what the interim action was looking for, but as you will see when we get into Amendment 16 and where it's going, it's going to match up quite well with it.

For Amendment 16, there are several components to it. One is the status determination criteria, so the reference points have changed a little bit. They have now something called ABC control rules where we set a catch – and I'll go over that – that will be constraining and will almost act like a hard quota.

Amendment 16 had what they called sectors; and what happened is for those who go with the sectors, they're going to get a percentage of the total catch. They'll get an annual catch entitlement, and they'll work as a group to decide how to take the catch. For vessels that do not want to joint sectors, they will remain in the common pool, which I will call the government sector.

Basically for this group of vessels, they're going to have mortality reductions and controls similar to what we have in the groundfish right now. There has been a specific allocation of Gulf of Maine cod and haddock between the recreational and the commercial sectors, but we don't have that for winter flounder. They eliminate the days-at-sea conservation tax on leasing.

There will be specific area reporting that will have to go to basically four areas like the Gulf of Maine, Georges Bank, Southern England – and I can't remember what the fourth one is. Then the Southern New England Winter Flounder Special Access Program is suspended until the stock improves.

For Framework 44, which is in development, it's going to have the specifications for the allowable biological catch and the annual catch limits plus the accountability measures. For the reference points, the Gulf of Maine, the target biomass is roughly 4,000 metric tons of SSB. The threshold becomes about 1,896. The Fthreshold is 0.28 and the MSY is about 917. These numbers are a little bit different than what we have in the ASMFC Plan.

For Southern New England Winter Flounder, the target biomass is around 39,000 tons. The threshold biomass that triggers rebuilding requirements is about 19,000 tons. The Fthreshold is 0.28 and the MSY is approximately 10,000 tons. Again, these figures here would have to be updated in the ASMFC Plan to keep these things consistent.

As reviewed earlier, the Southern New England stock is severely overfished with the SSB being less than 9 percent of the biomass target, and the overfishing is almost three times, two-and-a-half to three times higher than the reference point. Amendment 13 had a phased approach, in which case they were trying to get at Fmsy, and then in 2008 see how much you got towards the target and adjust for it.

During that time period the fishing mortality rates were exceeded and the recruitment was less than what was projected, and so you fell way behind the Amendment 13 rebuilding F. For Southern New England, it didn't rebuild by the 2014 rebuilding period even with an F of zero, and that's what led to the no possession rule and so forth.

For the Gulf of Maine Winter Flounder, the assessment was not accepted so the status remains unknown, but the peer reviewers concluded that it was likely overfished and overfishing was occurring. Unfortunately, we cannot estimate a rebuilding plan because we can't do projections and we can't estimate quotas for the stock, and so those ABCs will be set in a different manner, but most likely the fishing mortality rates on the Gulf of Maine stock will be taken care of by the other measures going into Amendment 16, which will impact the inshore Gulf of Maine.

Some those stocks are Gulf of Maine cod, Cape Cod/Gulf of Maine yellowtail and witch flounder. Amendment 16 is going to give you some new terminology. You're going to have an OFL, which is the catch that is projected to occur at Fmsy. We're going to have an allowable biological catch of ABC, which is the OFL reduced to account for the scientific uncertainty.

These are recommended by the New England Fisheries Management Council Science and Statistical Committee. Below that we have the annual catch limits or the ACLs, and that is going to be a catch limit that if exceeded is going to trigger some accountability measures. The ACL, this is from the ABC by accounting for uncertainty in the management.

These ACLs are going to be broken up into various sub-components, different fisheries, recreational, state waters and so forth. The Groundfish PDT made several recommendations in terms of how to set the ABC Control Rule. After much work, the SSC recommended that you set the ABC at the fishing mortality rate at 75 percent of Fmsy. If the 75 percent Fmsy does not rebuild within the specified rebuilding period, then you will use Frebuild to set the ABC.

If it doesn't rebuild within a period of F equals zero, the ABC should be based on the incidental bycatch that is unavoidable, and then that bycatch rate should be reduced over time to try to lower the F. Interim ABCs should be determined for stocks with an unknown status on a case-by-case basis. For the Gulf of Maine Winter Flounder, they're looking at 75 percent of the last three-year average of the catch for that.

