

# **Atlantic States Marine Fisheries Commission**

## **Spiny Dogfish Management Board**

August 6, 2014  
2:30 – 3:00 p.m.  
*Alexandria, Virginia*

### **Draft Agenda**

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

- |  |           |
|--|-----------|
| 1. Welcome/Call to Order ( <i>M. Gibson</i> )                                    | 2:30 p.m. |
| 2. Board Consent   | 2:30 p.m. |
| • Approval of Agenda   |           |
| • Approval of Proceedings from May 2014  |           |
| 3. Public Comment  | 2:35 p.m. |
| 4. Consider Draft Addendum V for Public Comment ( <i>M. Hawk</i> ) <b>Action</b> | 2:45 p.m. |
| 5. Other Business/Adjourn  | 3:00 p.m. |

The meeting will be held at the Crowne Plaza Hotel Old Town, 901 N. Fairfax St, Alexandria, VA 703-683-6000

*Vision: Sustainably Managing Atlantic Coastal Fisheries*

# MEETING OVERVIEW

**Spiny Dogfish Management Board Meeting**  
**Wednesday, August 6, 2014**  
**2:30 – 3:00 p.m.**  
**Alexandria, Virginia**

Chair: Mark Gibson (RI) Assumed Chairmanship: 10/12	Vice Chair: Vacant	Law Enforcement Committee Representative: Moran
Spiny Dogfish Technical Committee Chair: Scott Newlin	Spiny Dogfish Advisory Panel Chair: Vacant	Previous Board Meeting: May 12, 2014
Voting Members: ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA, NC, NMFS, USFWS (13 votes)		

## 2. Board Consent

- Approval of Agenda

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the Agenda. Individuals that wish to speak at this time must sign in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

## 4. Consider Draft Addendum V for Public Comment (2:45 - 3:00 p.m.) Action

### Background

- The Shark Conservation Act of 2010 prohibits processing-at-sea of sharks, including spiny dogfish
- The Fishery Management Plan for Spiny Dogfish allows processing-at-sea with a 5:95 fin-to-carcass ratio
- Goal of management is to support consistency between federal and states plans

### Presentations

- Draft Addendum V for Public Comment by M. Hawk

### Board actions for consideration at this meeting

- Approve Draft Addendum V for Public Comment

## 5. Other Business/Adjourn

**DRAFT PROCEEDINGS OF THE**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**  
**SPINY DOGFISH MANAGEMENT BOARD**

**Crowne Plaza - Old Town  
Alexandria, Virginia  
May 12, 2014**

These minutes are draft and subject to approval by the Spiny Dogfish Management Board.  
The Board will review the minutes during its next meeting.

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## **INDEX OF MOTIONS**

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of February 2014 by consent** (Page 1).
3. **Move to amend the trip limit to 7,000 pounds for the 2014/2015 spiny dogfish fishing season for the northern region** (Page 7). Motion by Terry Stockwell; second by Douglas Grout. Motion fails for lack of a two-thirds majority (Page 12).
4. **Move to initiate addendum to prohibit processing at sea of spiny dogfish and maintain consistency between Spiny Dogfish FMP and Shark Conservation Act** (Page 15). Motion by Pat Augustine; second by Rob O'Reilly. Motion carried (Page 17).
5. **Motion to adjourn by consent** (Page 19).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Emerson Hasbrouck, NY (GA)
Rep. Walter Kumiega, ME (LA)	Pat Augustine, NY, proxy for Sen. Boyle (LA)
Steve Train, ME (GA)	Tom Baum, NJ, proxy for D. Chanda (AA)
G. Ritchie White, NH (GA)	Tom Fote, NJ (GA)
Doug Grout, NH (AA)	Roy Miller, DE (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Rep. Sarah Peake, MA (LA)	John Clark, DE, proxy for D. Saveikis (AA)
David Pierce, MA, proxy for P. Diodati (AA)	Tom O'Connell, MD (AA)
Bill Adler, MA (GA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Mark Gibson, RI, proxy for B. Ballou (AA)	Rob O'Reilly, VA, proxy for J. Bull (AA)
David Borden, RI, proxy for B. McElroy (GA)	Catherine Davenport, VA (GA)
Rick Bellavance, RI, proxy for Sen. Sosnowski (LA)	Louis Daniel, NC (AA)
David Simpson, CT (AA)	Robert Boyles, SC (AA)
Lance Stewart, CT (GA)	Ross Self, SC, proxy for Sen. Cromer (LA)
Rep. Craig Miner, CT (LA)	Jim Estes, FL, proxy for J. McCawley (AA)
James Gilmore, NY (AA)	Wilson Laney, USFWS

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

### Ex-Officio Members

Patrick Moran, Law Enforcement Representative

### Staff

Robert Beal  
Toni Kerns

Marin Hawk

### Guests

Michael Pentony, NMFS  
Raymond Kane, CHOIR  
Claire Fitzgerald, CCCFA  
Leo Maher, Chatham, MA  
Chris Zeman, NJ, MAFMC

Hunter Maher, Chatham, MA  
David Gelfrow, Chatham, MA  
Justin LeBlanc, NCFA  
John Whiteside, Sustainable Fisheries Assn.

The Spiny Dogfish Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crown Plaza Hotel Old Town, Alexandria, Virginia, May 12, 2014, and was called to order at 5:00 o'clock p.m. by Chairman Mark Gibson.

### **CALL TO ORDER**

**CHAIRMAN MARK GIBSON:** I'm going to call the Spiny Dogfish Management Board to order. Just so everybody remembers, this is the Spiny Dogfish Management Board and not including the coastal sharks. If you're here for any coastal sharks, then you have the wrong meeting. My name is Mark Gibson from Rhode Island and I'm the Chair of the Spiny Dogfish Board.

### **APPROVAL OF AGENDA**

We're one hour behind for an agenda that is scheduled to be just about one hour. I don't know how wise that is to start at 5:00 o'clock for that; but nevertheless we'll give it a go. The first item on the agenda is the agenda itself. I have a couple of adjustments we need to make. First in terms of Item 4, the reporters will be Marin for the first two and then Dave Borden for the Rhode Island Proposal.

Under other business, there is an AP list in your supplemental materials. We would like to know of any changes that need to be made to that. Okay, anyone else wishing to make changes to the agenda or have suggestions for the agenda? Seeing none; is there any objection to approving the agenda with the changes I have identified? Seeing none; none the agenda stands approved as adjusted.

### **APPROVAL OF PROCEEDINGS**

There are no proceedings to approve. That will be for the Coastal Sharks Board to do. Public comment; is there anyone wishing to comment to this board on items that are not on the agenda but pertaining to dogfish? We will move right into Item Number 4, Spiny Dogfish Possession Limits. Marin.

## **REVIEW OF SPINY DOGFISH POSSESSION LIMITS**

### **MAFMC INDUSTRY ADVISORY COMMITTEE REPORT**

**MS. MARIN HAWK:** Jim Armstrong couldn't make it to the meeting, so I will be giving the presentation in his place. The Mid-Atlantic Council had a Spiny Dogfish Industry Advisory Committee that met. Just to provide a little background; the Regional Administrator, when the two councils don't agree on the trip limit, may pick any trip limit that has not been rejected by both councils.

The Mid-Atlantic Council and the New England Council, if you recall, recommended different trip limits to NOAA Fisheries. The Mid-Atlantic Council recommended 4,000 pounds and the New England Council recommended no trip limit. Like I said, since neither trip limit was rejected by either council, the Regional Administrator could pick any trip limit.

It was actually published in the Federal Register today; and NOAA Fisheries proposed eliminating the trip limit. The public comment period is open until June 12<sup>th</sup>. I just wanted to run through some reports that happened before this published just for your reference. As I said, the Mid-Atlantic Council Industry Advisory Committee met. They held a public meeting on April 8, 2014; and it was held to gather industry input on likely operational and price impacts of the trip limit options. There were 37 participants and 17 contributors.

I'm just going to go over a couple of general themes. You also have the full report in your materials. Fifteen of seventeen comments were opposed to eliminating these trip limits and two were in support. A majority supported maintaining the current trip limit, which is 4,000 pounds, or a modest increase; so about to 5,000 or 6,000 pounds.

There were a few comments which supported state and vessel-specific flexibility in the trip limits. The reason that the two commenters opposed no trip limits – the reason that the 15 or 17, excuse me, commenters opposed eliminating trip limits is because current market conditions

for dogfish are 32 percent below the 2008 to 2012 average; so it is fifteen cents per pound versus twenty-two cents per pound.

Industry members felt the unlimited possession would overwhelm the market and drive the price down further. There was a common theme during the discussions that there is a need for further development of the market domestically. As I mentioned, two members supported eliminating the trip limits. One participant expressed concern with the large amount of discards due to the trip limits; and another participant felt that the commission could better respond to the changing market if the federal trip limits were eliminated. That is my brief report and I can take any questions.

