

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

**The Westin Crystal City**  
Arlington, Virginia  
May 2, 2018

**Approved February 5, 2019**

**TABLE OF CONTENTS**

Approval of Agenda, Chairman David Pierce ..... 1

Approval of Proceedings, February 2018 ..... 1

Public Comment ..... 1

Review and Consider Rhode Island’s Proposal on Commercial Trip Limits..... 1

    Overview of Proposal ..... 1

    Technical Committee Report ..... 2

    Law Enforcement Committee Report ..... 5

    Consider Approval of Rhode Island’s Proposal ..... 5

Adjournment ..... 12

## INDEX OF MOTIONS

1. **Approval of agenda** by consent (Page 1).
2. **Move to accept the RI proposal allowing any SNE/MA state to enact, as a 2 year state-enacted pilot program, a permit program allowing for a 250 lb. weekly aggregate limit subject to daily reporting requirements, VMS and background checks** (Page 1). Motion by Bob Ballou; second by Ritchie White. Motion fails (Roll Call: In Favor – ME, RI; Opposed – NH, MA, CT, NJ, NMFS, USFWS; Null – NY). (Page 8).
3. **Motion to adjourn** by consent (Page 12).

**ATTENDANCE**

**Board Members**

Pat Keliher, ME (AA)	David Borden, RI (GA)
Steve Train, ME (GA)	Matt Gates, CT, proxy for P. Aarrestad (AA)
Doug Grout, NH (AA)	John McMurray, NY, proxy for Sen. Boyle (LA)
G. Ritchie White, NH (GA)	Maureen Davidson, NY, proxy for J. Gilmore (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Emerson Hasbrouck, NY (GA)
Raymond Kane, MA (GA)	Jeff Brust, NJ, proxy for L. Herrighty (AA)
Rep. Sarah Peake, MA (LA)	Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)
David Pierce, MA (AA)	Tom Fote, NJ (GA)
Jason McNamee, RI (AA)	Alison Murphy, NMFS
Bob Ballou, RI, proxy for J. McNamee (AA)	Mike Millard, USFWS

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

**Ex-Officio Members**

**Staff**

Robert Beal	Megan Ware
Toni Kerns	Jessica Kuesel
Mark Robson	

**Guests**

Joe Cimino, NJ DFW  
Craig Pugh, RI DEM

The Winter Flounder Management Board of the Atlantic States Marine Fisheries Commission convened in the Jefferson Ballroom of the Westin Crystal City Hotel, Arlington, Virginia; Wednesday, May 2, 2018, and was called to order at 3:30 o'clock a.m. by Chairman David Pierce.

*(Recording begins following Welcome and Call to Order, and then begins at Approval of the Agenda.)*

#### **APPROVAL OF AGENDA**

CHAIRMAN DAVID PIERCE: I see no interest in making any changes; so therefore we will accept the agenda by consent.

#### **APPROVAL OF PROCEEDINGS**

CHAIRMAN PIERCE: The proceedings from February, 2018, they've been made available for a while. Do I have a motion to approve the proceedings from February, 2018?

Okay so moved by Doug Grout, is there a second? Okay, by Bob Ballou. Are there any objections to adopting the motion? I see none; therefore the proceedings from February, 2018 are approved.

#### **PUBLIC COMMENT**

CHAIRMAN PIERCE: Next on the agenda is an opportunity for Public Comment regarding any issue pertaining to the winter flounder management that is not on today's agenda.

I don't have anyone signed up to speak, therefore I will assume that there is no interest; unless a hand shoots up, and I see none. Therefore, we will go on to the next item.

#### **REVIEW AND CONSIDER RHODE ISLAND'S PROPOSAL ON COMMERCIAL TRIP LIMITS**

CHAIRMAN PIERCE: This is a meeting of the Board that is to deal with one issue; and it's an issue that has been raised by Rhode Island, and that is to Review and Consider Rhode Island's Proposal on Commercial Trip Limits.

This is final action on that which has been proposed by Bob Ballou and his colleagues; in order to deal with that proposal, and Megan is going to provide an overview. At the same time she is going to provide the Technical Committee report in response to their proposal. Afterwards, we'll turn to Bob Ballou and ask for any comments he may have regarding the proposal that he has presented. With that said we'll turn to Megan for her presentation.

#### **OVERVIEW OF PROPOSAL**

MS. MEGAN WARE: As a reminder, Rhode Island submitted a proposal requesting the consideration of aggregate weekly limits in the Southern New England/Mid-Atlantic commercial winter flounder fishery. At the February meeting the Board tasked the TC with investigating potential impacts of the proposal.

Today the Board will consider a response to this proposal. I'm going to start by reviewing the current measures. I'll go through the Rhode Island proposal, also go through the TC report, and then Mark Robson will be able to provide the LEC report. Addendum I implemented a 50 pound per day possession limit in the Southern New England/Mid-Atlantic commercial fishery.