Preliminary estimates of the OFL for Southern New England Winter Flounder are listed up in here, and it goes from roughly 1,600 tons to 2,080 tones. This is given a projection increase in the exploitable biomass over that time. The question goes what should be catch be when F equals zero, and the plan development team ran some models to see what the bycatch would be given that people are going to continue to fish in some of the areas for the discards.

The ABCs were set at about 600 tons to 900 tons to about 1,200 tons. This includes all components, so it's the groundfish fishery, scallops, recreational and so forth. For the Gulf of Maine stock – and this one is kind of interesting because we really don't have an assessment or projection, but the OFL is based on the assessment that was rejected and the projections, and so you're looking at 400 to 700 tons here, but notice that the ABC is constant, 238 tons, and that's 75 percent of the recent three-year average catch.

The ACLs are going to be set every two years. The overage is going to be evaluated by the PDT and then adjustments will be made in a biennial adjustment plan. We're going to have sub-ACLs assigned to components in the fisheries with accountability measures if they exceed their ACL. In general you're going to hear about 95 percent going to the groundfish fishery and then this 5 percent to other components to the state waters.

Because most of the winter flounder recreational catch occurs within state waters, there is no allocation to the recreational catch because the New England Council can't manage that. So, Framework 44, these are very preliminary numbers, but you can see for 2010, for Southern New England Winter Flounder the OFL is 1,600 tons.

The ABC is 644; the total ACL is 605, and it's broken into 53 tons for state waters, 32 tons for the sub-components which are unidentified sources, but include things like scallops and the small-mesh fishery and so forth; about 520 tons for the groundfish; zero go into the sectors; and the non-sectors get 520. None of this, with the exception of state waters, can be landed so they'll all go over the side. Something like this, these numbers will occur for 2011 and 2012.

For Gulf of Maine Winter Flounder, again we see the OFL, ABC, ACL for 2010. This will actually be constant through 2012. The numbers go 60 tons for state waters, 12 tons for sub-components, 158 for groundfish. Based on preliminary sector rosters, of this 158, 132 will go into sectors and 26 will go into the non-sectors. Again, these are all very preliminary numbers. They'll be finalized once the sector rosters are finalized.

For the common pool vessels, their adjustment mechanism will be based on differential days-at-sea adjustments if they exceed the OFL. Also, trip limits can come into place. This will be in 2010 and 2011. In 2012 the system is going to change for the common pool, and basically you're going to have a hard TAC system overlaid with the total ACL being broken down into trimesters.

If the quotas get taken within the trimester, then you're going to get area closures that will happen specific by stock unit, but you need to understand that for some of these, if another species that overlaps in the range with Southern New England Winter Flounder causes a closure, if the area overlaps with winter flounder, that also will close.

For the recreational catch there will be adjustments to seasons, minimum size or bag limits, but again the New England Fisheries Management Council doesn't authority over state waters for this, so this will be probably be something that the ASMFC would have

to do. For both of these, the measures will be decided by either the council, the National Marine Fisheries Service or the National Marine Fisheries Service in consultation with the council.

A brave new world with sectors, and basically you're going to have an allocation of resources to self-selecting groups of fishermen that will form a sector. The sector has to have a plan and an analysis to show how the sector will avoid exceeding their TACs. There have to be provisions for having dockside monitoring, at-sea observer programs. They're going have to have reporting requirements both for landings and the discards.

The sectors will get an exemption from the days at sea. They get exemptions from trip limits and they get an exemption from some seasonal closures and rolling closures in the Gulf of Maine if they ask for it and they get approved. There are restricted gear areas, so, for instance, for the non-sector vessels, they're going to start off with a 50 percent cut in the days at sea, and the days at sea are going to be counted in 24-hour increments.