MR. ROB O'REILLY: Thank you, Marin, and I guess what I would ask is did you just indicate that was the final rule – proposed rule, correct?

MS. HAWK: The proposed rule, yes, that is correct.

MR. O'REILLY: So it is my understanding that the April 8<sup>th</sup> conference as well as what the ASMFC will bring forward would all be considered by NOAA as part of getting ready for the final rule; is that how that works?

MS. HAWK: Yes; that is my understanding.

MR. O'REILLY: And then, Mr. Chairman, if I may comment a little more; I participated in that call on April 8<sup>th</sup>. It was a little surprising at first because the expectation was there would be more information and more support to do away with the trip limit; and the first caller actually suggested that if the trip limit were done away with, they would force markets to appear, which sounded pretty unusual.

I guess right now everyone pretty much understands the situation with the European Union and the fact that the quota is going to be very large; 40-plus million is where are now. The expected landings are probably going to be under 30; so that is a really good reason at least from Virginia's viewpoint to maintain some semblance of a trip limit.

I know on the call that the representative of the processors, the three processors, would indicate maybe 5,000 pounds might be a place that it should be raised from the 4,000 that the federal waters are right now and a few of the states. I think as we go forward it is matching expectations with the reality of where the markets are. I know that we have one particular buyer that is handling a lot of dogfish there; and his concerns are no trip limit just means a derby-style fishery. It has become mostly a small boat fishery; and the idea that would change is also something that could glut the market pretty fast if you go to the larger vessels. Just a few comments; and thank you, Marin.

CHAIRMAN GIBSON: Let me go to Mike first because there were a few comments or questions about where the federal rulemaking is at.

MR. MICHAEL PENTONY: Mr. Chairman, I just wanted to clarify one thing that Marin said. The proposed rule actually publishes tomorrow. It filed today so it is a public document as of today; but if you go looking for it in the FR, you won't see it, but it will be out tomorrow with a 30-day comment period.

I also just wanted to explain that we are proposing the New England Council's recommendation of no trip limit or unlimited possession; but I wanted to clarify that we're not leaning that way. We were just trying to maximize the comments that we would get and encourage people to comment on something, either unlimited, 4,000 or something in between.

By proposing unlimited, it sort of maximizes our opportunities to do something in the final rule. We scheduled the publication of the rule so that this board could have the maximum opportunity to provide comments because we will certainly give the opinion and recommendations of this board a lot of – it will have a lot import in our final decision. Thank you.

MR. TERRY STOCKWELL: First a comment to Mike; I suspect your strategy will work. Secondly, a question for Marin; I noticed in the roster of folks that participated on the webinar, there was someone from the organic fertilizer

industry. Can you provide any more insight as to what the organic fertilizer industry might be?

MS. HAWK: I can provide a little insight but not too much. This would be a better question for Jim. From my understanding, they are trying to develop a domestic market for dogfish as fertilizer. I think that's why he was on the call.

MR. STOCKWELL: Based out of where; do you know?

MS. HAWK: I don't know.

MR. WILLIAM A. ADLER: Mr. Chairman, a couple of questions. First of all, as far as the federal rule goes; can the Service decide to go back to something which is more restrictive? When they come out with an unlimited, which is less restrictive, can they propose less restrictive and then end up changing their mind and going to the 4,000, which is more restrictive, after listening to the comments. That was one question.

Secondly, the discard I'm looking at; if it had unlimited and dealers got backed up; what happens to these dogfish? Do they get thrown over? The last question was did we decide at the ASMFC on 4,000 already? Well, then that is the end of it, right; it is 4,000.

CHAIRMAN GIBSON: You had three questions and I think Mike answered the first one, but I will let him have another crack at it.

MR. PENTONY: Yes, we can.

CHAIRMAN GIBSON: Yes; they can consider a more restrictive one. Marin, I think we have already dealt with 4,000.

MS. HAWK: We have; but with a two-thirds majority vote we can revisit the issue.

DR. DAVID PIERCE: Regarding the comment on the webinar; I note that there was one individual representing processors who spoke to the issue of limits. My question is was anyone on the webinar representing any other state with processors? Was it all Massachusetts' voice on processing? Has anyone else weighed in with any other state?

MS. HAWK: On the call there were only Massachusetts representatives. I did send out that summary that Jim provided to the board's AP and asked for their comments, but nobody provided any comments.

MR. PATRICK AUGUSTINE: Mr. Chairman, I just wanted clarify that Marin did say it would take a super majority, two-thirds vote, for us to go from four to five. Reviewing all the comments that were put together in the joint Spiny Dogfish Committee Report Jim Armstrong with all the industry comments; it looks like overwhelmingly, not just one individual or two individuals but many, many individuals seemed to opt to 4,000 pounds.

Folks that I talked to, there are two schools of thought. If you can land them with a vessel that is 80 or 90 feet, you can sell them. I asked the question, "Well, if you can't sell, what do you do with them?" "Well, we're going to dump them." On the one hand we're talking about conservation. Although the stock is fully rebuilt and the quota is as large as it is, if we don't have a marketplace, we don't have a marketplace.

I think reading some of the comments the fishermen spoke it loud and clear generally that it has been extremely difficult to sell all these animals without the European market being opened up. In one my conversations I had with Ray earlier, it would seem to me that maybe we, ASMFC, could write a letter to the Department of State because, for sure, we can write a letter to anybody and they're not going to open the European market up, but to see if we can't somehow get on the same page when that marketplace opens up again.

I understand the Canadian market has now literally taken over the European needs; and so here we are hung out to dry. I'm not sure about the health issue. I do understand that at least to my recollection the PCB level of our animals is slightly higher than that of the Canadian fish. I think if we've got a couple of major things to cope with and then to go ahead and have our fishermen have access to these fish and kill more of them for no purpose, unless a fertilizer industry were to be developed – now I understand there is movement.

On the eastern end of Long Island there is some talk going on there to talk with some folks up in Massachusetts who are talking about a fertilizer plant. Until that thing comes to fruition, I just think just to waste the animal the way it is, because it is doing a lot of damage down the food chain, we're kind of in a Catch-22. So when you're ready – I guess we will have more discussion, Mr. Chairman – I'll go for a motion.

CHAIRMAN GIBSON: I think we're getting a little too far ahead of ourselves on the merits of a particular possession limit and the voting requirements. We have a technical committee report on that and we also have a report from Rhode Island. I think we ought to get to those two before we get into the debate about the possession limit and what it ought to be.

MR. JOHN CLARK: Mr. Chair, just to clarify; in state waters we didn't put any trip limit on, so we're just talking about federal waters having a limit now?

MS. HAWK: In the northern region, they follow the federal waters; but in the southern it is state-specific.

MR. DOUGLAS E. GROUT: At our New England Council Meeting, probably one of the things that began to spark the debate here was a comment that was made by one of our council members, who is also the current manager of our co-op, and what he indicated was that right now there occasionally was a demand for spiny dogfish.

He could have sold some, but their fishermen said that at 4,000 pounds during the winter and twelve to thirteen cents a pound, it didn't make the trip economically viable. He was requesting that we up the trip limit to six or seven thousand pounds because at that point at twelve to thirteen cents a pound it would make the trip worthwhile for fishermen to go out there.

He said, yes, the market is very weak, but occasionally we get some demand for it and our fishermen aren't able to make a go of it. When we get to the point, I think it is time that I would like to reconsider the motion. I agree with you

we need to hear from the technical committee and from the state of Rhode Island.

#### **TECHNICAL COMMITTEE REPORT**

CHAIRMAN GIBSON: Let's go to the technical committee report, then.

MS. HAWK: This is very brief. If you recall, the technical committee previously has not felt that there is any scientific justification for a trip limit and that they're purely a management decision. They just held a call on April 17<sup>th</sup> to revisit the issue. Nine technical committee members participated and the technical committee maintains that there is no scientific justification for a large or small trip limit. They did note that a 4,000 trip limit allows accurate monitoring and so recommends maintaining a status quota or a modest increase. That is my technical committee report. Thank you.

#### **RHODE ISLAND PROPOSAL FOR ALTERNATIVE MANAGEMENT**

CHAIRMAN GIBSON: Are there any questions on that report? Seeing none; Dave, the Rhode Island Proposal, there is stressed support in there for a modest increase in the possession limit; but there is also a request for guidance on an alternative management strategy. I'm trying to keep those two things separated. Do you want to make a comment about the possession limit adjustment before we go into the more complicated aggregate program proposal and guidance on that?

MR. DAVID BORDEN: Mr. Chairman, I think it is important to actually keep all – there are three issues that are embedded in the memo. One talks about the possession limits, whether or not you raise it. The second one relates to the issue of the federal regulations and whether or not you actually need those. The third part, as Mark just said, relates to the issue of conservation equivalency.