This was in response to the 2008 stock assessment; which concluded that the Southern New England/Mid-Atlantic winter flounder stock was severely depleted, with a spawning stock biomass at only 9 percent of the target biomass. At the time the Board did consider a moratorium. However, there were concerns about discarding and the collection of fisheries dependent data. Overall the intent of Addendum I was to achieve the lowest possible F rate; while minimizing economic and social impacts, and solely to allow for bycatch.

In 2013 NOAA removed the moratorium in federal waters; and allowed for the directed harvest of winter flounder. However, in state waters the 50 pound possession limit remained. The Rhode Island proposal is proposing aggregate weekly limits in the Southern New England/Mid-Atlantic commercial fishery.

It is intended to first provide greater flexibility to state waters fishermen; and increase their efficiency, so that they could land similar amounts of fish in fewer trips to reduce the bycatch generated in state waters fisheries, to allow federally permitted vessels to pursue other species in state waters without being constrained by a low winter flounder possession limit.

Overall, it is to even the playing field between state and federally permitted harvesters in the winter flounder fishery. There are three options presented in the proposal. The first is a 250 pound per week limit; which would be year round. The second is a 350 pound per week limit, between the months of April and June, and November and December.

Then, during all other months it would go back to the 50 pound possession limit per day. This second option is aimed at limiting harvest to periods when winter flounder move in and out of state waters. Then the third option is a 250 pound per week limit; again year round, with the development of a permit program that would require captains to report daily via SAFIS, and acquire vessel monitoring hardware.

This third option affords management and enforcement the most control over the program.

#### **TECHNICAL COMMITTEE REPORT**

MS. WARE: Moving into the TC report, the TC met via conference call March 6, and April 17, to analyze the potential impacts of this proposal. The data used in the analysis includes trip level landing reports for state-only permit holders from 2014 through 2016.

While the proposal is from Rhode Island, the TC did look at data from Massachusetts through New Jersey; since that is the Southern New England/Mid-Atlantic stock. The data includes any trips which landed at least one pound of winter flounder, as well as the species name

and poundage of other species landed on the trip.

Vessels with a federal permit were not included in the analysis; since those vessels are limited by hard quotas. I'll just note; as we go through some of the figures. The New Jersey data was confidential. It's shown in any aggregate figures; but there was some analysis on a state-by-state level, and I'm not able to show that.

As a first step, the TC analyzed trends in the data. This figure is showing the number of winter flounder trips in 2016 by week and state. The Y axis is the number of trips; and the X axis is the week and the year. The four colors represent the four different states. The TC report does show these figures for 2014, 2015, and 2016. However, the trends are pretty similar, so I'm just going to focus on the 2016 figures today. The figure illustrates that most trips are occurring in Rhode Island; which is the purple color, with a significant number of trips also occurring in New York, which is the green color. The figure also shows clear seasonal trends in the fishery; with most of the trips occurring in late spring. Then there is a smaller pulse of effort at the end of the year. If we go to the next slide, the figure is very similar; but this time it's showing the pounds of winter flounder landed in 2016, by week and state.

Here the Y axis is pounds and the X axis is again weeks in a year. Similar trends here; the figure is showing that most of the landings are occurring in Rhode Island and New York, which are the purple and blue colors. The figure also highlights; and perhaps a little more prominently, the increase in effort in the spring and at the end of the year.

The TC also explored trends in individual states to determine if fishing behavior or activities differ throughout the stock. This slide is showing the distribution of catch per trip in Connecticut and New York; with the X axis being pounds of winter flounder landed per trip, and the Y axis being number of trips.

On the next slide I will show Massachusetts and Rhode Island. Together these states are exhibiting

somewhat of a bimodal pattern; in which there are a number of trips which landed very few winter flounder, and then a number of trips which harvested at or near that 50 pound possession limit.

You will also notice a few trips which were above the 50 pound limit. This could suggest that there are some issues with compliance in the fishery. These are similar plots for Rhode Island and Massachusetts. With the exception of 2014, Rhode Island does not seem to have that similar bimodal pattern; with the majority of trips in 2015 and 2016 landing less than 20 pounds of winter flounder.

In Massachusetts, particularly in 2014 and 2015, there are a large portion of trips which harvested at the trip limit; and it's these cluster of trips near that 50 pound mark, which may indicate regulatory discarding in the fishery. As a next step the TC investigated the current targeting behavior for state permitted fishermen.

For the top figure here the X axis is pounds per trip; and the Y axis is the proportion of trips in that bin. Only 10 percent of trips were at or near the 50 pound mark; and 2 percent of trips were above that limit. The bottom figure shows the proportion to which winter flounder contributed to total landings on a trip.