Once they get fishing, any part of the first day will be charged 24 hours; if they fish 25 hours, then they will be charged another 24 hours on that. There are new restricted gear areas, and so, for instance, over here you have the use the haddock separator trawl. As I was saying before, for the accountability measures for the non-sectors, they'll get adjustments for the days at sea. If many stocks are exceeded, then what will happen is you'll get a general cut in the days at sea. If it's specific to a stock, we'll go back to having a differential days-at-sea counting area.

Under Amendment 16, starting in 2010 there are no differential days-at-sea counting area left. Again, as I was saying earlier, in 2012 you're going to have a hard TAC, the area closures when about 90 percent of the TAC is taken. For the Gulf of Maine, that area is 514, which is off of Massachusetts Bay and Stellwagen.

For Southern New England, it's almost the whole stock area, 521, 526, 537, 539, 612, and 613. These are the Mid-Atlantic. This is the area east of the Cape. This is like in the Nantucket Shoals Area, so 537 is south of Nantucket. Again, other species will have different areas, but they'll close and then these other stocks within their area will be impacted.

Finally, there is a small-mesh drop-chain requirement throughout this whole area here in Southern New England, so anybody with a federal permit and using the small mesh will have to use these drop-chains, and that should reduce the catch of benthic species like winter flounder. That's Amendment 16 and Framework 44 in a nutshell. I think it's a couple of thousand pages long, but it's worthwhile reading. I think the comment period is open until sometime in December. Maybe Harry can mention what that is.

CHAIRMAN AUGUSTINE: Great report, Steve, very concise and clear. Thank you very much. Ritchie White, you had your hand up.

MR. R. WHITE: Mr. Chairman, a quick question and then a followup, if I may. When would the next stock assessment be scheduled?

MR. CORREIA: I'm not sure; I think 2011, which is the next time when I think winter flounder is scheduled for 2011.

MR. R. WHITE: At that stock assessment, the results of that stock assessment, if it shows that we are not on our rebuilding schedule, will it be possible to see the impact of the more liberal commission's regulations in Southern New England, if those regulations are a big factor in us not reaching the rebuilding schedule and accountability measures are implemented in federal waters, how would that work?

MR. CORREIA: I think the first thing is that there would be two components to the rebuilding. One would be the fishing mortality rate, and you compare that to what is expected under the plan. So we say, well, whatever those numbers were that I had up there – it's like 500 tons or something like that – and so if you were exceeding that 500 tons, then the mortality wasn't under control.

The accountability measures will be measured whether or not you exceed in this year 600 tons, so that's what triggers the accountability measures if you go over this 600 tons, and so it's unrelated to the assessment. But when we get to the assessment we can look at how much catch was taken and we might be able to break it down into state waters versus what is thrown over as discards and get some sense of the relative importance of each of the components with it. That's what I would expect.

CHAIRMAN AUGUSTINE: Ritchie, follow up, and then I think I would ask Harry Mears if he might want weigh in on clarification for this.

MR. R. WHITE: So the stock assessment should be able to give us the information of the impact of our more liberal state waters' regulations?

MR. CORREIA: I think you're going to be able to see it right from here because what is going to happen is right now we're predicting that the state waters' catch will be about 53 tons based on the ASMFC – well, it's the whole catch in there. So what happens is if this number goes above 53, then you're exceeding what you may be doing.

So, again, unrelated to the assessment, this will trigger whether or not you're meeting your goal. For the assessment, what we will get out of that is what is the fishing mortality rate, how high was it, how did the spawning stock rebuild compared to the projections, what was the recruitment coming in, and those sort of things.

CHAIRMAN AUGUSTINE: Thank you, Steve. Harry, why don't you intercede and give us some kind of clarification to that issue?

MR. HARRY MEARS: Mr. Chairman, there are essentially two opportunities for public comment. In response to Steve's summary of the extension of the interim action there was a Federal Register Notice that was published on October 27th, and that is open for a 30-day period, until November 27th on extension of the interim action.

Now, at some point, concurrent with that, there should be an opportunity for public comment on the Environmental Impact Statement for Amendment 16. That in turn will be followed by yet a third opportunity for public comment on a proposed rule for Amendment 16. My best projection would be that would likely be mid-December or so, the public comment, so we have actually three opportunities for public comment. One is open now until late November. Another opportunity will soon be announced that will likely be for another 30 days, and yet the concluding one on the proposed rule will be likely mid to late December.