The reason that we asked for this to be on the agenda is kind of laid out in detail in a memo that we submitted. I'm not going to repeat everything that is in the memo, but I think there are a couple of issues that I think everyone

should focus on. If you're a fisherman in a small port with, say, two or three fishermen and you want to go dogfishing, it is virtually impossible to find someone to truck your product to market.

The reason for that is 4,000 or 8,000 pounds at ten cents or twelve cents a pound just doesn't warrant dedicating a truck to moving dogfish from Montauk or ports in Rhode Island or New Hampshire to the processing facility. It is a scale issue. If you fish out of a port with, say, ten or even twenty fishermen all landing 4,000, you can aggregate all those dogfish into one tractor-trailer truck and ship 40,000 pounds to the market.

One of the provisions in the plan that specifically speaks to this is the requirement that we want to promote equity among all our constituents. I think what Rhode Island would argue is that the smaller ports with relatively few individuals are being prohibited from participating in the fishery. The other issue is the discards.

Discards are kind of poorly understood; but if you talk to people in the commercial industry, what you're going to find is that they're probably grossly underestimated. If you just take the discard number out of the plan, it is basically 72 percent of last year's landings, which is extraordinarily high. We've got a provision in the plan that requires us to reduce discards; and I don't think that is taking place.

It is essentially our conclusion that what you need to do is to increase the truck limit. I think that most of the fishermen in Rhode Island don't want radical changes in the trip limit in terms of much higher trip limits. They'd prefer to kind of ratchet it up and let the market respond accordingly. We had originally started talking to our fishermen about eight to ten thousand pound trip limits.

The advice that we got was you'd probably be better off for 2014 to notch it up a thousand pounds; and then maybe for 2015 notch it up another thousand pounds; that type of approach. I don't want to mislead anybody here; just

putting the trip limit up by a thousand pounds isn't going to solve the Rhode Island problems.

I think our problems are kind of symptomatic of some of the ports. I've heard fishermen in Montauk make the same arguments. I have heard fishermen in Portland, Maine, and Portsmouth, New Hampshire, all make the same arguments; it's the scale issue that is important. Even if they make fewer trips, they need to make trips that are economically viable at twelve cents.

I think our suggestion basically is to reconsider the trip limit so we get the language correct. We can debate what that number should be. I will kind of defer to some of my other colleagues here; but one of the things that's a little confusing about this is everybody has got to be clear there is no trip limit for state waters in the Mid-Atlantic area.

There is an ASMFC trip limit in New England waters and then currently you have a trip limit of 4,000 for everyone that has a federal permit. You end up with differential impacts because of all these different regulations. One of the things that has gone on – and maybe Louis can comment on it – his state I think has been very progressive and dealt with this issue by allowing state waters fishermen in North Carolina to have a 10,000 pound trip limit.

I can't see that it has flooded the market. I am not suggesting 10,000 pounds, but he is dealing with the scaling issue, the transportation issue and some of the economics in the fishery by allowing his fishermen to have a higher trip limit and therefore they can combine those landings in terms of trucking and so forth.

I think the first issue we need to focus on is that trip limit issue; and then if in fact a motion passes, then I think we should discuss the federal trip limit issue and give some advice to the National Marine Fisheries Service. Then Rhode Island would like to have a little bit of discussion – it won't take a lot of time – on the issue of conservation equivalency. We plan to put in a proposal under conservation equivalency and we'd like to get the board's guidance.

CHAIRMAN GIBSON: Yes, Representative Peake; and then I want to go to the matter of do we want to reconsider the trip limit.

REPRESENTATIVE SARAH K. PEAKE: In advance of our discussion of whether we want to reconsider the trip limit, I would ask the board to proceed with caution on this. We had a lengthy discussion and debate. We heard from people in the industry and we heard from fishermen. This is coming from somebody who was a pro increase the trip limit at our annual meeting in Boston, as I recall.

But I would say let's proceed with caution because in the two and half years, I guess it is, since we were at the annual meeting in Boston where we increased the trip limit from 3,000 to 4,000 pounds; what the facts have borne out – and there was kind of a warning issued by the representative of the dogfish processors when the trip limit was 3,000 pounds, the fishermen were getting paid about eighteen cents a pound.

We increased it to 4,000 pounds and the price per pound went to eleven cents per pound. As we're sitting here today and thinking about having a conversation about increasing the trip limits; respectfully, I would say I think we're putting the cart – maybe it is a dog cart, but the cart before the horse in that try as we might, the work hasn't been done successfully yet to develop new markets to support at least the price maintaining its status quo as we increase the trip limits.

For whatever reason, the market isn't there and it is not for lack of trying because I know we have sat down with folks from USDA; a positive aspect that maybe there is a fertilizer aspect to this now, but that is not anything that is going to happen any time soon. I understand that the New England Council has just made this change and NMFS has changed the regulations; but we heard today that is for discussion. I guess I'd like to chime in that I certainly don't support that.

I'm sympathetic to ports that are farther away from the processors, which I understand are all located in New Bedford, but that, too, gets at the issue of the market. If there were a market for

dogfish, there would be more processors cropping up who would want to process dogfish closer to the ports where it is being caught.

Respectfully, I say the answer isn't to increase the quota, but the answer is let's work together to increase the market, get our pricing as high as I understand it is in the Canadian Dogfish Market. For whatever reason, the price is significantly higher up there. Let's figure out what they're doing right; and when we can sustain pricing, then let's talk about increasing quota. Thank you.

CHAIRMAN GIBSON: **Is there a motion to reconsider?** Terry.

MR. STOCKWELL: **So moved.**

CHAIRMAN GIBSON: Moved by Terry Stockwell and seconded by Doug Grout. Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: The commission procedures have one little deviation from Roberts Rules of Order; and this is it. The way the commission modified its charter; it says in order to amend or reconsider a previous final action – and setting a trip limit is a final action – requires a two-thirds vote. If a motion is made to reconsider the trip limit; you don't need two separate motions.

Reconsideration is within the same meeting; to amend or rescind is a subsequent meeting. We're at a subsequent meeting so you can do it all in one motion where you have a motion to amend the trip limit to be whatever it is; and then you just need a two-thirds vote on that. While I have the mike, if the board wants to go that route, there are 15 voting members on this board. Georgia has removed themselves from the board; so it would be 10 votes in favor of any motion to reconsider in order for it to pass.

CHAIRMAN GIBSON: My interpretation is that the specific amount to be amended can be included up front. Robert, did you have a point of order?

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, I appreciate your recognizing me. I just wanted to follow up. Bob, I think there was

a mix-up on our end. South Carolina has declared a non-interest in this fishery as well; so we would like not to be considered a member of this board at this time.

**EXECUTIVE DIRECTOR BEAL:** Well, I think it is still ten votes because you need at least a two-thirds vote. You need 9 point something; and decimal voting hasn't worked out yet; so it is ten full votes.

**CHAIRMAN GIBSON:** Thank you for that. Are there comments on the motion? Okay, Terry, do you want to get another crack?

**MR. STOCKWELL:** I would make a motion to reconsider the 4,000 pound limit with 7,000 pounds. If I get a second, I'll provide my rationale. Toni, help me wordsmith here. Okay, move to amend the trip limit to 7,000 – okay, thank you, Toni.

**CHAIRMAN GIBSON:** Motion by Terry Stockwell and seconded by Doug Grout. Are there comments on the motion? Dave Pierce.

**MR. STOCKWELL:** Can I speak to the motion? A 3,000 pound increase is what I would call a modest increase. There are a number of reasons why. Talking from a state that's fairly well removed from the markets; we have a short season. The distance is such that as Doug said a higher volume of fish is necessary to make it economically viable for folks.

I am concerned by holding it at 4,000 pounds that we're not provided incentives for new markets to develop. We're holding the markets at the existing number of processors. I don't feel it is our business to manage the markets but manage the resource. Apart from that, there are several issues. I believe that dogfish are strongly impacting the ability through both council processes to have success in our rebuilding plans particularly as we transition into ecosystem-based management.

The most recent reason I support this is understanding that there is about to be a publication from a university that is saying there is an extremely high level of mercury in the dogs that may well impact the food market. The

question I asked from Marin was what is this fertilizer market? We need to allow for the development of an alternative market so that our small boats can continue to make money. Seven thousand pounds is not a lot of fish. I fished a 42-foot boat that could routinely haul 20,000 pounds; so I don't see for that amount of poundage many large boats investing to get into the fishery.

**DR. DAVID PIERCE:** I appreciate the maker of the motion's rationale. The arguments he makes in favor; I've heard all these arguments before regarding the reasons why we should increase the trip limits. If I had my way, I would increase the trip limit to 20,000 pounds. The abundance of the resource is there. They are major keystone predators preying on cod and everything else.

I for over a decade now been pushing for a robust directed fishery on spiny dogfish. Finally, we have reached the point where we can have one because the quota is large. You would think therefore that fishermen would be out there pursuing those fish and the dealers would be in a position to take them all and sell them all to their markets; but the markets are limited. We know there are trade barriers overseas.