Of all the pounds of species landed on a trip, what percentage was winter flounder? Overall, relatively few trips appear to be exclusively directed on winter flounder; so in 2016 less than 6 percent of trips were majority winter flounder. Together these figures are showing that there is little directed fishing effort in the Southern New England/Mid-Atlantic stock by state waters fishermen.

This means that that 50 pound trip limit is achieving its stated goal of solely accounting for bycatch. As a third part of the TC report, the TC did attempt to predict changes in fishermen behavior under an aggregate weekly limit; and

they did this through projections. There were two projections considered. The first is the 250 pound per week limit, and the second is the 350 pound per week limit between April/June and November/December. Those two projections are coming from the Rhode Island proposal. The TC also considered two scenarios for each projection. These two scenarios are intended to represent different changes in fishermen behavior.

The first one assumes that each harvester lands the full aggregate limit in a given week. I'm going to refer to that as the Full Participation Scenario. The second is a bit more conservative. It assumes that harvesters who landed greater than 50 pounds in a week will land that full aggregate limit.

However, a harvester who landed less than or equal to 50 pounds in a given week will just land 50 pounds a week. I'm going to refer to this as the Tiered Participation Scenario. For some quick methods, the calculations were based on pooling all of the 2014 to 2016 data by year, and then breaking the pounds of winter flounder caught by participant trip into week-sized bins.

For Scenario 1, which is that Full Participation Scenario, we multiplied each participant in a given week by the aggregate limit and summed. For Scenario 2, which is that Tiered Participation, for participants in the Tier 1 we multiplied by the aggregate weekly limit, and participants in Tier 2, we multiplied by 50 pounds.

This figure is showing the results of the projection for the 250 pound per week aggregate limit. The different color bars represent different scenarios. The blue bars represent Scenario 1, which is that Full Participation Scenario. The red bars represent the Scenario 2, where it's Tiered Participation, and then the orange bars represent the reported landings.

Here we have the X axis is the week and the year; and the Y axis is pounds. Overall this projection suggests that an aggregate weekly limit could lead to increases in landings. If you sum all the bars you would get the projected landings for the full year. If

you sum all of the blue bars, you would get the projected landings for that scenario.

In that Full Participation Scenario, which is again the blue bars, it is 6.4 times higher than the reported landings. In the Tiered Participation Scenario, which is the red bars, it's 2.6 times higher than the reported landings. This is the projection for the 350 pound per week aggregate limit; so very similar.

Again, the blue bars are the Full Participation Scenario; the red bars are the Tiered Participation, and the orange bars are the reported landings. Similarly the projections are suggesting that that 350 pound per week aggregate limit during parts of the year could lead to increases in landings. If you sum the bars again, you would get the projected landings for the full year.

Under that Full Participation Scenario, it's roughly 6.3 times higher than the reported landings. For the Tiered Participation Scenario, it's roughly 3 times higher than reported landings. Based off the projections and the current low levels of targeting in the Southern New England/Mid-Atlantic winter flounder fishery, the TC does believe that the behavior of state waters fishermen will change, and landings will increase under an aggregate weekly limit. The influence of an aggregate weekly limit on discards is a bit harder to predict. If there is greater incentive to catch the full limit, then there may be more fishermen harvesting at or near the weekly limit. That could perpetuate regulatory discarding. It's also difficult to determine if expected increases in landings will lead to overfishing. These are two plots from the 2017 stock assessment. That assessment concluded that overfishing is not occurring. However, SSB is at or near record low levels; with little evidence of rebuilding.

Finally, the TC just had some additional notes for the Board to consider. The first is that an aggregate weekly limit may result in increased

fishing by federally permitted boats in state waters. That would change the geographic distribution of effort. The second is that increased landings from state permit holders could alter the state waters subcomponent; as well as the sub ACLs for federally permitted vessels.

The reason for this is that a three-year average of landings from the Southern New England/Mid-Atlantic state waters is used to develop a state waters subcomponent. State water subcomponents do not have any accountability measures; and they are intended to estimate catch in state waters; so that they can be accounted for in the overall ACL. As a result, if landings increase the state waters subcomponent would also be expected to increase.

While this may be an advantage for state waters fishermen, this could be to the disadvantage of federal fishermen; given their overall ACLs might decrease to compensate for the increase in state waters landing. Finally, for some states including Rhode Island, winter flounder is not a limited entry fishery. As a result, aggregate weekly limits could result in increased effort and participation. That is the TC report. I will pass it to Mark for the LEC report.

CHAIRMAN PIERCE: Before Mark gives his report, I wanted to thank Megan for all the work she and the Technical Committee put into this particular issue; and frankly I'm very glad that Rhode Island raised this as an issue, because winter flounder really hasn't gotten much attention in the Southern New England and Mid-Atlantic area for a long time.