CHAIRMAN AUGUSTINE: Thank you for that clarification. Does that help you, Ritchie?

MR. R. WHITE: Yes, I guess I would ask Harry further if we go over the ACL and accountability measures are required in federal waters but the cause is coming from state waters, you would have no ability to affect the harvest in state waters yet accountability measures would have to be placed on the vessels in federal waters; would that be correct?

CHAIRMAN AUGUSTINE: Harry, could you respond to that, please.

MR. MEARS: You're going into waters unchartered. I think you're essentially correct. I don't know exactly how we would respond to that situation.

MR. SIMPSON: A couple of things; I guess the first coupled inspired by the previous question. So, from this table what we're seeing is that just over 90 percent of the mortality expected on winter flounder will occur in federal waters versus state waters?

MR. CORREIA: Yes, and it has always been the state waters' component is a much smaller component of the whole stock, although the importance to the state waters is occurring on the fish as they're moving in and out of their spawning grounds. I mean we manage on the whole stock, but clearly the thing is made of an aggregate of smaller spawning components.

MR. SIMPSON: I think that's an important point for a state to consider is that the mortality that occurs closest to home is most likely to affect the local stock; so the more you do close to home, the better it is for your local stocks. The second question related – a related question is what is the assumption of discards that was made – on the percent of dead discards here, you're estimating that there will be 550 metric tons dead winter flounder at the end of they year; what percentage are you assuming would survive after being caught?

MR. CORREIA: I think the assumption is a hundred percent mortality on this. The way that this is done for here is for a vessel that's fishing and it looks at whether or not they can be more profitable by continuing to fish in the area and throwing the things over the side as opposed to moving out. So things like the days at sea reductions and trip limits and those sorts of things that will be in place goes into the model that looks at this and how the fishing effort is distributed across the various areas given the limitations of days at sea and so forth.

MR. SIMPSON: So, therefore, the commission plan, unless 50 pounds of bycatch inspires directed fishing, should not be expected to produce anymore mortality on winter flounder; is that right. Since you assume that anything encountered is going to die, then the 50-pound bycatch, if it doesn't inspire directed fishing, is simply converting dead discards into landings?

MR. CORREIA: Yes, the real question is how much of an incentive you have to fish at 50 pounds along with everything else that you're catching at the time that you're doing it. Now, probably, if you're directing on just winter flounder, there are not too many people that are going to be profitable if the only thing they're catching is 50 pounds of winter flounder, but it there are other things that they're catching at the same time, then they could continue to fish and throw things over the side and so forth.

MR. SIMPSON: Actually, a follow up to that and then the questions I was originally going to ask. So, again, the states should pay attention to any circumstances where even 50 pounds of bycatch could result in some directed fishing; so if states were looking to reduce their mortality even further, they should look for opportunities to perhaps close their fishery when – you know, we're talking state waters, so they can be very small boats.

We have 20-foot skiffs that would target on 50 pounds, and certainly it's my intention to try to address that through regular regulation-making. There isn't anything in the commission plan that gives us the tools to do that or we would have done it already in Long Island Sound. I think both New York and Connecticut would have.

So the questions I had, could you put the screen up that shows where the drop-chain requirement is, and I just wondered if you knew enough about that gear technology to tell me if that's something that might be applicable to the small inshore vessels. Could a boat towing – a 30, 40, 50-foot boat that's towing a proper scaled net; is this a practical thing to consider for state waters?

MR. CORREIA: I imagine it would be. I haven't seen the studies on these types of nets. Basically, what it does is it is raising the footrope off of the bottom so the benthic stuff goes away. Now, when you do that, depending on what people are fishing for, is like – for instance, we have a raised footrope trawl that goes on in Cape Cod Bay.