The processors are all in Massachusetts. Everyone trucks their dogfish to Massachusetts; so I listened to the Massachusetts processors' arguments as to what they can handle. They have expressed many concerns about the quality of dogfish coming into the plants; and that if the limit is too high, it will promote a real directed fishery on the dogs, by trawlers, for example, and the quality will definitely go down and the price will drop dramatically.

My colleague, Representative Peake, made that point very clear; the higher the limit, the more likely there will be a plummeting of the price to the dogfish; so there is no real gain to the fishermen except they have to handle more dogfish, bring in more dogfish and get less for it. This indeed is a dilemma.

I'm disappointed that our processors have not been able to make more inroads into the markets overseas; and I'm disappointed that other states

haven't been able to do it either. The argument has been made that if the limits were raised up, then maybe processors would become more engaged and more markets would be available. I don't think that would happen.

Again, I've heard all the arguments. Small ports from distant states and not so distant states; they've got to put all their dogfish together to ship them down to Massachusetts; it is a real burden economically; infeasible; I've heard this before; I have heard this for five or six years; but the processors really are the ones that dictate what is going to happen.

If they say they can't handle a trip limit more than 4,000, with all the fishermen who are out there wanting to land dogfish – and many can and many do – then I'm guided by what the processors have to say largely because I don't want to see the price drop down even more for the fishermen. Ideally, we'd have a higher limit and a higher price and this fishery would really take off; but it hasn't happened. There is discarding of dogfish all the time, of course, because there is no market. They can't bring them in; they're everywhere. Discarding is a problem and always will be a problem and there is no way to avoid it.

I suspect that the problem will become even greater down the road. Issues of equity; sure, we all want equity. David Borden made the point that he seeks equity. Sure, I'd love to have equity. I favor equity, but again processors are not in the position to buy more dogs. They have spoken out rather strongly in favor of not increasing the limit beyond 4,000. Also in our package of material that was made available to us, there is a letter from the Cape Cod Fishermen's Alliance, so please attention to that. These are the –

CHAIRMAN GIBSON: David, there are nine people waiting on the list. The board has all those materials. Could you wrap up your comments so I can move on to the other nine people?

DR. PIERCE: Thank you for cutting me off; I guess I was going too long, but this is a Massachusetts based fishery in terms of the

processing capability; so I feel obliged to make these statements. I have to make these statements because of Rhode Island's push for a change; one that is going to go beyond the increase in the limit, Mr. Chairman. I'll stop there. This will get us no gain and will force states to make changes in their trip limits. It will cause many fishermen to express their great concern that we've gone in a different direction now after making the decision to go with 4,000. With that; I'm done.

MR. DAVID SIMPSON: Could I ask Terry how he envisions this motion – we have the issue, anyway, but at 7,000 pounds, we have a proposed rule coming out tomorrow where NOAA may ultimately set something very different than 7,000 pounds. Say they set it much higher; do you envision states precluding those federal boats from landing more than 7,000 pounds or would we just hold state waters vessels to 7,000 pounds? Conversely, if they set it lower at 4,000 pounds; how do you envision this motion would respond to that?

MR. STOCKWELL: Ultimately the states through this process regulate the landings of the dogfish by the more restrictive rule; so whether you're a federal or a state waters boat, the individual states would then have, through our commission process, the ability to set the trip limit. As much as I'd like to advocate for no trip limit at all, I mean there are a number of other issues that have been raised. I was ecstatic to hear that the agency has a broad range of alternatives. My sense, unless the Chair and staff disagree, is that we will be the ones providing the recommendations to the agency for what the state trip limit should be.

DR. LOUIS B. DANIEL, III: I'm hesitate to say this but I'm going to do it anyway. I've got a quota; I can't catch it. My fishermen asked for 10,000 pounds because of the shipping cost, et cetera, and so that is what I told them to do. I'm flabbergasted by this concern over price. I mean, we set a quota and then we allow the fish to be harvested.

It is the industry's responsibility to make the price. It is not our responsibility to make the price. We never talk about this with anything

else; why are we talking about it here? You set a trip limit; give them as much flexibility as we possibly can. We're not going over the quota; who cares what the trip limit is; if it is unlimited or whatever. If the fishermen then want to back off a little bit, let them do it amongst themselves. But this concept that we've got to hand hold them through that process; they're businessmen, they need to make those decisions on their own. I hope there is nothing in here that precludes me from having a 10,000 pound trip limit. If my guys can't handle 10,000, then they won't catch 10,000; but in the southern region, that has worked for us. The price issue is really concerning to me.

MR. GROUT: As I previously stated, there were opportunities that were missed this year for our small boat fishery to be able to land a small amount of dogfish because it wasn't economically feasible at the 4,000 pound level. I agree that the processors are going to control this. Even our co-op manager indicated there were a lot of times where they just said we're not going to take anymore; we're not going to take any fish; but there were times that they were asking for it.

They asked our manager and said, "Can you send someone out to get some dogfish for us," and they wouldn't go out because at twelve to thirteen cents a pound and 4,000 fish it wasn't economically viable for them. I'll tell you another thing; I voted against the New England Proposal to have unlimited trip limits because I think you had to have some kind of constraints on it. I'm looking at this as sort of a modest increase that would allow these small boat fleets that have been decimated by the fact that they've had to take huge cuts in their groundfish allocations recently; they're struggling.

On top of that, we've had to close the Northern Shrimp Fishery, which is their other source of income. Now we've got this large quota but there isn't the market. The market was originally driven by the European market; and that for a variety of reasons, which Dr. Pierce knows about, has collapsed at this particular point in time.

Hopefully, we'll be able to develop additional markets. I know our sector has done a wonderful job at trying to develop a local market with a higher-price fish and has been able to sell a few of them for more than twenty-two cents a pound; but obviously that is not handle the volume. What I'm looking for here and the reason I supported this motion was to try in those few times when the processors say, yes, we could use some dogfish, we can sell them and have our small boat fisheries be able to go out and make an economically viable trip.

MR. O'REILLY: Mr. Chairman, just to point out it really is an economic situation; but as Terry Stockwell said, it is a resource issue, but we aren't going to come close to the quota. We're going to come far away from the quota indirectly because of the market conditions. I would rather see as much of the quota taken as possible. I think this motion just makes that pretty difficult in Virginia, for example, and I would like to see them be able to have a fair price; but price isn't our business, I agree with Louis Daniel on that; but getting closer to that quota is.

MR. ADLER: Mr. Chairman, I won't support this motion. One of my concerns – I won't get into the price thing – is the discards. For instance, if you can take these fish and nobody can take them, they get dumped. It is sort of a, yes, I know, we're ridding the ocean of a predator; yes, okay, so we have a bunch of dead things around.

The health thing and the market has also been a problem where we can't have fish coming in and then we haven't solved the health issue, that thing that closed down some of the markets to these people. I also think that we stuck to the 4,000 – and once again I have this thing about changing what we decide to go with some – you know, like the National Marine Fisheries Service. I think we should stay where we are. We have heard from our fishermen that 4,000 is the way to go; and then maybe if you make them a little bit tighter in the market, the price goes up rather than dumping them all over the place. I won't support this motion.

MR. AUGUSTINE: Mr. Chairman, just a quick question; do we have any indication of what kind of poundage is being dumped by commercial fishermen? If you have it, fine; if not, that's okay.

MS. HAWK: If you give me a few minutes; I will find it.

MR. AUGUSTINE: Okay, in the meantime, after that, Mr. Chairman, I'm ready to make a motion to call the question.

CHAIRMAN GIBSON: Five people are still on my list. Steve.

MR. STEPHEN R. TRAIN: Mr. Chairman, most of what I want to say has been said already. I have got a couple of things I want to touch on. We've talked about ecosystem-based management many times here; and now we're talking about a single species, probably the cheapest species we harvest, that is a voracious predator on the money species we're trying to rebuild.

It has got the same diet in the Mid and South Atlantic Regions as the striped bass that we're complaining don't have enough food. I wouldn't worry about the market. I have fished for lobster. When we go out of the market before the processors and when there is too much, they tell us not to go. I fished for shrimp when we only had one processor running in Maine; and when there were too many, they told us not to go. The people dealing in the product will tell the boats when they don't want it.

CHAIRMAN GIBSON: Jim, do you want to comment from Florida; I had you on the list.

MR. JIM ESTES: I was going to wait until you got done. Florida doesn't really have an interest in this fishery and we respectfully would like to withdraw from the board. It changes your numbers.

CHAIRMAN GIBSON: Okay, thank you for that. It changes our arithmetic again, Mr. Beal?

EXECUTIVE DIRECTOR BEAL: I'm just commenting on why people in the southern end

seem to be dropping out of the board pretty quickly here. If you remember at the Policy Board at their last meeting, there was a discussion about separating the Spiny Dogfish Board from the Coastal Shark Board.

