

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

**Crowne Plaza Hotel Old Town
Alexandria, Virginia
August 14, 2007**

Approved October 29, 2007

TABLE OF CONTENTS

CALL TO ORDER.....1

APPROVAL OF AGENDA1

APPROVAL OF PROCEEDINGS.....1

PUBLIC COMMENT.....1

SPINY DOGFISH FMP REVIEW1

APPLICATION FOR DE MINIMIS STATUS BY DELAWARE, SOUTH CAROLINA, GEORGIA AND
FLORIDA.....2

ASMFC LETTER TO GSMFC2

UPDATED MANAGEMENT OPTIONS FOR ISFMP FOR COASTAL SHARKS4

OTHER BUSINESS.....37

ADJOURN37

INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1)
2. **Approval of proceedings of May 10, 2007.** (Page 1) Motion by Patrick Augustine; Second by Patton White. Motion Carried. (Page 1)
3. **Motion to grant de minimis status in the spiny dogfish fishery to** Delaware, South Carolina, Georgia, and Florida (Page 2) Motion by Patrick Augustine; Second by Patton White. Motion Carried. (Page 2)
4. **Motion to accept the 2007 FMP Review for Spiny Dogfish.** (Page 3) Motion by Patrick Augustine; Second by Patton. Motion Carried. (Page 3)
5. **Motion to remove Option C from Section 4.2.5 Recreational Fishing License of the Draft Shark FMP (Page 11).** Motion by Vito Calomo; Second by Jimmy Johnson. Motion Carried. (Page 11)
6. **Adjourn by consent.** (Page 41).

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ATTENDANCE**Board Members**

George Lapointe, ME (AA)
 Pat White, ME (GA)
 Sen. Dennis Damon, ME (LA)
 David Pierce, MA, proxy for Diodati, (AA)
 William Adler, MA (GA)
 Vito Calomo, MA, proxy for Rep. Verga (LA)
 Mark Gibson, RI (AA)
 Gil Pope, RI, proxy for Rep. Naughton (LA)
 Eric Smith, CT (AA)
 Lance Stewart, CT (GA)
 Karen Chytalo, NY, proxy for Gerald Barnhart (AA)
 Pat Augustine, NY (GA), Chair
 Brian Culhane, NY, proxy for Sen. Johnson (LA)
 Peter Himchak, NJ, proxy for David Chanda (AA)
 Erling Berg, NJ (GA)
 Dick Herb, NJ, proxy for Rep. D. Fisher (LA)
 Roy Miller, proxy for Patrick Emory, DE (AA)

Bernie Pankowski, DE, proxy for Sen. Venables (LA)
 Howard King, MD DNR (AA)
 Bruno Vasta, MD (GA)
 Russell Dize, MD, proxy for Sen. Colburn (LA)
 Jack Travelstead, VA, proxy for Steve Bowman (AA)
 Catherine Davenport, VA (GA)
 Louis Daniel, NC (AA)
 Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
 Malcolm Rhodes, SC (GA)
 Robert H. Boyles, Jr. SC (LA)
 Spud Woodward, GA, proxy for S. Shipman (AA)
 John Duren, GA (GA)
 Gil McRae, FL (AA)
 April Price, FL (GA)
 Frank Montelione, FL, proxy for Rep. Needleman (LA)
 Margo Schulze-Haugen, NMFS

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

Ex-Officio Members

Russell Hudson

Dr. Jack Musick

Staff

Vince O'Shea
 Robert Beal

Chris Vonderweidt
 Toni Kerns

Guests

Bill Sharp, FL FWC

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 14, 2007, and was called to order at 2:30 o'clock p.m. by Chairman Eric Smith.

CALL TO ORDER

CHAIRMAN ERIC M. SMITH: Okay, Board Members, if you'll take your seats, this is the Management Board Meeting of the Spiny Dogfish and Coastal Sharks. If you'll look on your meeting overview, there are 16 voting members of this board. Dr. Musick is the chairman of the technical committee, and Russell Hudson is the chairman of the advisory panel. Glad to have both of you here.

You have the agenda in front of you. It's got a Spiny Dogfish Issue and then the major issues, the management options for the Coastal Sharks Plan. Are there other issues that people would like to add to the agenda?

MR. PETER HIMCHAK: Thank you, Mr. Chairman. I'd like to add, under the Other Category, a request that I had sent out through Chris Vonderweidt, canvassing other Atlantic Coastal States on near shore, either fishery-dependent or fishery-independent, spiny dogfish data. I'll explain why when we get to that issue. Thank you.

APPROVAL OF AGENDA

CHAIRMAN SMITH: That will be under Other Business. Other issues to add to the agenda? Okay, seeing none, without objection, the agenda is approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN SMITH: Is there a motion to approve the Proceedings of the May 2007 meeting?

MR. PAT H. AUGUSTINE: So move.

CHAIRMAN SMITH: Seconded by Pat White. Any corrections, additions? Seeing none, without objection, the Proceedings are approved.

PUBLIC COMMENT

Racing along, again, as with the Sturgeon Board, there is a very light audience. I will point out that we have a new process we're beginning to initiate with the commission; whereby, if there are issues that have been out recently for public hearing, the board may reserve the right to simply not have public comment, but rather have public review of the process, but reserve the time for the board to deliberate and take their action.

However, we don't have any of those issues at this time. The items on the agenda are not final measures or the subject of recent hearings; so, if time permits, while we're getting board comment on principally the Shark Plan options, we'll take some limited public comment, as long as we can do it within our allotted time.

Having said that, the first item of business is the Spiny Dogfish FMP Review, Chris Vonderweidt.

SPINY DOGFISH FMP REVIEW

MR. CHRISTOPHER M. VONDERWEIDT: Okay, thank you, Mr. Chairman. This is the FMP Review by the Spiny Dogfish Plan Review Team. There haven't really been a whole lot of changes since we did this last year in October. As far as the fisheries management plan goes, there have been no changes in regulation's status of the stock. There have been no changes since the 2006 SARC.

There still remains the 2005 and 2006 spawning stock biomass discrepancy. We're waiting for the updated 2007 spring survey. And, if you look at it right here, just kind of to review, the 2005 number is dependent on 2004, 2005, and 2006. So, in order to get the 2006 number, we need to look at the 2007 spring survey. That survey is completed, and hopefully we'll have the numbers crunched so we can make recommendations or provide the board with information to adjust quotas. I know that was kind of a hot topic.

As far as the status of the fishery, this is all review from the last SARC, but as most of you will remember, landings have been mostly female, which is one of the problems or why there is so much contention over spiny dogfish. The average weight of females has been down. Moving on to 2006, 2007 landings, as you can see, Massachusetts and Virginia caught the

majority of spiny dogfish. The fishery is 98.1 percent commercial and about 2 percent recreational.

Moving on to state compliance, the biomedical harvest, as everybody here knows, states are allotted a thousand dogfish for biomedical research. Maine was the only state who took any dogfish with an exemption. They harvested 391 dogfish, 139 females and 252 males. The DMR Aquarium took 16 dogfish, 2 females and 4 males.

An update on the CITES listing for spiny dogfish, as people here know, June 8th, 2007, dogfish were proposed to be listed as an Appendix II, which would regulate trade on dogfish if there wasn't a paper trail showing that they came from a sustainable stock. It did not receive the necessary votes, so that issue has been laid to rest for a little while, anyways.

Going ahead to state compliance, all states were compliant with all elements of the fishery management plan. There's a chart and a couple of slides. As far as de minimis, Delaware, South Carolina, Georgia and Florida all met the requirements of less than 1 percent of the commercial catch for de minimis and the plan review team recommends that they be granted de minimis status.