As a consequence of this analysis, this review, we know a lot more than we knew before. It's very important for us to have this appreciation; the New England states notably. Certainly Rhode Island and Massachusetts, because so much attention has been paid to the subcomponent set aside by the New England Council for state waters fishing for non-federal permit holders.

This analysis definitely will be of use to the New England Council as it moves forward with this discussion on groundfish. Thanks to the Technical



Committee for this very comprehensive analysis and review of the Rhode Island proposal. With that said I'll take questions of the Technical Committee; as soon as Mark gives his presentation. If you would, Mark.

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

MR. MARK ROBSON: The LEC got an excellent presentation yesterday during our meeting by Megan; outlining the proposal from Rhode Island, and we had an opportunity to discuss it at length. It was pointed out; in particular for Rhode Island that they currently have an aggregate limit situation for the summer flounder fishery. That is an enforceable program. What helps that program, as it was pointed out, is that the permit holders in that summer flounder fishery are also required to undergo a background check; which helps to ensure that you get good compliance and that you've got good folks in the program with those aggregate limit allowances. We did want to highlight that as we've indicated before in our enforceability guidelines, sometimes weekly aggregate limits can be troublesome from an enforcement perspective; and the main reason for that is because it does reduce some of the agility of an enforcement officer at the docks to deal with a situation where there may be a violation occurring.

Because in addition to just looking at, or measuring, or counting fish, you would have to then go back and do some independent verification using logbooks or some other mechanism; to see if they're still within their aggregate limit. That does create a bit more of an enforcement challenge for officers working at the docks.

But in looking at the three proposals from Rhode Island, the Law Enforcement Committee was supportive of Option 3; which would include for the winter flounder weekly aggregate limit the vessel monitoring and permit program. If possible, even including the background check system, similar to what is

used for the summer flounder fishery in Rhode Island.

There was some follow up discussion on the good aspect of looking at an individual fishery like this; particularly in state waters. If there's an opportunity to add a vessel monitoring system to those kinds of fisheries. In general the Law Enforcement Committee was very supportive of those kinds of activities; if they could be developed, Mr. Chairman that is my report.

#### **CONSIDER APPROVAL OF RHODE ISLAND'S PROPOSAL**

CHAIRMAN PIERCE: Questions of Megan or Mark. Tom Fote.

MR. THOMAS P. FOTE: Megan, in New Jersey we don't allow any mobile gear; it's all fyke net fishery for winter flounder, with you know a 50 pound limit. Are the other states fyke nets and mobile gear or just mobile gear, Rhode Island and Massachusetts?

MS. WARE: I would have to look to the other states to answer that. I think it's primarily mobile gear. I'm getting a nod for primarily mobile gear; at least from the Rhode Island contingent.

MR. FOTE: What about Massachusetts?

CHAIRMAN PIERCE: Primarily mobile gear; any other questions of Megan or Mark? David Borden.

MR. DAVID V. BORDEN: A couple of quick points. The analysis I guess, there is a little bit of disconnect. Maybe I'm misinterpreting this; but there is a little bit of disconnect. The way I understand the proposal, if the Board approved this under Alternative 3, which was recommended by the Enforcement Committee, then basically Jason and his staff would have the option of starting a program and looking for people to opt into the program.

In other words they would keep the current 50 pound limit in place; but individuals that wanted to

exceed the 50 pound limit would have to fish in accordance with the provisions of Option 3, which means they have to have VMS. It's probably going to be a one minute ping rate; so enforcement will know exactly where the boats are. As soon as it's all in state waters they'll know where the boats are at all times. They would have to report via the reporting system that is associated with the VMS unit. In fact, I think the Rhode Island staff has met with Ferabiti to work out the details of how that reporting would take place. Where I think there is disconnect is when the technical analysis was done, I think they assume that they scale up the landings based on historic participation.

But in my own view there is very little likelihood that everyone is going to participate in this program; it would be a small subset. Most of these people are not going to want to pay \$700.00 to access that type of technology in order to go out and catch a couple of fish. It's going to be a small group.

I think that the analysis of that option is too conservative; but we could all debate how much more conservative it is. The second point is that Rhode Island has limited access. It's not that they don't have limited access. They've had a limited access program for most permits. Halfway through my career there we basically instituted limited access. What they don't have is a winter flounder only permit; that's different. There is a limit on the number of permits.

CHAIRMAN PIERCE: Excuse me David, but I've given you latitude. These are not questions these are comments.

MR. BORDEN: Okay, my question then is; is my assumption correct about the analysis that really the analysis is more conservative than what will actually take place and what was proposed by Rhode Island. That's a question.

MS. WARE: The analysis only looked at those two fishermen behavior scenarios. It did look at

the one where if a fisherman landed less than 50 pounds he stays at the 50 pounds; and if it's greater than 50 pounds he or she would go up to that aggregate limit. But it didn't look at VMS or things like that that might already exist on a vessel.