The Policy Board agreed to that; and the Policy Board also agreed at that time to review the states' interests actually across all the boards at the commission. The Policy Board asked the states to chime in and say which boards they wanted to be on and which ones they wanted to remove themselves from. This is a fallout from that. It is not something that has just come up during the course of this meeting. We're going to review all those changes at the Policy Board later this week. To your point, with South Carolina, Florida and Georgia all removed from the board, there are only 13 votes; so that two-thirds majority would be nine votes in favor.

CHAIRMAN GIBSON: We're down to nine. I have three more people on the list and then we'll see if we can get this motion dealt with. Dennis Abbott.

MR. DENNIS ABBOTT: Mr. Chairman, I have to take a deep breath. I never thought I would sit on this board long enough to hear the famous Dr. Dog advocate for catching less dogfish. (Laughter) I don't know what to say. After all these years of trying to catch the dogfish, my goodness; but, seriously, I feel that we're here as fisheries' managers.

We're supposed to manage the fishery and not manage the market. I think that Dr. Daniel stated what I wanted to say quite well. I think there is a fairness issue here. I also think that fishermen should end up ultimately deciding whether or not they want to go fishing – that has been said by a number of the board members – and that is the most important thing.

We shouldn't be trying to artificially control the market; and essentially apparently from the debate to the advantage of the Commonwealth of Massachusetts. It is important that we manage dogfish. I also think that the recreational sector would be very pleased to know that this Atlantic States Marine Fisheries

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Commission is allowing a larger catch of spiny dogfish. I urge you to vote for this motion.

REPRESENTATIVE PEAKE: Just to comment that if this passes it may turn into a motion after that; and that is I heard and understood loud and clear Dr. Daniel's comments that he made; but I also heard him say that his fishermen asked him in his state, with an allocation that is a state allocation, for a certain amount.

Maybe what we need here is more flexibility; because I'm hearing Rhode Island wants something, Maine wants something else. Virginia is concerned about their allocation. Yet from Virginia to Maine we deal with a coastal allocation; and maybe it is time to start thinking about a state-by-state allocation.

MR. BORDEN: Mr. Chairman, the question was raised about what are the discards? The discards are 11 million pounds; the estimated catch this past year was 16 million pounds. Those are the actual numbers. I'd just like to point out – and this follows on what Louis said earlier – I can't think of another example in either the council process or the commission process where a fishery management agency makes a deliberate decision to not achieve OY; in other words, to support the price.

I'm not an attorney; I'm not sure it is legal to make that type of determination. I think that the key here is at least those of that have been advocating this change is we envision a fundamental change in the way the market operates if this actually passes. What will happen is that dogfish will operate in a similar fashion the way the bait skate fishery operates.

Right now, New Hampshire fishermen, David Gaither gets an order for bait skates, he goes out and he fishes for it. He doesn't bring 25,000 pounds of bait skates up to his dealer and expects his dealer to sell them. It is a change in the way business is done; and that's what I think we need. There is a lot of discussion about product quality. Maybe the dealers will start paying fishermen to bring high-quality dogfish to the dock. Thank you.

CHAIRMAN GIBSON: Okay, I'm going to move this motion. I have a request for a roll call vote. I am assuming there is opposition to it so we will have to have that roll call vote. We have identified the states that are still in; so are you ready to call the roll. We need some time to caucus; 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: Okay, is the board ready? Marin, will you call the roll, please.

MS. HAWK: Maine.

MAINE: Yes.

MS. HAWK: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. HAWK: Massachusetts.

MASSACHUSETTS: No.

MS. HAWK: Rhode Island.

RHODE ISLAND: Yes.

MS. HAWK: Connecticut.

CONNECTICUT: Yes.

MS. HAWK: New York.

NEW YORK: Yes.

MS. HAWK: New Jersey.

NEW JERSEY: No.

MS. HAWK: Delaware.

DELAWARE: Yes.

MS. HAWK: Maryland.

MARYLAND: Yes.

MS. HAWK: Virginia.

VIRGINIA: No.

MS. HAWK: North Carolina.

NORTH CAROLINA: Yes.

MS. HAWK: Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE:  
Abstain.

MS. HAWK: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE:  
Abstain.

CHAIRMAN GIBSON: **The motion fails for lack of two-thirds majority.** There eight yeses. Okay, where do you recommend we go next? We've got the piece of the Rhode Island Issue relative to conservation equivalency. How about the federal rulemaking; why don't we wrap that up.

MS. HAWK: I would suggest that if we would like to write a letter to the National Marine Fisheries Service with our recommendations, we could decide on that.

CHAIRMAN GIBSON: Okay, what is the board's pleasure; write a letter or not?

MR. GROUT: I'll make a motion that we write a letter supporting a 7,000 pound – (laughter)

MR. AUGUSTINE: Mr. Chairman, write a letter to U.S. Fish and Wildlife and whoever else and NOAA telling them that we have voted to support a 4,000 pound trip limit for the 2014/15 season.

CHAIRMAN GIBSON: I think you might have got the agency wrong.

MR. AUGUSTINE: Well, whoever it is; those people over there who didn't vote. I'm just picking on you guys.

MS. HAWK: Perhaps in the letter we don't have to specify a trip limit. We can outline our concerns since there seems to be some disagreement around the table.

MR. AUGUSTINE: What is your pleasure, Mr. Chairman?

CHAIRMAN GIBSON: Well, we can certainly report on what we did here today and express the concerns that we can express.

MR. AUGUSTINE: We could have a majority comment and then a minority comment. That would go over well.

CHAIRMAN GIBSON: How about if Marin and I work on the letter. You'll have to trust us on that one, I guess. I mean, we've heard the discussions; we know what the vote count us.

MR. SIMPSON: Yes; they're sitting here; they heard it. I think let it stand as that; and then if an individual state wants to write a letter, then they should do that.

CHAIRMAN GIBSON: Is there any objection to proceeding that way? Seeing none; we have resolved that issue. What is next?

MS. HAWK: Rhode Island.

CHAIRMAN GIBSON: Rhode Island conservation equivalency; Dave, could you just refresh us on that and what guidance you're looking for.

MR. BORDEN: I'll make this very fast. There is a provision in the plan that allows a state to apply for conservation equivalency. The criteria in the plan are basically that the program that you formulate has to have the same conservation value as the mandatory measures that are in place and it shall not contribute to overfishing.

That almost is the sole extent of the requirements in the current plan. I thought it would be useful for the board just to think about that. Rhode Island intends to submit a proposal under conservation equivalency. We think that we can meet both of those standards; and our landings will be less than 28,000 pounds per week. We envision using a weekly aggregate.

We intend to impose a number of other restrictions on the fishery that will ensure that there will be no overfishing; that the landings

will be capped; that the program will terminate once we get to a certain amount of landings. Our only suggestion here is if the board has any other suggestions or guidance that they would like to give us before we submit that, we would be glad to hear it.

CHAIRMAN GIBSON: Marin is going to speak to that.

MS. HAWK: I guess my question is what is the timeline that you're thinking of just so that we can let the board know?

MR. BORDEN: Well, I'm going to have to probably defer to the Chairman who has some impact on this; but I don't think it is going to take a long period of time to formulate that. We've had a lot of discussions internally with the industry; and I think it will be just a matter of sitting down and writing a couple-page letter.

MS. HAWK: So we could discuss this proposal at the August meeting?

MR. BORDEN: Yes.

DR. PIERCE: I certainly have no objection to Rhode Island putting together a proposal regarding conservation equivalency. With David involved in the discussion; I'm sure it will be very creative and thorough. I would suggest as guidance to the state of Rhode Island that they need to put this proposal together with the input from Massachusetts processors who buy the Rhode Island dogfish.

Rhode Island is going to offer up an aggregate limit, fine, I have no objection to that, but please involve the Massachusetts processors in that discussion so we will know what the buyers will buy into.

If the buyers are in favor of that particular conservation equivalency strategy, then I wouldn't object to it. That is my guidance; that's what I would suggest; just don't exclude them. It is not just about Rhode Island fishermen; it is about who they sell to.

CHAIRMAN GIBSON: Toni, do you have a comment?

MS. TONI KERNS: Just if the board is going to review the conservation equivalency plan; we need to make sure that the state sends it in with enough time for technical committee, AP and LEC to review the plan so that they can give their comments to the board at that meeting.

CHAIRMAN GIBSON: Yes, that would be useful feedback for the agency if you could spell out that timeline for us with suggested dates. David, did you want to follow up on that?

MR. BORDEN: I was just going to say that we will be happy to get the input from the Massachusetts processors. In our case this will just start the process. In other words, after this meeting, we will organize a meeting in-state to kind of flesh out some of the details; and we're more than happy to have their input. Thank you.