APPLICATION FOR DE MINIMIS STATUS BY DELAWARE, SOUTH CAROLINA, GEORGIA AND FLORIDA

Looking at the various management measures contained within the fishery management plan, you can see all states – that's actually a typo. Massachusetts does have a finning prohibition. You can see the various possession limits. The maximum possession limit for this season is 2,000 pounds, pretty much what it was the last time we went through. So, just to review, all states are compliant with all elements of the fishery management plan. Delaware, South Carolina, Georgia and Florida all meet and request de minimis status.

CHAIRMAN SMITH: Thank you, Chris. Questions for Chris? Is there a motion for the four states, Delaware, South Carolina, Georgia, Florida, to be granted de minimis status? Moved by Pat Augustine; seconded by Pat White. Any

discussion on the motion? Any objection? Seeing no objection, the motion is approved. Delaware, South Carolina, Georgia and Florida are granted de minimis status. Is there a motion to approve the FMP Review?

MR. AUGUSTINE: So move, Mr. Chairman.

CHAIRMAN SMITH: Seconded by Pat White. The motion is to approve the FMP Review. Any discussion? Any objection? Seeing none, the FMP Review is approved. That concludes the Dogfish FMP Review.

The next item on the agenda, there is a proposed letter to go from ASMFC to the Gulf States Marine Fisheries Commission, and Dr. Musick, technical committee chairman, can describe that subject for us. It was distributed individually to us, but it's also, I think, on the meeting CD. It's dated July 12th, the memo that describes this need.

ASMFC LETTER TO GSMFC

DR. JACK MUSICK: We've come pretty far along in developing this management plan for sharks – it's long overdue – in state waters. This is simply a request for the commission to send two letters to the Gulf Coast Fisheries Commission; one of them to make them aware of the fact that we're actively engaged in preparing a management plan now, so it's a heads-up, essentially; and, also, to let them know about our technical committee and the rest of that, to offer some aid.

And then upon the completion of the plan, which is scheduled for 2008, we ask that we send another letter with a copy of the final plan and a recommendation to the Gulf Commission to initiate their own Shark Fisheries Management Plan. That's the crux of it.

CHAIRMAN SMITH: Okay, discussion on that subject? Bill Adler. Actually, Bill, before you do, let me get the AP chairman's take on this.

MR. RUSSELL H. HUDSON: Okay, my name is Russell Hudson with Directed Shark, and I am the Coastal Shark Advisory Panel Chairman. On July 14th of last year, just before we met in August for the AP meeting, I had submitted a comment asking exactly what Jack has just asked

to do, and I am applaud him for the roadmap to try to get that done.

With the federal plan, from Maine to Texas, including the Caribbean, it would be very prudent to be able to have the state waters in the Gulf of Mexico included in anything that the Atlantic States is doing.

CHAIRMAN SMITH: Thank you. Now, Bill, and then Pat Augustine.

MR. WILLIAM A. ADLER: Thank you. The Gulf Marine Fisheries Commission, they're not bound like we are, I understand, when we do a plan and then we have compliance and all this stuff, so it's almost like they do a plan, but it's voluntary or something like that? At least, it sounded like that was the situation.

CHAIRMAN SMITH: They don't have what we call ACFCMA. And I guess – and Vince can correct me if I'm wrong – the way they operate is the way we did pre-ACFCMA. You develop a plan, and then it's incumbent on the states to implement it for their own process; is that how they operate? Yes.

MR. ADLER: Okay, now, how do they handle the Caribbean? I noticed that we had 4,265 sharks listed here, it seems, and a lot of them were in the Caribbean and the Gulf. We're going to do a plan that covers all of those sharks; and, is there any control down in the Caribbean? I didn't know if they have anything like what we have.

CHAIRMAN SMITH: Well, they have a regional fishery management council. Whether they have a shark management plan or not, I don't know.

DR. MUSICK: It's more important that the Gulf states have a plan, because a lot of our large coastals, like duskies and sandbars, as adults will migrate down into the Gulf and back. There is not so much an exchange with the Caribbean. There is the odd tiger shark that will go from here to there, but by and large these are coastal populations. The Caribbean even has a different suite of species down there.

MR. AUGUSTINE: Thank you, Mr. Chairman. It's a good presentation. The recommendations are very clearly stated. I'm wondering, Dr. Musick, do you have a sense for – you noted

here that the Gulf has successfully created plans for striped bass, menhaden, Spanish mackerel and other species. To your knowledge, have most of them been effective and are they working? You said "successfully created", but is it a table-top creation or do you think it's live plans that they have for those species?

DR. MUSICK: I can't really answer that question. I think Chris has got a better handle on it.

MR. VONDERWEIDT: Yes, sure. I spoke with a representative from the Gulf Commission a couple of weeks ago. The way he described was basically instead of staff creating the fisheries management plans, states will create their own fisheries management plans; and in so doing, they will put in things other states will voluntarily come on board with.

So, there is nothing that holds them to it, but some of their plans, all the states are on board because of that reason. The representative made it sound like it's not an unreasonable thing for them to initiate and have states do, I guess, hopefully.

MR. AUGUSTINE: Thank you for that, and then a followup, Mr. Chairman. Would a recommendation or a consensus from the board be adequate to have Mr. O'Shea or George write the following letters as described by Dr. Musick in his recommendations; or, would you want a motion?

CHAIRMAN SMITH: Well, let's see. If there's no objection, then we don't need a motion and we'll just do it. Anybody disagree with having these two letters sent at the right time? Okay, seeing no objection, we'll do those. That was Item 5 on the agenda; we're at Item 6 now. Yes, Bob.

MR. ROBERT BEAL: Just a bit of a procedural technicality, probably. Since it's a letter going from, more or less, commission to commission, it probably should be a decision of the full policy board that the letter should go out. It's virtually the same folks that are around this table. The result would be the same or likely would be the same – I can't predict that – but to keep the procedure whole, usually we have management boards recommend to the policy board communication with other councils or commissions.

CHAIRMAN SMITH: Okay, so we can add that to the agenda for either tomorrow or Thursday's policy board meeting. All right, everybody understand that? Okay, when we wear the hat of the Shark Board, we're out of control, but when we wear the hat of the Policy Board, we're golden. Okay, thank you, though, for keeping the process straight.

UPDATED MANAGEMENT OPTIONS FOR ISFMP FOR COASTAL SHARKS

Okay, we're now at Item 6, which is the meat of the agenda, the updated management options for the plan. I hope you took a copy or have a copy because it's a fairly lengthy document. We've got the document itself, we've got technical committee advice on the various management options; and because it's long and it will be complicated, so stay tuned. Chris is going to walk us through it.

MR. VONDERWEIDT: Thank you, Mr. Chairman. There are two documents that are relevant for following along with this presentation, if you want a little more information than what is going to be up there and from what I say. Both of these were provided on the CD. One of them is Coastal Shark Technical Committee Consensus Recommendations, June 25th and 26th. This basically goes through the management options that the technical committee discussed and prefers.

The other document is the actual fishery's management plan itself. The relevant pages of that start on Page 101 of the general management provisions. As we go through or as I go through the presentation, at the top of each one, for example, 4.1.1 is species' groupings, the numbering will follow along through both of them. If you have questions or want more information, it describes what was considered a little bit more than I can go into because of time constraints.

As far as just a little background and the timeline of where we've been and where we're going, in 2005 everybody here knows that we initiated the development of a Shark FMP. The public information document was approved in 2006. In May 2007, which was the last ASMFC Meeting Week, I presented pre-draft management options to the board just got some input and made some changes.