One of the requirements that Massachusetts put in there is that you couldn't land benthic things, so you can't land lobsters, monkfish and everything else. It stops somebody from messing with the thing and getting it on the bottom. The comment I wanted to make about the state waters – and I think this is something that is really important to watch – is whether or not there is going to be a shift effort into state waters given the restrictions that are going to be happening with federal permits, either people giving up their permits or if a vessel does away with it and tries to get into the state waters; whether or not you get that kind of directed effort into state waters.

I know some states have moratoriums so that they cannot get new permits, but I'm not sure if that's the case for everyone. For the days at sea, I think they're looking at an average for the common pool vessels as currently thought of in terms of who is registered. They're looking at about 12 days at sea on average would be their fishing year, so I think there is going to be some strong incentives, if you can sell your permit and move to a less restrictive system.

MR. GIBSON: Quickly, on a drop-chain trawl, I think the answer is yes. I'm not sure how small it can be scaled down, but we have a requirement for the summer flounder sector. We're experimenting with it. Within one mile of the Rhode Island coast, they have to fish with this sort of gear, and that was done to alleviate concerns that our so-called summer flounder sector would catch all the recreational fish available.

What we've seen so far in the observer records that we have and discussions with the sector members is it is highly effective in avoiding catch of summer flounder, winter flounder, any of the bottom-going species. If it's of interest to the commission, I could back in February with whatever information we have on the effectiveness of this so-called drop-chain trawl, which is being pioneered in Rhode Island. We should have some pretty good data by then on observed trips versus unobserved trips that didn't use the gear and so on, and the size of vessels that deployed it.

CHAIRMAN AUGUSTINE: Without any objection, we should try to do that. We didn't have a comment from the advisory panel; did they have anything to say on this all, Bud?

MR. BUD BROWN: No.

CHAIRMAN AUGUSTINE: Thank you very much. John Tulik, did you have anything on enforcement that we would want to know about now? Okay, we're okay there. Okay, let's go to the audience. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, really quickly, the ASMFC regulations went into effect for the states in November of this year, and the 53-ton number that Steve put up there, it would seem that it might be appropriate for the board to sort of get an update on that a year from now

to see in fact if there has been any kind of an effort shift. Thanks, Mr. Chairman.

CHAIRMAN AUGUSTINE: Thank you, Vince. To the public now; Mr. Leo.

MR. ARNOLD LEO: I'm speaking here based on conversations I've had with Bonnie Brady of the Long Island Commercial Fishermen's Association, who in public hearings on this Amendment 16 brought up the fact concerning the drop-chain; that there is no science to support the claim that this would reduce the catch on winter flounder.

I'm interested to hear today from Mark Gibson that indeed now there are some studies ongoing. However, this is a little bit backwards to include something in the amendment that will become a requirement before the science has indicated whether this drop-chain is in fact effective. It would seem in the interest of scientific management that drop-chain requirement should be eliminated from Amendment 16 until the science demonstrates that in fact it is effective.

The concern is the small-mesh trawl fishermen that we're at least conversant with out of Montauk say that this is going to have a very detrimental effect on the squid and whiting catch through the use of these drop-chains. It's something that will have a detrimental impact on fisheries that are not in trouble. I think that it just is not a sound approach to management to include something like this when there is no science yet to support it. Thanks.

CHAIRMAN AUGUSTINE: Thank you, Arnold. As you will recall, Harry Mears said this document was going to go out to the public and will have three more opportunities for public input to respond to that, and I would suggest that Bonnie Brady and her organization might want to respond accordingly with comments that you have made on the record. Any further comments from the board. George Lapointe.

MR. LAPOINTE: Just in response to Arnold's, as I recall the alternative was closing the area to all fishing, and so it was trying to give people some opportunity. If he wants an alternative, it's to close the area to all groundfish fishing, which would have a detrimental effect on the catch of those other species for fishermen as well.

ADJOURNMENT

CHAIRMAN AUGUSTINE: Very good point. Any other comments from the board? Are there any other issues to be brought before this board? If there is no other business to come before the board, is there objection to finalizing this and saying goodbye to everybody? Seeing none, we are adjourned.

(Whereupon, the meeting was adjourned at 8:57 o'clock a.m., November 5, 2009.)