CHAIRMAN PIERCE: Jeff Brust.

MR. JEFF BRUST: I appreciate the presentations from Megan and Mark. If I may, I do have a question for both of them. Megan, this might be a tough one for you. Maybe someone in the room will know; Jay, you're still here right? Do we know what proportion of the total harvest the inshore commercial fishery contributes?

MS. WARE: To all of winter flounder landings?

MR. BRUST: Yes. If the inshore, the state waters commercial landings increased by 2.5 or 6 times, what might that mean for total landings overall?

MS. WARE: I have the numbers here; give me one second.

MR. BRUST: Maybe while she's looking that up, a question for Mark. To the Law Enforcement Committee, your recommendation was for Option Number 3. Is that your preferred option over status quo, or is that your preferred option of the three options that were presented?

MR. ROBSON: That was our preferred option of the three options that were presented.

MS. WARE: All right, so I'm just going to read off numbers; and hopefully these answer your question in some capacity. For 2016 those are the numbers I have. The total catch in the Southern New England/Mid-Atlantic winter flounder fishery was 597 metric tons. For state waters it was 26 metric tons; and then of those state waters, 11.8 were from the commercial fishery.

CHAIRMAN PIERCE: Go ahead, Jeff.

MR. BRUST: The 26 was commercial and recreational combined?

MS. WARE: And discards.

CHAIRMAN PIERCE: Any further questions of Megan or Mark? Follow up question, go ahead.

MR. BORDEN: Yes, follow up to that question. Megan, when you looked that up, what portion was Rhode Island, is the question; 26 total from state waters and then what portion is Rhode Island?

MS. WARE: Yes, I don't have that number right in front of me. Looking from the figure I would say it was at least 50 percent; but that would be my best guess, at least 50 percent or higher. Sorry, I don't have that exact number.

CHAIRMAN PIERCE: Adam.

MR. ADAM NOWALSKY: Are we looking at doing this through specification; or would this require an addendum? If we're not doing this through an addendum, how would we reconcile this action with the most recent language we have in Addendum I, that says we're achieving the lowest possible F, and our goal is solely to allow bycatch?

MS. WARE: Acceptance of the proposal would take a Board motion; not an addendum. I think reconciling that language is something for the Board to consider in your deliberations. If you feel that the proposal still meets that language in the addendum.

CHAIRMAN PIERCE: All set, Adam? You look like you're thinking. All right, if there are no further questions of Megan or of Mark, I'll turn to Bob Ballou and ask Bob; if there is anything else you would like to add for Board consideration.

MR. BOB BALLOU: First and foremost, on behalf of the entire Rhode Island delegation, we want to thank the TC for their excellent work; and I would echo your sentiments expressed earlier, and that is I think we've already learned a lot just from this proposal and the response to it

from both the TC and the Law Enforcement Committee. Whether there is an opportunity to advance is what we're about to find out. But again, I want to really credit the excellent work done in developing some very good information; that frankly we didn't have available to us prior to this proposal. I think we've already made some advances. Secondly, I just want to remind the Board of the context of this proposal; and that is when Addendum I was adopted in 2009, establishing the 50 pound per day limit that was during a time when at the federal level a moratorium was in place. It was indeed intended to maintain the state water fishery as a bycatch only fishery; to complement the federal water fishery, if you will, which was essentially closed.

That changed in 2013 when NOAA Fisheries lifted the moratorium; and allowed fishing in federal waters under the Sector Program, where there really are no possession limits whatsoever. The vessels participating in the Sector Program obviously are fishing in accordance with their ACE. Then those fishing in the common pool are subject to daily possession limits which are often set at 2,000 pounds per day.

At that point, starting in 2013, there arose significant disparities between the federal waters program and the state waters program that have perpetuated over the years; and really created a disconnect in terms of management of the commercial winter flounder fishery in Southern New England/Mid-Atlantic region. In part this proposal is aimed at addressing that.

But importantly, this proposal is aimed at maintaining the state waters fishery as a bycatch fishery; recognizing that with an allowance for a weekly aggregate program, there may well be benefits with regard to fishing mortality associated with reduced discard mortality. With that focus, and with the benefits of the analysis and the LEC review in mind, I would like to make a motion. I've provided it to staff; so I believe it's ready to be put up. I'm going to tweak it a bit, Jess, so if you could follow along with me.

**Move to accept the Rhode Island proposal allowing any SNE/MA to reflect Southern New England and Mid-Atlantic state to enact, as a 2 year state-enacted pilot program, a permit program allowing for an aggregate 250 pound weekly aggregate limit subject to daily reporting requirements, VMS and background checks.** I want to add background checks. If there is a second to the motion I'll be happy to speak more to it.