In June 2007 the technical committee had a three-day meeting. One of the goals for that was to develop nursing area and pupping ground closure options for the plan. Unfortunately, because of lack of data and because it was the first time the TC met in a while, they weren't able to develop those options, which may delay the plan going out to public hearing one more meeting, but I'll go through that.

So between May 2007, which is the last meeting, and August 2007, the plan development team incorporated the changes, which brings us to where we are right now. The plan development team is going to present these revisions; and then, as I said before, September 24th and 25th, the TC is getting together.

Members from different states have assignments that they have agreed to develop these nursing areas and pupping grounds, so that should happen over those two days. It's all we're doing, and people are going to come prepared. Then October 2007 the board will hopefully approve the draft FMP for public comment, which will be followed by the public comment period. We will also get Law Enforcement Committee recommendations, Technical Committee recommendations, and Advisory Panel review.

So, what we will likely come back to the board with is a document which has a TC and AP for which options were preferred by which groups to aid in making those decisions. In January 2009 the board will hopefully approve the final FMP. I guess this is an ambitious timeline, but it is slightly delayed because we weren't able to develop the nursing options yet, but it is a big job. There is a new report coming out called the McCandless Report, which is going to greatly aid the technical committee in doing that, so we're hopeful.

MS. MARGO SCHULZ-HAUGEN: Is that accurate that it says "2009"?

MR. VONDERWEIDT: That should be 2008.

CHAIRMAN SMITH: I was about to comment that would be the first time we actually gave ourselves enough time for the staff to really review the comments and get through all of this; but as it turns out you're going to be behind the eight ball again.

MR. VONDERWEIDT: Okay, so species' groupings, this hasn't changed since the last time we spoke, basically define groups and manage by groups, which is what Highly Migratory Species does in federal waters. It would be large coastals, small coastals, pelagic and prohibited, as the regulation stands right this second.

As a lot of you probably know, Amendment 2 is coming out. The proposed rule came out about two weeks ago. HMS is going to give a presentation after that, and one of the options proposed is quotas for sandbars and changing the species group. What we have written in right now is that individual species can be designated as a group, so if HMS changed their groupings, we could change ours accordingly so that we could have complimentary quotas if that was our goal. So, it does have the flexibility to move the groups around.

Smooth dogfish, the technical committee talked about this at length. The general feeling was that it's important to manage smooth dogfish now before they become a problematic species, and we kind of have to push people out of the fishery or reduce quotas after people have gotten comfortable fishing for them. They do have a life history that's similar to spiny dogfish. In North Carolina and Virginia females predominantly caught, so they're susceptible to the same things that spiny dogfish are susceptible to.

Option A would be to include smooth dogfish as a separate species group. Option B would be to include smooth dogfish in the small coastal shark species group. Option C would be to not include smooth dogfish in the Interstate Coastal Shark FMP. What the technical committee is recommending – and we'll get into this a little bit more – is basically to not manage using quotas but to manage using trip limits. Right now the technical committee felt that an assessment is possible, so we could possibly manage based on spawning stock biomass or whatever we chose as the most appropriate metric.

DR. MUSICK: This is a species that's not included in any plan. It's not in the federal plan now. Luckily, they're a little bit more resilient than spiny dogfish because they mature earlier and they have more young, and they reproduce every year. So far they're okay, but if the fishery expands at all, they're not going to be okay, and

we want to try to cut them off at the pass, so to speak, to make sure that they stay okay.

CHAIRMAN SMITH: How I'm going to handle these things is as we see an issue like this where there are some options and a TC recommendation, I'm going to ask you if there is any objection to it, okay, and then just try and take silence as golden and move right on. Any objection to the way this is portrayed? Seeing none, let's go to the next one.

MR. VONDERWEIDT: Okay, recreationally permitted species, 4.2.1, this has changed a bit since the last meeting. What is new is Option D, and it's prohibited from targeting, retaining, catching or landing any shark species that are illegal to catch recreationally in federal waters. The thinking behind this is that the federal recreational species are possibly changing.

The list is getting shorter with Amendment 2; so, by not allowing fishermen to land what you can't land in federal waters makes the regulations the same automatically. One consideration is that recreational fishermen, for the most part, aren't shark fishermen, so it's going to be confusing for them to have different regulations in state and federal waters, and this is a way to keep it simple, and they just have one list of species in state and federal waters.

CHAIRMAN SMITH: Any objection to the way this is characterized? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I don't think it's an objection, but when you're fishing for sharks, I find it hard to believe that you're going to tell a shark that's swimming up to your bait "I can't catch you, so go away". I can understand "prohibited from targeting and retaining", but I'm not sure about "catching" – and I would say "or landing any shark species that are illegal", and I don't know if that's overkill or what it is at this point.

As a shark fisherman for 20 years, you don't tell them that I can catch you or can't catch you. If they're on your line, it's responsible that you release them as quickly as you can; so, whether the word belongs there or not, it seems kind of foolish to be in there.

CHAIRMAN SMITH: Yes, I think the intention is that if it comes on your hook, you have to

throw it back right away without avoidable injury, so if we characterize it that way.

MR. VONDERWEIDT: Okay “targeting and retention”?

CHAIRMAN SMITH: Yes. Okay, any other comments or objections? Rusty.

MR. HUDSON: Currently there is a fishery up in Maryland that is targeting dusky sharks, young dusky sharks, and so I like the work “targeting” because it keeps that from occurring. But “catching”, I agree with Pat wholeheartedly, you can’t always define that.

CHAIRMAN SMITH: Okay, any other comments?

DR. LOUIS B. DANIEL: Well, I just think from a consistency standpoint amongst our other plans – I mean, we have other prohibited species, and we have directed fishing for them, like a large adult red drum. So, you run the risk of setting a precedent here that I think could be dangerous.

Oftentimes, when you’re shark fishing, you’re targeting sharks, and there may be a host of species that are occurring in the area where you’re fishing. It’s an unenforceable thing, but if the technical committee is dead set on it, I think we should at least have the enforcement committee review this and provide their recommendation, but I would not select that as my preferred alternative.

CHAIRMAN SMITH: Okay, because this is what I want to get at. There’s nothing that says we have to say something as a preferred alternative, but if we agree with the technical committee, it gives the public a better sense of where we’re coming from, so maybe that spawns a little bit more debate. We could just leave the four options up there and not have a TC – well, we could say a TC recommendation because it is their recommendation. It may not be the board’s. Okay, any other concerns on this slide? Okay, seeing none, go to the next one.

MR. VONDERWEIDT: Okay, recreational minimum size limits, after discussing it, the technical committee felt that a fork length of 4.5 feet was appropriate for all species except for bonnethead, sharpnose and smooth dogfish. Smooth dogfish has been added to these options,

and there is no reason why recreational fishermen shouldn’t be allowed to catch smooth dogfish, according to the technical committee.

The federal recreational regulations are identical to this, that you’re allowed to land one shark from the large coastal, small coastal or pelagic, and a bonnethead or a sharpnose. I think the large coastals and small coastals and pelagics are assigned to a vessel, but we don’t want to get into that right now.

CHAIRMAN SMITH: Comments? Louis.

DR. DANIEL: I think there will be more information coming when we get the small coastal assessment. My original concern about this was the essential elimination of the other small coastals, finetooths and blacknose. Very few of those animals get above the 4.5 feet size limit, so we need to be prepared for those comments.

That will continue to not allow the dominant species in the small coastal category, blacknose and finetooths, from being landed. I think it’s a rare individual that’s over that size limit. I believe that once we get the assessment back on small coastals, we will find that finetooths are now okay and it’s blacknose that we’re concerned about, at least from the technical committee’s standpoint, in the assessment. So, it’s just something we need to be cognizant about.