CHAIRMAN GIBSON: Is there any other guidance from board members on this matter? We will work with the commission on the timeline and make sure they get adequate time to review. Pat.

MR. AUGUSTINE: Yes, just a question; if more than one state is allowed – what we're saying we're allowing a vessel to bring in – they could bring in one trip at 28,000; you said no more than 28,000 in a week or 27,000? Is it a one-time vessel could bring it in at one time and that would be the week or are we – that is what it sounds like. Is that what Rhode Island is doing?

CHAIRMAN GIBSON: I think so. David, will you respond to that.

MR. BORDEN: The program we're talking about – and I think most of the people around the table are familiar with it – is exactly what we have in place that is authorized by the commission for scup and fluke. It is exactly the same type of program. We have a scup program that allows, for instance, in the summertime vessels can land 10,000 a week; so they may bring in 500 one day and the day they bring in 2,000. At the end, if the dealers keep track, the

department keeps track, we have a whole number of ways of tracking that – and Mark can probably explain that better than I can at this point. But, at the end of week, they're done. When they hit their number; they're done.

MR. AUGUSTINE: Follow-on, Mr. Chairman; if that is true, Mr. Chairman, then that means that any other state that is abided by the 4,000 pound per day would literally be aced out of the market. We only have the processors that are up in Massachusetts to process; so that is part of the problem. Way back when, when we got into the 2 million pound quota, Dr. Pierce was very effective in how they operated the fishery up there.

He was to be commended how they worked it; but they literally took the whole quota. North Carolina I think got aced out of it that year because we had a divided industry in north and south. Here we are; we're going to allow a state to have cumulative days on a vessel one time and we're going to ace out the other states who are going to be limited to the 4,000 pounds a day. I think there is a problem here unless I misunderstand it. As you all know, I'm getting old and I don't hear well; so if you would clarify that, I would appreciate it.

CHAIRMAN GIBSON: Well, we appreciate the guidance and your concern. I don't think I want to debate the merits of the proposal before you even have it in hand; but thank you for that guidance. Doug.

MR. GROUT: Just to this concept of an aggregate trip limit; we've gotten comments from our law enforcement that that is very difficult to enforce. Now, clearly, in the state of Rhode Island it seems like there has been a mechanism that has been developed with summer flounder and scup where they feel it is something that is enforceable. I would recommend that in your conservation equivalency that you highlight that as to the reasons that you feel that an aggregate trip limit is enforceable. I also might recommend that we run this by our enforcement committee as a conservation equivalency to see if they concur with that.

MR. SIMPSON: I just wanted to point out that there is a fundamental difference between scup in the summer, which is a state-by-state allocation, and a regionally shared quota. We'll see the proposal, but I think it begs the question of whether one state gets an advantage over the ability to land fish before they close the quota in theory by changing the rules to weekly trip limits.

CHAIRMAN GIBSON: Is there anything else as guidance or advice to Rhode Island before they put their proposal together? Seeing none; we will move on to Amendment Proposed Rule – sorry, Number 5, consistency of federal and state management.

#### **REVIEW CONSISTENCY OF FEDERAL AND STATE MANAGEMENT OF SPINY DOGFISH**

MS. HAWK: This is a very brief presentation. I just wanted to bring this to the board's attention. An objection of the FMP for spiny dogfish is to strive for complementary management of spiny dogfish in federal and state waters. The Coastal Sharks FMP was modified to address changes in the Shark Conservation Act.

If you will recall, we changed the fin-to-carcass ratio from 5 to 95 to 12 to 88 to be in line with the Shark Conservation Act. It is under development by NOAA Fisheries. The Shark Conservation Act also addresses spiny dogfish; and it prohibits the removal of any fin of the shark, including the tail, at sea.

It prohibits the possession of any fin of the shark unless it is naturally attached. It prohibits landing of any fin that is not attached to the shark carcass. As I mentioned, this applies to all sharks, including spiny dogfish, except smooth dogfish. Currently the Interstate Fishery Management Plan allows processing at sea of spiny dogfish with the maximum fin-to-carcass ratio of 5 to 95.

Very little processing at sea occurs, if any; and Maine, New Jersey, Delaware, Virginia, South Carolina, Georgia, and Florida have already prohibited the processing of spiny dogfish at sea. Possible actions are take no action and leave it

as is; initiate an addendum to maintain consistency between the Spiny Dogfish FMP and the Federal FMP; or any other the ideas that the board may come up with.

MR. AUGUSTINE: Are you ready for a motion, Mr. Chairman?

CHAIRMAN GIBSON: I just wanted to see if there were any questions for Marin on the report. I didn't think there was any; so go ahead.

MR. AUGUSTINE: Will you put that back up, please. **I move to initiate an addendum to maintain consistency between the Spiny Dogfish FMP and the Federal FMP.**

CHAIRMAN GIBSON: Is there a second to that; Rob O'Reilly. I think we know what the motion is going to be eventually. Is there discussion on the motion? Pat, do you want to speak to that?

MR. AUGUSTINE: No, I think it is perfectly clear what we have to do in order to be consistent.

CHAIRMAN GIBSON: Is there anyone that wishes to speak to the motion? Bill Adler.

MR. WILLIAM A. ADLER: Yes, Mr. Chairman, I would like Pat to explain a little bit further what we mean by consistency with the federal plan?

MR. AUGUSTINE: Do you flip back to the chart before that where it talks about the 5 and 95 percent.

MS. HAWK: Just to clarify; the Shark Conservation Act prohibits processing at sea of spiny dogfish; so I might suggest that we use that language.

MR. AUGUSTINE: I don't know if Bill needs more information than that.

DR. PIERCE: This is about finning primarily, correct? I can't recall what the ASMFC rule is or the obligation is for all individual states, but I know that in Massachusetts we took action on this long ago. We have a regulation that says it

is unlawful for any fisherman to fin dogfish. Fins removed at sea must be retained, landed at the same time and in the same location with carcasses and not exceed a maximum of 5 percent fin-to-carcass ratio by weight.

We put that in place largely because we don't like finning. Obviously, it is not the thing to do; and therefore if you want to fin at sea, bring the carcass in. Obviously, they fin them when they get them back at the port and the processing plant because there is a value for the fins. Anyway, we have already done this. If is not already a compliance requirement of the board; I suspect that this addendum will eventually lead to a similar sort of requirement.

MS. HAWK: Just to clarify; removing the fin of the shark and discarding the carcass at sea is prohibited in all U.S. waters. This addresses removing the – this would prohibit any processing at sea; so removing the fin at sea, you have to keep the fin naturally attached.

MR. THOMAS O'CONNELL: We had a state law passed last year that prohibits finning, but spiny dogfish and smooth dogfish were exempted. We got a letter from NMFS that granted that exemption in state waters. My concern is that if this rule was passed in federal waters; do our federal dealers then have to abide by the more conservative rule and then would no longer be allowed to fin, as Dave described, in state waters. I have some concern on how this would roll over to what we currently allow in state waters.

CHAIRMAN GIBSON: Your concern is noted. Do you want to speak to that?

MS. HAWK: I would like to, yes. From what I understand when the Shark Conservation Act is implemented, any federal-permitted individual – although a federal dealer is on land; so, perfect.

CHAIRMAN GIBSON: Is there anyone else on the motion to initiate the addendum? Seeing none; we'll a little time to caucus.

(Whereupon, a caucus was held.)

MR. DAVID GELFMAN: Dave Gelfman, Chatham, Massachusetts. Can the public comment on your shark finning thing? I'm a dogfish fisherman. Recently we have been experimenting with trying to increase the food quality of our sharks, dogfish specifically, only. One of the things we have been experimenting with is removing the tail to bleed the fish at sea, which apparently is illegal. If you do this, we won't be able to do that anymore; and that will be one more nail in our coffin.

CHAIRMAN GIBSON: This vote is just to initiate an addendum; and if the vote is positive, there will be development of an addendum and ample opportunity for input into that addendum through hearings and so on. That's all we're doing here. Are there any other comments on the motion? Is the board ready to vote? We need a little bit more wordsmithing, according to Marin, on the motion.

MS. HAWK: I'm just interested in a little bit more specificity in the motion as to what the addendum will contain.

AMR. AUGUSTINE: Put in what you want.  
MR. AUGUSTINE: Put in what you want.

MR. SIMPSON: You need it to say to prevent finning spiny dogfish at sea.

MS. HAWK: It is really processing, yes.

MS. KERNIS: I believe that the board is trying to be consistent with the Shark Conservation Act and not the Federal FMP. The language that prohibits the processing of dogfish is in the Shark Conservation Act, I believe.

MS. HAWK: Yes; and so I'll read it to you again. It prohibits the removal of any fin of the shark, including the tail, at sea. It prohibits possession of any fin of the shark unless it is naturally attached. It prohibits landing of any fin that is not attached to the shark carcass.