CHAIRMAN PIERCE: All right, is there a second. Ritchie has seconded the motion. All right, before you speak to the motion I've just got a question for you. It's relevant to the discussion we will have. The motion that you have made that departs from the charge that was given to the Technical Committee, to some extent. You're including all states as well. Are you concerned that this particular motion will require additional work by the Technical Committee; since this opens the door for other states to get involved, if they so choose?

MR. BALLOU: Respectfully Mr. Chairman, I'm not aware that it was ever advanced as a Rhode Island only proposal. In fact I believe the record reflects I went back and looked at the meeting minutes and there was I think a brief exchange, indicating that it was certainly our intent to make this a program that would be available to any state fishing in the Southern New England/Mid-Atlantic region.

We're looking to carry that forward. My representation, and I would certainly look to Megan for her sense, is that the Technical Committee analyzed the proposal with this in mind that is the program applying to any Southern New England state, not just Rhode Island.

MS. WARE: Yes that's correct. At the February meeting the request to the TC was to consider this not just with Rhode Island in mind; but for any of the Southern New England/Mid-Atlantic states.

CHAIRMAN PIERCE: Thank you, Megan, all right Bob, continue to speak to the motion.

MR. BALLOU: I really don't have much more to add. Frankly, I was just going to highlight that very issue that we just had an exchange on; that it is intended to apply to any Southern New England/Mid-Atlantic state, and there are only a small number. But they know who they are. What we've added here is that this would be the new element, if you will is a two-year pilot program.

This is a proposal that's limited in scope and time; very restrictive in terms of entry into the program, noting all of the requirements that one would have to meet in order to gain entry into the program. Very much a de facto limited entry program; and one that we think will generate additional information and data to augment and build upon the very good work already done by the Technical Committee.

The intent of this would be to see if there is interest; and to be honest with you we don't know the level of interest given the very stringent requirements for entry into the program. But to the extent that there is interest in participating on the part of Rhode Island fishermen, Connecticut, Massachusetts, New York, New Jersey.

This would allow for data collection with particular emphasis on discard, harvest to discard ratio information that I think would really enhance our understanding of the state waters program, and potentially lead to an opportunity to maybe expand this if there is a basis for doing so. That is the key focus here; is two-year pilot program with stringent entry requirements available for any state in the region to implement if they see fit.

CHAIRMAN PIERCE: All right thank you, Bob. Does anyone care to speak to the motion? I'll speak with you, Ritchie, and then Tom.

MR. G. RITCHIE WHITE: I seconded the motion; because it's a two-year pilot program, so it sunsets, and it would take a vote of this Board to expand it beyond that. I guess one question is should the

motion include what the two years are? When does it start, what fishing years?

CHAIRMAN PIERCE: Clarification.

MR. BALLOU: I think that is a very fair request. I would actually welcome Jason McNamee's thoughts on this; and perhaps at the public microphone. I'm going to suggest that it would be for the 2019-2020 period.

CHAIRMAN PIERCE: It would also be helpful as we comment upon the motion as presented by Bob Ballou; and as seconded to offer up Board perspectives as they pertain to the Technical Committee review, especially what was noted in the discussion part of the report, and also the unintended consequences that the TC has raised. I would be derelict in my duty as Chair if I didn't emphasize the fact that the TC has expressed some serious reservations about this particular proposal. Tom Fote.

MR. FOTE: I'll give a little history lesson. It was also at the advice of the Advisors that basically on winter flounder they came to this Board, and basically recommended a moratorium back in that period of time, because they saw the crash of the winter flounder stocks. I know, because I personally was the person that made the motion to allow it open for 2 fish recreationally and 50 pound daily limit.

Mainly because I was looking at most of our gear was fixed gears, fyke net fishery, so the gear was going to be in the water catching white perch and everything and then we would have a bycatch of winter flounder. I didn't think it would cause any more problems to the moratorium. As a matter of fact I did the same thing on weakfish.

As soon as I did it on weakfish, before it was even in place a year, one of the states came back and said oh, because you didn't say conservation equivalency couldn't be used, came back with 1,000 pounds instead of 100 pounds in the weakfish. All of a sudden that

changes that fishery from a bycatch fishery to a directed fishery.

Again, this is what we're doing here. We're basically taking a bycatch fishery that just happens to be on bycatch, and we're going to turn it to a directed fishery. When you look at 250 pounds of winter flounder at \$4.00, \$5.00 a pound boat vessel price probably at that period of time, because there isn't any other fish. It also becomes as it's an inshore fishery, so it's not where they're traveling offshore. They can make a dollar at this so they're going to do it.

This is a stock that has not recovered. It is no better off than when we put this in place; well how many years ago? I kind of forget what the years are, but I remember what I said back then, and we haven't seen any recovery whatsoever. Is this sending the right message on stocks that are fully depressed? We came in with weakfish with the same problem or the same suggestion. I have the same concerns.