CHAIRMAN SMITH: It’s not anything we want to change on this?

DR. DANIEL: No, because I think the concern here and the reason this was put in was for sandbars is the size at maturity or first maturity, or whatever, the 50 percent, whatever it is, and the concern that many folks wouldn’t be able to distinguish between some of the large coastals and the small coastals. I don’t necessarily prescribe to that theory, but that’s the reasoning, and I think it’s probably reasonable to continue.

CHAIRMAN SMITH: Any other questions or concerns?

MR. HUDSON: It’s just a housekeeping thing, but on sharpnose I precede would it with “Atlantic”, because there is a Caribbean sharpnose. It is on the prohibited species list.

CHAIRMAN SMITH: Okay, the next one.

DR. DANIEL: Eric, before we get past it, I didn't see 4.1.3 discussed, and maybe I missed it, but it was the fishing year. While we have the advisory panel chair and the technical committee chair, I'm wondering if we don't want to have another option in there to have a split season around a pupping closure, so that we have a coastwide pupping closure; regardless of what the technical committee decides in terms of nursery areas and area closures for HAPCs or EFHs, whether or not we want a specific seasonal closure for all waters for pupping?

MR. VONDERWEIDT: I'm sorry, which section?

DR. DANIEL: That was 4.1.3. The coastal shark fishing year is January 1st to December 31st, and I'm wondering if we want to have another option that has January 1st through some date the technical committee recommends, and then have it restart at another part of the year to include a pupping closure. It would be around the spring/summer time and just have a coast-wide closure for all state waters during that timeframe. That may come up somewhere else. It does? Okay.

MR. VONDERWEIDT: Yes, that's covered in seasons, a little bit further down.

CHAIRMAN SMITH: We'll get to your second point then, but we did breeze over the fishing year issue, which is simply the calendar year, and unless anybody objects to that, I think –

DR. MUSICK: I say you can break that up into as many pieces as you want to have separate quotas, and that's what has been done, and we'll discuss that later in this document. Chris will get to that.

CHAIRMAN SMITH: My comment is just Louis started by saying we never talked about the fishing year. It's proposed to be the calendar year; and unless anybody objects with that and thinks it ought to be different dates for the year, we'll deal with both of those issues, the seasonal closures and quota periods, later on.

MR. HUDSON: As a further thought on what Louis was trying to talk about, from the directed shark fishery, we have always liked the idea of being closed down April, May and June, because

that's usually the last part of the pregnancy of the mature females. And if they're in there in the habitat areas of particular concern, that is a very excellent suggestion on his part.

CHAIRMAN SMITH: Back to where you were.

MR. VONDERWEIDT: So, moving on to authorized recreational gear, the only change here is that the technical committee has reviewed the options, and they feel that circle hooks should be required of recreational shark anglers. It came up that there are a lot of studies that show that circle hooks greatly reduced the chance of catching sea turtles and marine mammals and other protected species. In some of the studies, it actually increased the hooking of the sharks.

CHAIRMAN SMITH: Any objection to how this is characterized? Okay, go on.

MR. VONDERWEIDT: Okay, recreational fishing license, in talking to the technical committee, they'd like to get as much data as possible. Right now there is really no coast-wide state system that can collect recreational fishing data. The Office of Highly Migratory Species has an angler permit and a charter/headboat permit where the data gets collected. They're something like \$45.00, and they're open access so they are affordable.

The technical committee's recommendation would be to only require recreational charter and headboat permits – sorry, charter boat and headboat operators to have the charter/headboat permits. I think they're assigned to the vessels. This would gather information, and it's not unreasonable to have charter and headboat captains responsible to know which permits they have. They did not recommend the angling permit for all shark fishermen because the weekend anglers might not target sharks, so that might be burdensome.

CHAIRMAN SMITH: Okay, one point of clarification I noticed in this. In Option B, two things, you ought to change it from "NMFS is creating a coast-wide recreational fishing license"; it's a recreational registry, just to be consistent with the Magnuson Act. Then you might say "once this system is established", just for consistency. Pat.

MR. AUGUSTINE: Mr. Chairman, a point of clarification. I may stand corrected, but I thought anyone that fished for highly migratory species was required to have a federal permit. Is that not correct? I mean, maybe they can help me back there, but I was under the impression everybody fishing for them had to have it.

MS. SCHULZ-HAUGEN: For sharks our authority is in federal waters only; however, we do have a permit condition that as a condition of getting the federal permit, you are required to follow federal rules regardless of where you're fishing. However, someone who never ventures into federal waters, they're not required to have the federal permit. So, exclusively state permitted or fishing people would not be required.

CHAIRMAN SMITH: George.

MR. GEORGE D. LAPOINTE: But under Option C they would be required; wouldn't they? What Margo just said was that for state-only charterboat operators, they wouldn't be required – aren't required to get a permit now, but they would be under this option.

CHAIRMAN SMITH: Yes, unless this was corrected to what Margo had just said. You're right, I mean, otherwise this is a new HMS requirement for boats fishing only in state waters, so we probably want to revise that.

MR. LAPOINTE: We can either do it informally or formally, Mr. Chairman.

CHAIRMAN SMITH: Well, simply add "for fishing in the EEZ".

MR. LAPOINTE: Perfect.

CHAIRMAN SMITH: Do you understand that, Jack, because the technical committee commented and maybe didn't appreciate the EEZ versus state waters component that Margo just talked about.

DR. MUSICK: I think they did. That's the problem, state waters have been a big loophole all along because there is no way to document the number of fishermen and they are landing sharks there.

CHAIRMAN SMITH: Okay, so the technical committee wants the permitting system to be

revised so that all party/charterboats, regardless of where they fished, need the federal permit?

DR. MUSICK: That's right.

CHAIRMAN SMITH: That needs a motion if somebody wants to endorse that; otherwise – well, I don't know, as a technical recommendation, there is no problem with it as long as we appreciate what it actually means, and it needs a few more words. It's going to have to say "in all waters" or "state and federal waters". Then when we go for public comment, we can deal with the consistency argument. If you want it changed or removed, that needs a motion. Louis, then Robert, then George.

DR. DANIEL: Well, this is going to create some problems as far as those inshore guys and for-hire folks that don't venture into the EEZ. This would be the only reason they would need to obtain this highly migratory species permit. At least in North Carolina, those guys are required to have a charter/headboat permit as well as a North Carolina recreational fishing license.

So, there are no exemptions for really anyone that would be targeting sharks, and we would capture that information. I think we will hear a lot of complaints for this requirement where states already have a license.

CHAIRMAN SMITH: Well, before we keep going down the list, let's try and keep it in two parts. Is it a good idea to propose this as one of our options for public comment, even though we know we're going to get complaints, because it solves the problem the technical committee sees where there may be a loophole for people fishing for sharks that aren't in the permitting system?

So, just on the issue of whether it's good sense to get that out in front of the public to see if we can close that loophole, and then the question is to gauge what kind of animosity it creates and whether it's worth it. All right, think on that, and then I have Robert, then George, then Doug.

MR. ROBERT H. BOYLES, JR.: Thank you, Mr. Chairman, just a question for clarification. Chris, is it the technical committee's recommendation these permits be required to retain or just to exhibit effort?

MR. VONDERWEIDT: It would be to retain.

MR. LAPOINTE: I would like to add an Option E, and that would be for the status quo. I mean, the issue of the state waters is going to be controversial, and so, in fact, that is preserved. The state of Maine went through a legislative process trying to get a license in this year, and it's a tad political right now. So, if we look like we're trying to back-door a recreational license, it would make it a tad more political, so I'm a little sensitive about that.

CHAIRMAN SMITH: Okay, any objection to adding an Option E, status quo, which is the permit system as it exists now?