CHAIRMAN GIBSON: Can't we just say in the motion we're trying to be consistent with the Shark Conservation Act; elements of the Shark Conservation Act instead of trying to write out the whole set of bullets here on the fly. Dave.

DR. PIERCE: So if we support this motion, that would mean that the fishermen would not be able to cut the tail off at sea for bleeding the dogs; and then they bring the carcass in and they bring the tail in; they would be prohibited from doing that, correct? That would seem to be an unnecessary move on our part.

As long as they bring the carcass in with the fins, I see no problem, especially if it is going to improve the quality of the dogfish and maybe increase the price. I know we're not supposed to deal with price. I don't think I can support this if it means they can't chop off the tail and bring everything in.

Again, we have our regulation in place in Massachusetts that deals with this issue already. This would be contrary to the division's rule we already have in place, I suspect. For that reason, I'd have to oppose it. I understand the concept, and again finning is not what we want, but this is unnecessarily burdensome, I would think.

MS. HAWK: Just to clarify; the fin can still be attached to the carcass; and as I understand it, you can still bleed the carcass as long as it is attached by some amount. I can clarify that and get back to you.

REPRSENTATIVE WALTER KUMIEGA: That is what I was going to ask; you can cut the fin part way through and so it folds over; you can cut the tail part way through. As long it is still somewhat attached, it doesn't have to be uncut.

MR. O'CONNELL: This may be a question for NMFS. My understanding is that NMFS is currently discussing how the Shark Conservation Act may preempt some state finning laws and they have not issued a final rule for spiny dogfish; is that correct?

MS. HAWK: That applies to smooth dogfish; not spiny dogfish.

MR. AUGUSTINE: That clarification was that you can cut the fins but you can't cut them completely off. You can cut them so they can fold down against the body; and you can cut the tail. I'm not sure how they do that effectively.

As you know, it is long and thin, but the fins on the side do take up space and they're able to cut those back so they'll fold right into the body, as that applies to all the other sharks under Shark Conservation Act.

There is some latitude for smooth dogfish during certain months of the year where they can actually process at sea. The problem is with the smooth dogfish, as you know they spoil very quickly as opposed to spiny dogfish. I think there is a problem with them, that if they don't gut them relatively quickly, the urine in the system is pushed through the flesh and through the skin and it spoils the meat. The law is clear in saying that they must be attached but they can be cut back so they will fold.

CHAIRMAN GIBSON: Is there anybody else on the motion as clarified. Seeing none, let's caucus and then we'll call the question.

(Whereupon, a caucus was held.)

CHAIRMAN GIBSON: **The motion is move to initiate an addendum to prohibit processing at sea of spiny dogfish and maintain consistency between the Spiny Dogfish FMP and the Shark Conservation Act.** Motion by Mr. Augustine; seconded by Mr. O'Reilly. Is the board ready to vote? All in favor please raise your right hand; those opposed; any abstentions; any null votes. **Seeing none; the motion carries.**

EXECUTIVE DIRECTOR BEAL: Just quickly on the addendum; the Annual Work Plan or Action Plan for this year does not have this addendum included. I don't think there is a lot of heavy lifting as far as drafting with the PDT and technical committee work. I think the addendum can move on.

We may get to the point, if the board approves this in August for public hearing, where we may need the states to conduct their own public hearings. We will check where we are in the budget and report back to you in August; but I just want to give you a heads-up that states may have to do some of their public hearings, if not all of them.

CHAIRMAN GIBSON: Okay, we're down to Item 6, Amendment 3 Proposed Rule.

### **REVIEW OF NOAA FISHERIES AMENDMENT 3 PROPOSED RULE**

MS. HAWK: A very brief presentation; NOAA Fisheries came out with Amendment 3 for Spiny Dogfish, and I just wanted to run through it very quickly with you. There were three proposed changes; and it is just a proposed rule. They are going to implement a research set-aside of up to 3 percent; allow rollover of management measures from one year to the next, so they wouldn't have to revisit the management measures; and remove the seasonal allocation of the commercial quota.

Just a little more detail on the seasonal allocation; in the past the seasonal allocation in federal waters and the state shares in state waters have resulted in occasional inconsistencies; so the state waters are closed or the federal waters are closed, but not both. The industry has been confused by where to fish; so this proposal by NOAA Fisheries is a good thing – I guess that is up to you; but removing the season allocation fixes this issue; and so that is what proposed. Again, possible actions; no action, to submit a public comment letter – and that comment period closes May 27<sup>th</sup> – or any other ideas that the board may have. Thank you.

CHAIRMAN GIBSON: Are there any questions on that agenda item? Seeing none; what is the board's pleasure on how to proceed? Doug Grout.

MR. GROUT: I would like to recommend that the Chair recommend to the Policy Board that we send a letter supporting these provisions.

CHAIRMAN GIBSON: That is a good point. Did this board already decide to send a letter somewhere and we didn't recommend to the Policy Board to do it? That's a good point; will the board recommend to the Policy Board to send a comment letter? Very good. Dave Pierce.

DR. PIERCE: Only that we've been trying to have this done for about five years, six years, so applause will be appropriate once this happens.

CHAIRMAN GIBSON: Are there any other comments on Item 6, Amendment 3 Proposed Rule? Seeing none; I'm down to the last item or close to the last item, election of a vice-chair. Toni.

### ELECTION OF VICE-CHAIR

MS. KERNS: Mr. Chairman, I'm going to ask if we can postpone the election of the vice-chair. Adam Nowalsky has been just reinstated as the proxy for the new New Jersey Legislative Commissioner, which I will not say his name because I'm unclear how to pronounce it yet. Adam was our vice-chair before and he was no longer a commissioner because the legislative commissioner was not reelected. It is unclear if Adam is on the Coastal Shark Board or the Spiny Dogfish Board, so we want to get that from him before we make this decision.

CHAIRMAN GIBSON: Okay, we can revisit this at the summer meeting. The last thing I had was the advisory panel list. Marin, how should we proceed on that; it was in the supplemental materials. Are you looking for feedback?

MS. HAWK: Yes; I've gotten a little bit of feedback from some of the states so far; but if you could just look over the advisory panel membership from your state and let me know if there is anything that needs to be updated, it would be very helpful.

CHAIRMAN GIBSON: Terry, on that or other business?

MR. STOCKWELL: No, to that point. Marin, we're going to be submitting a name for consideration.

CHAIRMAN GIBSON: Is there anything else on the advisory panel?

### OTHER BUSINESS

CHAIRMAN GIBSON: Is there any other business to come before the Spiny Dogfish Board? Dennis Abbott.

MR. ABBOTT: I would like to raise the question of the vote that we took regarding the 7,000 pounds. I would like to question the ruling of the Chair. The reason I do that is it would be my understanding that a two-thirds majority was required of those present and voting. I don't consider abstaining to be a negative vote.

I think we had eleven votes and the vote was eight to three. If we consider we needed eight votes to pass and we were convened as a board with a majority or with a quorum of eight; it would have made it difficult or impossible to pass the requirement for the two-thirds. I have a question of the ruling of the Chair that we didn't prevail in the vote of eight to three.

CHAIRMAN GIBSON: So the vote was eight, three, two; and I need to better understand your argument how eight makes nine.

MR. ABBOTT: The explanation of that is to arrive at the requirement of nine included the two parties that abstained when we should have been considering the present and voting as being eleven; and eleven would require eight. Is that clear?

CHAIRMAN GIBSON: Bob, give us some advice.

EXECUTIVE DIRECTOR BEAL: Well, reading out of the Compact Rules and Regulations – as I mentioned, this is one of the areas that the commission consciously made a deviation from Roberts Rules of Order – and in that section it says a board or section will need a two-thirds vote of all voting members; i.e., entire membership, to amend or rescind any final action.

In that wording it says regardless if they're present and not present, abstaining or not abstaining; it is the entire membership of the board; that you have to have a two-thirds vote of

the entire membership. I'm not disagreeing with Dennis. I'm just saying that is the guidance that the commission agreed to for itself to amend or rescind final actions.

MR. ABBOTT: I can accept that.

**ADJOURNMENT**

CHAIRMAN GIBSON: Thank you; I'm glad we didn't have to revisit that. Is there any other business to come before this board? We have a motion to adjourn; everyone seconds. Thank you.

(Whereupon, the meeting was adjourned at 6:30 o'clock p.m., May 12, 2014.)

**Draft Document for Board Review. Not for Public comment.**

*Atlantic States Marine Fisheries Commission*

**DRAFT ADDENDUM V TO THE INTERSTATE FISHERY  
MANAGEMENT PLAN FOR SPINY DOGFISH**



This draft addendum was developed for Management Board review and discussion. It is not intended to solicit public comment as part of the Commission/State formal public input process. Comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. If approved, a public comment period will be established to solicit input on the draft addendum.