There is no showing that it's going the other direction. I'm not sure why. Well, I think I know why, but it doesn't look like fishing pressure. When we opened up the federal government through New England Council for the direction of our former Northeast Director, basically said that we should have 5,000 pound trip limits on winter flounder.

We all went crazy around this table; because we were afraid of what the impact of that would be on the stocks. We don't know, because they took it off on the error. Some of us felt it was a response of the yellowtail fishery collapsing, so they wanted to give a little bone to them. I mean this is a stock that is in serious, serious trouble.

We consider we really almost, moratorium was this close to coming off, and that was a last minute thing. Has anything changed since that period of time? Are we now looking that this might have 2.5 times the effect or 6 times the effect on a stock that is fully depressed; that should be in a moratorium, but we're allowing it to stay open, just to collect some biological data? I don't know what we're doing here then. I mean I really can't believe we're

proposing this; because when you go to 250 pounds or 350 pounds, it is a directed fishery, because the money involved is there. If it was as stock that could handle it, but this is a stock that we know is down the tubes. I don't see anything right now, any sign from NMFS, any sign from the stock assessment that show that it's recovered by one iota.

Now, if it was basically where you can concentrate on the offshore stocks, the Georges Bank stocks, they don't seem to have the same problem. We're having that problem with estuarine dependent fish that are basically spawned in the estuary with all the other factors; estrogen and everything else that is in there, and seen the effects of their sex lives.

I mean the study that was done in Jamaica Bay, and I wish we would have done some more studies, looked at the female to male relationship in Jamaica Bay. It was 16 to 1, 17 to 1, 14 to 1, and 15 to 1 female to male; which probably most of the time should be just the opposite, it should be more males trying to attack the females and basically make the eggs fertile.

I cannot support this. Really, it surprised me that we're basically doing this, or even thinking about doing this on a stock that is so depressed. You always know where fishing isn't taking place, because we have the controls in. Would this amount of extra catch all of a sudden push our overfishing? Then we'll be saying oh, this is a stock that we're now overfishing. Until we see some recovery, we should not look for any opportunity to basically put more pressure on the winter flounder stocks. Sorry if I took so long.

CHAIRMAN PIERCE: That's fine, Tom. Doug Grout.

MR. DOUGLAS E. GROUT: Just a question for the maker of the motion. I think I know where you're coming from; but I would like to hear some specifics about it, and that is these

background checks that you added in there. Is the intent behind that that you would check their fisheries enforcement records, and if they had a violation in some period of time you wouldn't allow them in the program? Is that what you're trying to say with this?

MR. BALLOU: Certainly the Rhode Island standard currently in place for entry into our existing aggregate programs, I think would be an applicable standard, certainly for Rhode Island, and we could potentially make it applicable for this program region wide, and that is no violations of state or federal fisheries laws or regulations within the past three years.

CHAIRMAN PIERCE: Adam.

MR. NOWALSKY: I'm definitely sensitive to the issue that's been brought forward here; and the inequities described between state waters and federal waters fishermen. I'm having the most difficulty with the language that we have in the last addendum that directs us how we should be acting.

I think it's very clear on the record that this goes beyond a bycatch fishery. But I think there is a case that could be made that we as a Board can move in that direction. Clearly the Service has moved in that direction in federal waters. I think there is a reasonable argument that can be made that we can move past that. The TC report in evaluating these proposals, found the second proposal of 350 pound per week limit during two periods, would be about half the catch. I noted that Rhode Island's third proposal, which is basically what is up on the Board, uses the 250 pound week limit year round. I was wondering if Rhode Island felt that the 350 pound per week limit over two periods, with all of these other requirements, might be a palatable middle ground here.

Given the information that we have from the TC, how it would constrain catch, and in my opinion is more consistent with the current addendum we're working under to achieve the lowest possible F rate. I would be interested in hearing if that would be something they would consider.

MS. WARE: Adam, just to clarify. I think actually the halving of the pounds landed was from the two scenarios; whether it was Full Participation or Tiered Participation. The 250 versus the 350 during parts of the year, ended up with pretty similar pounds for each of the different scenarios. I'm looking at Table 1 versus Table 2 on Pages 11 and 12.

CHAIRMAN PIERCE: Yes Bob, a response.

MR. BALLOU: Just a quick response. Thank you for the opportunity, Mr. Chair. I also want to just point out that the TCs essentially did not analyze Option 3. They only analyzed Options 1 and 2. Granted this is a version of, I forget which it is now, Option 1 or 2; the 250 pound weekly limit. But it's subject to significant entry constraints. I appreciate the comments that are being made; but I want to remind the Board that the analysis done by the TC did not consider the likelihood of very limited participation in the program based on the motion that is up on the board now.

CHAIRMAN PEIRCE: I wasn't going to comment, but in light of the fact that you've offered up a motion that potentially includes Massachusetts as a state that would want to participate. I'm obliged to offer up a perspective; and that is that Massachusetts, I will not be offering up any proposal to do this, for a number of reasons.