MR. VONDERWEIDT: That's already written in to the plan. It's not up here, but –

CHAIRMAN SMITH: It's not on the slide.

MR. VONDERWEIDT: -- it's in the management options.

CHAIRMAN SMITH: Okay, no need, then, for that addition; it's already there. Doug.

MR. DOUGLAS GROUT: Just a procedural question with this. Can we, in a management plan, require the federal government to require that people fishing in state waters only get a federal highly migratory species –

CHAIRMAN SMITH: Probably not, and that's what you'd want to have come out through a public comment process.

MR. GROUT: Then why include it if it's a non –

CHAIRMAN SMITH: Well, the reason to include the concept –

MR. GROUT: I understand the reason for it.

CHAIRMAN SMITH: That's the reason, but the procedure doesn't allow that. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Isn't it a fact, though, that states could be more restrictive than the federal government but not less restrictive; and if that's a fact and we have highly migratory species traveling in state waters and the requirement to fish on those species requires a federal permit, then it would seem to me it's kind of a Catch-22, and I'm not sure how you get around that monster.

I'm inclined to agree with Mr. LaPointe, to put another license option in front of the folks at this point in time may be the correct thing, but it would be suicide. So, going back 4.2.5, we're referring to all charterboat and headboat operators, but we don't really say – did we say in there somewhere about private boats and/or shore fishermen that would have been included under that license scenario if you were to go forward with it? I may have missed it; I don't know, Chris, but can you address that, please.

MR. VONDERWEIDT: Yes, sure. I guess this is kind of a tradeoff. I guess the goal is to get as much shark information as possible to find out what the recreational fishery is catching in state waters. The technical committee thinks that we can do that by requiring an HMS permit, but they felt that it would be burdensome to require a shore angler or just weekend fishermen to go out and have to purchase one of these licenses. So, no, but we can still get a lot of information through the charter/headboats. It wouldn't be a burden for anybody except for the operators and the fishing businesses.

CHAIRMAN SMITH: I guess I would like to pursue Doug Grout's question one more time; because, if the answer to his question is, no, the Fishery Service would not be able to mandate an HMS permit for state waters only shark fishing operation, then we may not want to have Option C in there, because it's also covered by Option A, which is ASMFC requiring a state license. George's point is well taken, the states who have considered licenses in this last year, this would be viewed as coming back at it again through a different process, and we need to be careful about that, to keep an even keel on this issue as it's discussed by states in the coming legislative sessions. Jack.

DR. MUSICK: The technical committee went around and around, and we're just trying to figure out the most plausible way to get the data. Given the fact that state fishing licenses are such a hot topic and there are such discrepancies among the states, we thought it was more probable if the states required, through ASMFC, that these boats have a federal permit. NMFS wouldn't be requiring it; we would be requiring that they have the NMFS permit. That was our thinking on this. There could be other ways. If you could agree on an ASMFC coast-wide recreational fishing permit, that would probably achieve the same thing.

CHAIRMAN SMITH: That's an elegant approach, but I'm not sure it would withstand scrutiny – have ASMFC require a state's fishermen to acquire a federal permit that the federal government didn't require. Things like this I don't mind having in a public hearing document, but we're liable to get the same level of derision in the public sector that we're getting among ourselves here now.

However, let's not lose sight of the fact that what the technical committee really wants is anybody who fishes for a shark anywhere has permit, and, therefore, we can capture the management information we need, so how do we get that? Margo or Harry, did you have a comment on this?

MS. SCHULZ-HAUGEN: Well, I was just going to say I don't have legal counsel with me in terms of the intricacies of how it's phrased, but, certainly, a recommendation to pursue the issue is something we would readily look at.

CHAIRMAN SMITH: So, your view is leave it in there for now; and if that review is unfavorable, we can kick it out in October when we make the final cut on these things?

MS. SCHULZ-HAUGEN: Yes, I think that's a possibility. We can certainly look at it between now and then.

CHAIRMAN SMITH: All right, that's actually a pretty good solution to this. We're not making a final decision today. Is there objection to leaving it in there? Vito.

MR. VITO CALOMO: I have objection to leaving it in there, and I would like to take it out. I would like to make a motion to delete Option C from this group of options.

CHAIRMAN SMITH: A motion made; is there a second? Option C was the technical committee recommended all charter/headboats must obtain a federal highly migratory species permit. Implicit in that is even if fishing only in state waters. Is there a second to the motion? Seconded by Jimmy Johnson. Okay, discussion on the motion? Margo.

MS. SCHULZ-HAUGEN: I just had a question. Is there an alternate way of collecting some of this information that the states already have in

place or could do to address the technical committee's needs?

CHAIRMAN SMITH: Louis, answer to that?

DR. DANIEL: Well, we have an expanded MRFSS program in North Carolina. I'm not sure if that's what the technical committee means, though, whether they're wanting a logbook program for these permit holders; the ability to be able to contact those folks. I guess the reason I've got a little bit of heartburn over this is because we do have the mechanisms in place in North Carolina, but recognizing that we have a lot more jurisdictions represented here that may or may not have that ability. I guess my question for the technical committee is exactly what are you trying to achieve through this as far as the data-gathering process?

DR. MUSICK: Louis, if all states had the system that North Carolina has in place, this recommendation wouldn't even be in here.

CHAIRMAN SMITH: Another vote for the great state of North Carolina.

DR. DANIEL: Thank you, Jack.

CHAIRMAN SMITH: Okay, the motion on the floor is to eliminate Option C. I would only suggest that elimination of an option too soon in the process kind of prevents you from being able to see if it's got some legs before the final date. I am not actually speaking against the motion as much as keeping our options open. Other comments on the motion? Doug.

MR. GROUT: Based on what Margo said – even though I question the need for that Item C in there, based on what Margo said, I guess I would vote against this motion at this point with the contingency that based on what comes out of legal counsel's recommendation as to whether it actually can be used or can be done. At that point I think we should look at leaving it in or taking it out.

CHAIRMAN SMITH: Okay, if the motion passes, it's out; if the motion fails, it's still in pending a review and final decision at the October meeting; is that how we stand? Okay, any other discussion on the motion? David.

DR. DAVID PIERCE: Just simply put, I don't see the sense of bringing this forward and putting

it in the document when we're essentially saying to a state, if this eventually gets adopted, that a state fishing operation, if it's only in states' waters, would have to have a federal permit. I don't see the sense of it. It's a states' waters fishery, there is no federal involvement.

I would much rather see the states pursue the option whereby they would require that party and charterboat operators be licensed in order to take these particular species. I think that makes more sense. It gets rid of the federal involvement inside state waters and makes it necessary for the states to initiate their own efforts to permit those operations.

CHAIRMAN SMITH: Okay, and that is Option A, after all. Other comments on the motion? Seeing none, let's take a minute to caucus. Okay, are you done caucusing? Seeing that board members are done caucusing, the motion is to remove Option C from Section 4.2.5, recreational fishing license, of the Draft Shark FMP. Motion by Mr. Calomo; seconded by Mr. Johnson. All those in favor, raise your hand. I see eight. All those opposed, 4; abstentions, 0; null, 1. The motion passes 8 to 4 with 1 null and no abstentions. I'm sorry, 2 nulls. The motion carries.

MR. VONDERWEIDT: All right, thank you, Mr. Chairman. This brings us to Issue 4.2.6, recreational shore angler possession limits. It might seem redundant. Issue 4.2.7 is vessel angler possession limits. These were split because it makes the most sense to have per calendar day for the shore anglers and per trip for the vessel anglers who may be a charter or a headboat, and they may have two trips to go out.