*Vision: Sustainable Managing Atlantic Coast Fisheries*

August 2014

**Draft Document for Board Review. Not for Public comment.**

# Draft Document for Board Review. Not for Public comment.

## Public Comment Process and Proposed Timeline

In May 2014, the Atlantic States Marine Fisheries Commission's (ASMFC) Spiny Dogfish Management Board (Board) approved a motion to initiate the development of an addendum to the Interstate Fishery Management Plan (FMP) for Spiny Dogfish to consider changes to the FMP to maintain consistency with the Shark Conservation Act of 2010.

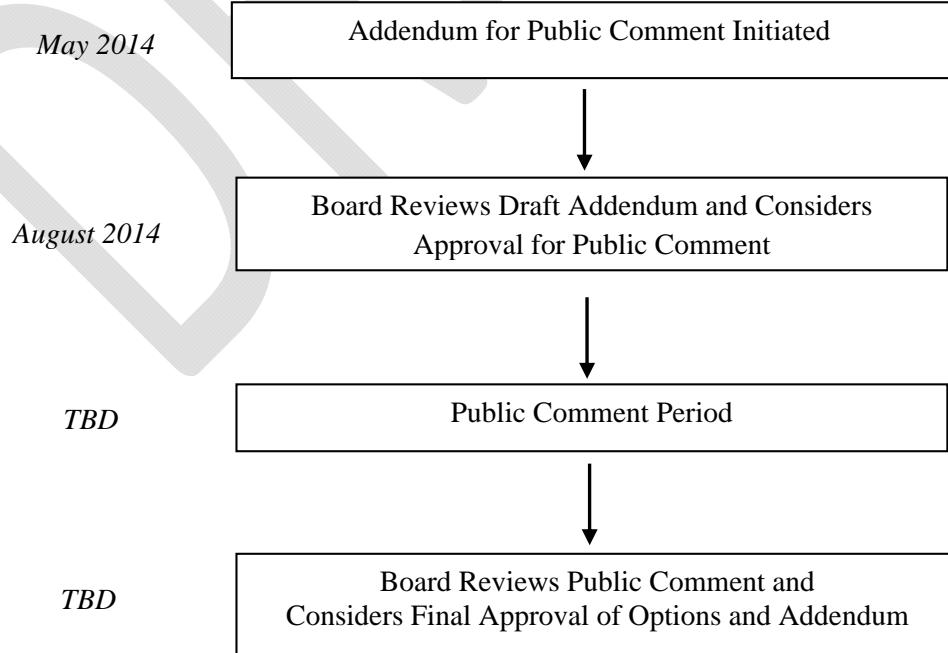
This draft addendum presents background on ASMFC's management of spiny dogfish, the addendum process and timeline, and a statement of the problem. This document also provides options of spiny dogfish management for public consideration and comment.

The public is encouraged to submit comments regarding this addendum during the public comment period. Comments will be accepted until **5:00 pm (EST) on [Month] [Day], 2014**. The Board will be considering final action on this addendum during the week of [Month] [Day], 2014 at the ASMFC [Season] Meeting.

Comments may be submitted by mail, email, or fax. If you have any questions or would like to submit comment, please use the contact information below.

Mail: Marin Hawk  
Atlantic States Marine Fisheries Commission  
1050 N. Highland Street, Suite 200 A-N  
Arlington, VA 22201

Email: [comments@asmfc.org](mailto:comments@asmfc.org)  
(Subject: Spiny Dogfish Addendum V)  
Phone: (703) 842-0740  
Fax: (703) 842-0741



# **Draft Document for Board Review. Not for Public comment.**

## **1.0 Introduction**

Spiny dogfish are a highly migratory species of shark found in both federal and state waters. State waters extend from 0-3 miles offshore of the United States, while federal waters are 3-200 miles offshore. State and federal waters are managed through different processes.

Spiny dogfish are managed jointly in federal waters by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC). These two councils make recommendations on management to the National Oceanographic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries). NOAA Fisheries is then responsible for implementing management based on the input from the two councils. NOAA Fisheries is also subject to the laws of the United States that govern fisheries and fisheries management. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the federal law which governs management of federal fisheries. NOAA Fisheries must also abide by other laws that may influence fisheries management (Marine Mammal Protection Act, Endangered Species Act, etc.).

The Atlantic States Marine Fisheries Commission (Commission) is responsible for management of spiny dogfish in state waters (0- 3 miles offshore). The Commission is a collaborative entity of the Atlantic coast states from Maine to Florida and is governed by the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Each state has three commissioners that sit on the various species boards; a legislative commissioner, a governor's appointee and the director of the fisheries agency in the respective state. Any states that are included in a Commission fishery management plan must comply with certain provisions contained in that plan. Spiny dogfish are currently managed under the Interstate Fishery Management Plan for Spiny Dogfish (2002) and Addenda I – IV.

At its May 2014 meeting, the Commission's Spiny Dogfish Management Board (Board) approved the following motion:

*Move to initiate addendum to prohibit processing at sea of spiny dogfish and maintain consistency between the Spiny Dogfish FMP and Shark Conservation Act.*

As a result, Draft Addendum V proposes changes to modify the Spiny Dogfish Fishery Management Plan to maintain consistency with the Shark Conservation Act of 2010.

## **2.0 Management Program**

### **2.1 Statement of the Problem**

The Shark Conservation Act of 2010 (SCA) passed both the United States House and Senate in December 2010, and was signed into law by President Barack Obama in January 2011. The SCA requires that all sharks, including spiny dogfish, be brought to shore with their fins naturally attached, with one exemption for the smoothhound shark complex. The Spiny Dogfish FMP allows processing-at-sea of spiny dogfish, so long as the fin-to-carcass ratio on board the vessel is not greater than 5-to-95. An objective of the FMP is to promote complementary management of species in state and federal waters, so the Board is considering actions to maintain consistency with the Shark Conservation Act of 2010.

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## **2.2 Background**

### *Federal Management*

The Shark Finning Prohibition Act (SFPA) was signed into law by President Bill Clinton in December 2000. Finning is defined as taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea. It is considered a wasteful practice because most of the shark is not utilized. The SFPA prohibited finning of sharks in the United States and required any fishing vessel to retain the corresponding carcasses of the shark fins on board, not to exceed a fin-to-carcass ratio of 5-to-95. The SFPA contained several loopholes that were brought forward during various court cases. The SCA was initiated to close those loopholes by requiring all sharks be landed with fins naturally attached to the carcass.

Once the SCA was signed into law, it amended the MSA. Consequent to the SCA becoming law, NOAA Fisheries published a proposed rule to implement the Act in May of 2013. The proposed rule prohibits any person from removing shark fins at sea, possessing shark fins on board a fishing vessel unless they are naturally attached, transferring or receiving shark fins from one vessel to another at sea unless the fins are naturally attached, landing shark fins unless they are naturally attached, landing sharks without their fins naturally attached, or possessing, purchasing, or selling shark fins or shark carcasses taken, transferred, landed, or possessed in violation of the regulations. The public comment period for the proposed rule closed on July 31, 2013, and NOAA Fisheries has not published a final rule as of the writing of this document.

### *State Management*

*Section 4.1.7 Prohibition of Finning* of the original ISFMP prohibits finning of spiny dogfish in state waters. The section also allows vessels to remove fins at-sea, so long as the carcass is retained. Vessels that remove the fins must land fins in proportion to the carcasses, with a maximum fin-to-carcass ratio of 5-to-95 (5%), by weight, consistent with the Shark Finning Prohibition Act of 2000. However, this current prohibition is now inconsistent with federal regulations under the SCA.

Several states already require landing all species of sharks with fins-naturally-attached. Those states are as follows: Maine, New Hampshire, New York, New Jersey, Delaware and Virginia. These states would not need to take action should Draft Addendum V move forward since they are in compliance with the Shark Conservation Act.

## **3.0 Management Options**

### **3.1 Consider Fins-Naturally-Attached Policy**

This section proposes alternatives to maintain consistency between the Shark Conservation Act of 2010 and the Interstate Fishery Management Plan for Spiny Dogfish.

Option A: Status Quo.

Fins of spiny dogfish may be removed at sea. If fins are removed, the corresponding carcasses must be retained. The ratio of the wet weight of fins to dressed weight of carcasses on board the vessel cannot exceed 5-to-95.

Option B: Fins-Naturally-Attached

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Removing any fin of spiny dogfish at sea is prohibited (including the tail). All spiny dogfish must be landed with fins-naturally-attached to the corresponding carcass. Gutting and processing fish at-sea is permitted, so long as the fins remain attached by a portion of uncut skin.

### **4.0 Compliance Schedule**

If approved, states must implement Addendum V according to the following schedule to be in compliance with the Spiny Dogfish ISFMP:

XXXXXX: States submit proposals to meet requirements of Addendum V.

XXXXXX: Management Board reviews and takes action on state proposals.

XXXXXX: States implement regulations.