The first and foremost reason is the Technical Committee review of the proposal. The second is the fact that I do believe this would result in a departure from the bycatch fishery that we are promoting, trying to continue, as opposed to a directed fishery. This likely would result in some more directed fishing; to what extent I'm not sure.

Nevertheless, I'm not willing to take that risk, certainly in Massachusetts. In addition, there is the issue of recreational fishermen versus the commercial fishermen; and with this particular pilot program being allowed for commercial

fishermen, does that in a sense put the recreational fisherman at yet a disadvantage?

The recreational fishermen are already significantly restricted for the Southern New England area. Finally, as I noted before, there is the issue of the set aside, the state water subcomponent for winter flounder, and I've already dealt with New England Council concern about Massachusetts; non-federal permit holders, and the take of cod and a few other species in Massachusetts waters. I don't want to further the concern that might be expressed regarding the take; real or otherwise of winter flounder in state waters by non-federal permits holders. Those are some of the reasons why I would not be promoting this. Other states of course, if this passes, they would have the option to pursue it. But to me there are too many compelling reasons for Massachusetts not to support this approach, any further comments on the motion? Yes, Matt.

MR. MATTHEW GATES: I was going to speak against this motion. I'm generally in favor of providing increased efficiencies for commercial fishermen; but for all the reasons that everybody else has said around the table. I don't think this is the right time or the right stock to do that with. That's all.

CHAIRMAN PIERCE: Any other hands? Anyone who has not yet spoken? I'll give people another shot at it if there are no other takers, so I'll go back to you, Tom.

MR. FOTE: It would have been interesting to take this out to the Advisors to get their input on this; because the last time we went to the Advisors, every state recommended a moratorium, if I remember right. There was nobody objecting to it at that period of time. Have their feelings changed at all, because we didn't go out to the Advisors to ask them what their concerns were over this. They haven't had an Advisory meeting in a while.

CHAIRMAN PIERCE: If there are no other comments, well David Borden one more time.

MR. BORDEN: I'll make this quick, Mr. Chairman. I just point out to everybody, 95 percent of the stock is being taken in federal waters in a directed fishery, period. The Board has tried on two or three occasions to wrestle with that factor. The fishery and our in-state waters are almost irrelevant compared to what's going on in federal waters.

The second point is, and I want to talk about this for a long period of time. The analysis is way overly conservative. If you assume the most conservative, if you look at the analysis in the most conservative light, it would cause like an 8 percent increase in total catch. The way the system would react, as we discussed at our last Board meeting, is the New England Council and NOAA would have to look at that increased catch and basically deduct it from federal waters ACLs is what would happen.

There may be some poetic justice to doing that; given how we've struggled with this issue. The third point is since I didn't see the motion before it went up on the board. I would be personally more comfortable with it if it said a one-year program with a right to renew for one year; and after the one year we get a report from the state agency. Then the Board could decide whether or not there was value in the program, of there as not value in the program. I would ask Bob to consider revising his proposal to reflect that.

CHAIRMAN PIERCE: All right, if there are no further comments to make on the motion, I'll call the question and read it into the record. I'm going to read it into the record now, Tom. I think we've certainly spoken at length about this. Move to accept the Rhode Island proposal allowing any SNE/MA state to enact, as a 2-year-state-enacted pilot program, a permit program allowing for a 250 lb. weekly aggregate limit subject to daily reporting requirements, VMS, and background checks. Motion by Mr. Ballou and seconded by Mr. White. I assume there is a need to caucus, so we'll give you 45 seconds or so. Yes there will

be a roll call vote. All right, enough time has been allotted. I assume every state has taken a position. Megan will now call the roll.

MS. WARE: Maine.

MR. PATRICK C. KELIHER: Yes.

MS. WARE: New Hampshire.

MR. GROUT: No.

MS. WARE: Massachusetts.

REPRESENTATIVE SARAH PEAKE: No.

MS. WARE: Rhode Island.

MR. BALLOU: Yes.

MS. WARE: Connecticut.

MR. GATES: No.

MS. WARE: New York.

MR. EMERSON C. HASBROUCK: Null.

MS. WARE: New Jersey.

MR. BRUST: No.

MS. WARE: U.S. Fish and Wildlife.

U.S. FISH & WILDLIFE: No.

MS. WARE: NOAA Fisheries.

NOAA FISHERIES: No.

CHAIRMAN PIERCE: **All right the vote is 2 in favor, 6 against and 1 null. The motion is defeated.**

#### ADJOURNMENT

CHAIRMAN PIERCE: Is there any other business to come before the Board? I see none; therefore with no objection we will adjourn.

(Whereupon the meeting adjourned at 4:25 o'clock p.m. on May 2, 2018)