So, if we said per 24-hour day, it would limit the amount of trips, so that's really the only difference. This is one shark from large coastal, small coastal and pelagics; in addition, one bonnethead, sharpnose and smooth dogfish. This mirrors federal options except for including smooth dogfish.

CHAIRMAN SMITH: Any objection to characterizing this section this way, this issue? Seeing none, the next one.

MR. VONDERWEIDT: This is exactly the same thing except it would be per trip instead of per 24-hour period.

DR. PIERCE: I don't necessarily object to it. I just want to know how we would present this at the public hearing, whenever those hearings are held? What's the logic for the one smooth dogfish? There is no federal counterpart to that, correct? This is something new; it's an initiative on our part to deal with smooth dogfish. Indeed, we do need to deal with smooth dogfish, but what analysis do we have to bring forward to public hearing to explain why that is the number that we are proposing?

MR. VONDERWEIDT: That's a good point. I guess this is precautionary. If the board so thought that it was inappropriate to only have one, it could be increased. Also, if we choose to remove smooth dogfish from the plan, that would obviously get wiped. If you would like to suggest a different possession limit or whatever, I assume now would be the time.

DR. PIERCE: Well, I haven't got a clue what the possession limit should be because I don't know what the status of the resource is and what sorts of restrictions are required in order for us to be attentive to the need to restrain the recreational fishery catch of smooth dogfish. I don't even know what the catch of smooth dogfish is by the recreational fishery. To me, it's just there for the sake of having a limit on smooth dogfish.

If we want to bring it to public hearing, I suppose that's okay, but, again, I don't know how I would address the commenter at any public hearing in Massachusetts regarding why one versus five versus whatever. God bless the recreational fisherman if he wants to catch many smooth dogfish to bring home to put in his freezer, I suppose. I just want a technical reason for one smooth dogfish.

DR. MUSICK: The reason is this; it's precautionary. The life history of the smooth dogfish, even though they're not closely related to sharpnose shark, is similar. There is certainly a hell of a lot more sharpnose sharks out there than there are smooth dogfish. The limits that we've chosen are in compliance with the federal limits for sharpnose and bonnethead, and we just followed through for smooth dogfish as well. We know there are fewer of them than sharpnose sharks, and we already set a one-shark limit for sharpnose sharks. Their reproductive abilities are about the same.

DR. PIERCE: If I may, Mr. Chairman, so you've just given us some stock assessment information regarding the status of smooth dogfish. If the information exists, and, obviously, it must because you've cited it, then if you can bring that forward to the public hearing in order to make a case for one being a precautionary action, then I suppose, okay.

We have to have something there to justify the one. I feel very uncomfortable saying to the public, we're saying one smooth dogfish, ladies and gentlemen, because we want to be precautionary.

DR. MUSICK: Yes, I should fill you in. The committee is currently working on an assessment for smooth dogfish. Mike Frisk has taken the lead in that from Stony Brook. And, we hope by next year to have an amendment to the management plan that will just look at smooth hounds. So, right now this is a precautionary measure, and it's a way to get the species under some plan. But that's started already with the assessment.

CHAIRMAN SMITH: Okay, I understand where David is coming from, though. In the document – we can't see it on the slide, but in the document there better be some text to justify it, because the push-back we will get out in the public, if anybody cares to push back, will say, "Where is your science," and there should be a paragraph that says some of the things that you just said. So, for Chris, let's make sure that text is in there. Bill.

MR. ADLER: Excuse my ignorance. One shark from either the large coastal, small coastal or pelagic species, okay, and then it says in addition one bonnethead, sharpnose and smooth dogfish. Now, are those three sharks not large coastal, small coastal or pelagic? Are they something else?

DR. MUSICK: First of all, yes, smooth dogfish is something else, but it's a small species that grows relatively rapidly and reproduces every year. Bonnethead and sharpnose are both small coastal species, but they're more abundant than the other species that are listed as small coastals. So, if you can take another sharpnose or you can take a blacknose shark or a finetooth shark, and then you're allowed another sharpnose and another bonnethead on top of those. It's like a bonus. These are in good shape.

MR. ADLER: Okay, I thought we were repeating ourselves.

CHAIRMAN SMITH: Okay, Roy.

MR. ROY MILLER: Mr. Chairman, I find myself in agreement with Dr. Pierce on this issue regarding the smooth dogfish. Smooth dogfish have utility as cut bait, and that may necessarily be reflected in how many people take home to eat, but that utility is real, nonetheless. To this point, maybe I've missed it, but I haven't seen the stock assessment on smooth dogfish yet. Apparently, Dr. Musick indicated that it's yet to come, so, therefore, I think it's premature for us to have options to vote up or vote down that have a limit of one for smooth dogfish as this point in time. Thank you.

CHAIRMAN SMITH: Okay, other comments on either the smooth dogfish issue itself or how this slide is characterized? I hear Roy's point. With some more discussion, it's either going to need a motion to take it out or it is the TC recommendation, so it would be in pending our final review in October; and then if it stays in at that time, pending what kind of public comment we get back. We can either vote to take it out now or we can leave it as a TC recommendation and reconsider in October or we can decide in October to leave it in for public comment. Rusty and then Louis.

MR. HUDSON: Just for everybody's information, there is a small coastal shark review workshop that ended last Friday, and technically the final report will be available in about two or three weeks. I would think that if you want to have smooth dogfish included, then you need to have the sharpnose, bonnethead, blacknose and finetooth all included as far as their status. There are people already recommending trying to increase the take of Atlantic sharpnose due to the large population of those animals.

DR. DANIEL: Well, when we just took out the TC recommendation before, I think it was more based on a policy decision. This one I don't think we've had the discussion around the table that I am certain the technical committee had at their meeting to justify this. I think it would be more appropriate for us to leave it in until October when we have the assessment back.

CHAIRMAN SMITH: All right, so far it sounds like everything on the slide is okay except the smooth dogfish issue, which we're having a little bit of discussion on. Are people comfortable with the last comment to leave it in for now or do you want to offer a motion to do something different? I am hearing a lot of "leave it in for now". Unless there is an objection or a motion, we'll leave it in for now and see how we feel in October. John.

MR. JOHN DUREN: While we're still on recreational, can we go back to the recreational gear? I didn't raise my hand fast enough before you moved on from that.

CHAIRMAN SMITH: We're traveling at the speed of light, but that's okay, we'll go backwards.

MR. DUREN: Okay. About circle hooks, I certainly support circle hooks, but I think in the NMFS regulations for highly migratory species they call for circle hooks to be used when natural bait is used. I think we should also require, in the shark fishery, circle hooks with natural bait, because I don't think we'd want to make it illegal if a shark decided to hit someone's artificial lure. I will make a motion that we modify that Item B to require circle hooks when natural bait is used.

DR. DANIEL: Second.

CHAIRMAN SMITH: There may not be a need for a motion. Is there any disagreement with that suggestion? Seeing none, we'll just make sure we amend the document and the slides to reflect that point. We're back at 4.2. – 4.3, right?

MR. VONDERWEIDT: Yes. Okay, this really hasn't changed since we talked at the last meeting. However, the HMS is proposing, with their preferred alternative, to only have one region, so this gives us the ability to become consistent with them. Option E was preferred by the technical committee and this is regions that default to federal waters automatically. This would exclude smooth dogfish because HMS does not – there is no federal entity that manages smooth dogfish. So, by defaulting to the federal regulations, our quotas could be set in the same areas and have one coast-wide quota, I guess is the point.

CHAIRMAN SMITH: Okay, any comment or discussion? I see some looks of confusion on that one, and I'm a little confused about it, too. Why don't you run through the explanation of that again.

MR. VONDERWEIDT: Sure. Let's say HMS has one region that spans from Maine to Florida, and we have two regions; how do we set our quotas, and do we close one region, but it would be open in, let's say, the North Atlantic, our North Atlantic would be closed, but HMS, in that North Atlantic area, let's say from Virginia north, as the regions are set up right now, it would still be open if they had one region; and how would we set complimentary quotas if we have different management units?

CHAIRMAN SMITH: So, if the National Marine Fisheries Service for the HMS Plan ends up with one region and we end up with two – actually, the other way around – you know, fishing in one region could impair the opportunities in the other region, and that's kind of the concern with making it one whole big coast, because the fisheries are different by season.

Now, I'm wondering how we best get comments on the record because it's not just our plan we have to worry about. If I understood you correctly, the Service is contemplating going to one coast-wide region, so that's something we want to comment on, in addition, but we don't know how we're going to end up with ours. I guess our comment to them is we want to keep the options open. Louis.

DR. DANIEL: And that sort of starts the discussion of complementary plans and working with HMS to develop this coast-wide shark plan. You know, if we're just going to be complimenting what HMS does, then there is not as much of a need for us to be here. I think that it's important for us to be engaged with HMS and work with them to try to develop the alternatives that we think are most satisfactory to us.

I think Option A sort of provides the justification in the document itself where it says the regions are based upon regional differences in fisheries, shark pupping seasons and fish availability. I think the justification is good there to maintain the current two-region approach, and it does tend

to protect the southern part of the coast during parts of the year and the northern areas as well.

CHAIRMAN SMITH: I never really mentioned this because I didn't think about it until now. Is there any reason why we can't have a management board recommendation as a parenthetical, as we're doing with the technical committee; so that when we go to public hearing, the public gets a sense of the technical committee recommendation for a certain reason and there's a management board recommendation that may have a different reason, must as Louis just said.

Is that beneficial to do that or is that confusing? If we don't do it on this issue, we may run the risk of not properly informing the Service, who, of course, is well represented here, of the nature of our concern on this issue. I guess I'm looking for people with a bigger dog in the fight that I have to try and figure out how to send that signal to the Service so that even though we don't know what our plan is going to say yet, we want them to know what we think the coast plan ought to say. Louis.

DR. DANIEL: I think it does help to have the board's recommendation if it's different from the technical committee. I also think it's important for folks interested in this issue to be here this afternoon for the Service's presentation on Amendment 2, and talk with them, and let's work together on this issue and try to come to some common ground.

I think what the Service wants to do is work with the ASMFC and not dictate to us what we need. So, how do we come up with alternatives that satisfy the needs of the Service, the technical committee and the board to where we can all agree, and we'll all get a little bit out of it and some might lose a few things.

I think when we get into these recreational measures, particularly some of these area closures and pupping areas and those kinds of things, there is a real disconnect around the table about opinions there, and that's where we really need to focus on trying to come up with a good cooperative management strategy so that you don't have some states going off on their own or trying to circumvent the process.

CHAIRMAN SMITH: Is there objection to having Option A followed by a parenthetical

management board recommendation? Is that beneficial; does the board feel that's beneficial? One does. Pat and then George.

MR. AUGUSTINE: Mr. Chairman, my concern here is what if the species occurs in different geographical locations at different times? That's question one, and we know they do. Two, if you end up with a coast-wide quota, which is what you're heading for, how are we going to determine what the quota break is if you have a single region?

That's why I'm against a single region. If you have a single region and a coast-wide quota, wherever the species occurs and are harvested, in my mind it's a run for the fish, catch what you can, and when the quota is filled, it's done. The way NMFS works, when you get to 80 percent, it's closed. So, I'm against one region. Two regions might be more adequate.

And without knowing whether or not there is a large enough difference in the geographical split, whether two or more would be appropriate, I'd lean towards Option A, but I would want some consideration for Option C. I'm not sure how clearly defined these groupings are. If someone could address that or leave them both in, I'd appreciate it.

CHAIRMAN SMITH: After public hearings – even if we call Option A a management board recommendation, that does not mean after public hearings we can't come back, rethink it a little more and select C.

MR. AUGUSTINE: That's fair enough, Mr. Chairman.

MR. LAPOINTE: I like the idea of management board recommendations, but we made a lot of decisions this afternoon without that, and so how do we back-fill? Do we do that today or can we wait until October?

CHAIRMAN SMITH: We could do either. I mean, we're pretty much still ahead of the curve. I am not sure how much more to do, but let's reserve judgment. From now on, if we find places where we want to have management board recommendations, we'll plug it in. Other places we won't have such a strong view. We can see how much time we have and if we want to go back over this ground.

MR. VONDERWEIDT: Correct me if I'm wrong, Margo, but I believe the only relevant change or proposed change in the HMS rule that we've covered so far would be recreationally permitted species, and they are proposing to limit the species based on the most commonly caught, easily identifiable recreational species; so if we wanted to go back to that alternative, I don't think it would take too much time. We wouldn't have to go through all the other options.

MS. SCHULZ-HAUGEN: Yes, I think that's right. Just to let folks know, one of the reasons that we proposed a single region is because the quota was getting so small, that the idea of dividing that small number by two for two regions or even trimesters seemed like it would become very difficult to administer, to track and then you have the race-for-fish, safety-at-sea concerns. That's one of the reasons we proposed a single region.

And to just reiterate what Louis is saying is we're very interested in working cooperatively with the commission and would be interested in some dialogue on how we move forward together, given your process and our process. We're certainly interested in hearing your views, and we will do what we can.

CHAIRMAN SMITH: Thank you. Any other board comments on this. Rusty.

MR. HUDSON: Basically, the one-region thing on the federal level had been in place since '93 and then got changed a couple of years ago to a three-region approach. We have a fundamental problem with, like, Louisiana. If we go with one quota – earlier this year they had one quota for the Gulf of Mexico Region.

That quota was ended, as far as the federal's fishing on it, the federally permitted boats, on January 15th. But all the way through March 31st Louisiana kept fishing in state waters, so instead of catching 120 percent of the quota that was caught originally reported, it's now up to 300 percent, and the same thing is occurring right now.

So, if you go to one region, Louisiana, with their blacktips, will pretty much dominate the small quota that's left, because if the reduction on the federal level takes place, you have two states, Virginia and Louisiana, that have state landings

that are being deducted from the federal quota each year.

DR. PIERCE: Well, it's on C, Option C; two or more regions with different geographical splits; do we have any sub-options that would relate to that so we have some specific ideas to air at public hearings; or, are we just asking for views? It's nebulous; it doesn't really help me understand what we're trying to achieve.

If the technical committee had some specific ideas regarding other geographical splits, then that would certainly be helpful, and we could bring them forward for public comment. But right now, it's just so ambiguous, I'm not sure it accomplishes much.

MR. VONDERWEIDT: Yes, sure, that just kind of comes back to what the goals of the plan development team were when we initiated that, and that was basically to be consistent – to provide options that were consistent with HMS and to also come up with as many options as we could think of or as many options for each issue that we could think of and put them in there so that the board could make the decisions.

That's why it's in there, but the technical committee does not recommend any other geographical splits. The HMS geographical splits are based on what Louis said before, the fishery and migration periods of the fish. Nobody has suggested two or more different geographical splits, but it's in there to increase flexibility or options. I mean, it wouldn't seem unreasonable to remove it. It might be extraneous.

DR. PIERCE: So C is different from E, right? There is no connection between C and E? Okay. Well, I would recommend removing C unless we have something very specific to bring out to public hearing.

CHAIRMAN SMITH: Any objection to taking Option C off the board? Okay, seeing none, we'll take Option C out and renumber them. Any objection to adding "management board recommendation" after Option A? Seeing none, we'll add that to Option A. Malcolm.

MR. MALCOLM RHODES: Well, along that line, what would be the point of Option D with no region? We're either looking at coastal region – we're looking at a North Atlantic and a South Atlantic Region, but how can we have no

region as an option for management? I would move that we remove Option D, also.

CHAIRMAN SMITH: Any objection to taking out Option D? I like short lists. Okay, Bruce Freeman, you had your hand up. Now that we sort of have our ducks in a row, you might want to comment on them.

MR. BRUCE FREEMAN: I would make a comment that if we look at our experience with the shark fishery to date, we recognize the problem of catches where they were very high in certain areas. We had traditional fisheries in other areas where we made relatively modest catches, and some of these new areas – Louisiana was mentioned – essentially came into play and started taking the majority of the catch.

What essentially has occurred is traditional fisheries have been eliminated because of what has happened in the southern area of their migration. I would have argued that Option C probably makes the most sense in that if it's determined by the commission that it reaches a point it must allocate the quota, whatever it is, amongst the regions or perhaps even amongst the states, as we've done with summer flounder and sea bass, that it probably would be more realistic to leave that, having the commission with the responsibility of determining what those regions be, only because of the restriction of the quota.

And, again, it just gets me back to what has occurred in some of the coastal species where aggressive fisheries have developed relatively recently and now take almost the entire catch, as Margo has indicated, more than the entire catch. So, my point being that one or more regions may be something we want use in the future; and if there is some mechanism in the plan to take that option or at least look at that option, if does develop, I think it's perhaps a wise thing to do.

CHAIRMAN SMITH: Okay, that's a useful comment on something we've just decided to take out. Is anyone on the board persuaded that Option C should be added back in? David Pierce.

DR. PIERCE: I was the one that said it should be taken out; however, I think Bruce has made some compelling arguments to keep it in. I would suggest that we do, indeed, keep it in.

CHAIRMAN SMITH: Okay, any objection to putting Option C back in there? No objection, Option C is back in there. Thank you, Bruce. Louis.

DR. DANIEL: And, I'm sorry, but I think Chris made a good point, and I think we can go back where there is some discrepancy, I think, or some things that the feds are going to be proposing that we can comment on specifically. I think that would be helpful. So, that one issue that he just brought up – and I can't remember now what it was.

CHAIRMAN SMITH: We'll get that and he'll keep a placeholder. We'll get that when we get to the end the thing, rather than dropping 20 pages. Okay, 4.3.2?

MR. VONDERWEIDT: One, quota specification schedule.

CHAIRMAN SMITH: No, that regions; we just did regions. Have I got the wrong draft here?

MR. VONDERWEIDT: Yes, so I guess there are no options for 4.3.2, so it wasn't included. It just basically says the board can set seasons as they see fit. It just provides flexibility to do that.

CHAIRMAN SMITH: There was a question, though. We did have that comment before. Louis raised it and Jack commented and Rusty commented. Do we have enough latitude in here to do what they had talked about, which was potentially for protection of life stages or quota allocations, I guess is the other way to look at it. We'd be able to set seasons of whatever amount or lengths we determined.

MR. VONDERWEIDT: Yes, that's what 4.3 – the seasons –

CHAIRMAN SMITH: That's what it allowed?

MR. VONDERWEIDT: Yes.

CHAIRMAN SMITH: Okay. All right, Louis.

DR. DANIEL: But I think it would be nice to have a specific option in there from the technical committee, maybe with the concurrence of the advisors, on a pupping season closure. What did you say, Rusty, April, May, June, or something like that, whatever the technical committee and the AP feel is appropriate, to go ahead and have

that out there for the public to see before we take it out for final hearing. I think the technical committee is going to be getting together, and they could ask that question.

MR. VONDERWEIDT: Yes, that's the specific goal of the technical committee meeting. That's actually a little bit further down in this presentation, but we'll get to that. So, the quota specification schedule – and this has a new option, and this is an option that was actually suggested by a board over the phone and brought before the TC. The TC thought it was a very good suggestion. This is Option E. The ASMFC does not actively set quotas, so this essentially would remove any need to set regions or to set seasons other than seasonal closures, which we will get to.

But, what this means is that when a species is – you're no longer allowed to fish for in federal waters because they've hit the quota, you can no longer fish for in state waters. Smooth dogfish would be exempt from this because they're not a federally managed species. This brings simplicity to the plan.;

DR. MUSICK: We thought this was critical. This has been a huge loophole in shark management right now, and it's one of the reasons why you see this 300 percent overage. People can keep fishing in state waters for these sharks after the federal area is closed. I serve on the group that puts together the federal management plan, as well, and Rusty does, too.

Those plans are based on assessments that come up with the quotas; and when you exceed those quotas, then you're not fulfilling the requirements that you set up for yourselves in order to prevent overfishing and have sustainability. So, in order for the federal plan to work at all, the states have to close state waters when federal waters are closed, absolutely essential.

CHAIRMAN SMITH: Comments? Bill.

MR. ADLER: Just the process here. Did we skip over 4.3.3 and go to 4.3.3.1, annual process for setting fishery specifications, which would seem to be – did we skip over that?

MR. VONDERWEIDT: That's kind of what we had just discussed as far as the seasons, but this basically doesn't have options, and it allows the

board flexibility to set them however they want. This is going to kind of come to fruition as we decide on the other options.

CHAIRMAN SMITH: Okay, any objection to how this issue is characterized on the screen? Seeing none, we will move on.

MR. VONDERWEIDT: Okay, commercial permit requirements, this is basically – I guess this is another one that the technical committee felt was imperative to the management plan, and this is data collection. Basically, federal quotas are – landings are reported through federal dealers. Once you get to a certain volume, the fishery is shut down for a species group.

So, by requiring a commercial permit for dealers, we would essentially get all the information to HMS in a timely manner. These are not – any dealer can get a federal dealer permit. It's not limited access or anything like that. I'm sorry, this is not dealer yet – I apologize, it's late. This is trying to cover landings for the commercial fishermen, and the technical committee recommended either a federal shark permit, which a lot of commercial fishermen are going to have, in federal waters or a state commercial fishing license, if one is set up in a state.

We would have to be careful about our language there, but we would work with the LEC and the plan development team and make sure that we get it right and bring that in the draft for public comment. That way, every commercial fisherman would have a permit. The technical committee did not recommend requiring a commercial federal permit, and the reason for that is that they're limited access. So, state-specific commercial shark fishermen would essentially be pushed out of the fishery with that option, which is Option A.

CHAIRMAN SMITH: Okay, does that raise the question that perhaps Option A shouldn't be in there, because that's the whole thing we had with the recreational one earlier, where that's basically saying that a commercial vessel fishing only in state waters has to have a federal shark permit? I guess we left that in for review; didn't we, with the recreational?

MR. VONDERWEIDT: We removed that.

CHAIRMAN SMITH: Did we remove that?

MR. VONDERWEIDT: Yes.

CHAIRMAN SMITH: We ought to be consistent, I would think. If we took that out, then perhaps we ought to take this one out. How do you feel about that? Leave it or take it out? Is there any objection to taking Option A out of the document, to be consistent with how we dealt with the recreational?

This is commercial vessels must have a federal permit to commercially harvest sharks in state waters. As Chris just pointed out, since they're limited access, I can think of good reasons for both ways of looking at it. Option B, though, is shark fishermen must hold a state permit in order to commercially harvest sharks in state waters.

So, it's covered by commercial licensing, which most states do, anyway. So how do you feel about Option A, in or out? I hear some "outs". Okay, we'll take it out? Okay, without objection, we'll take that out.

MR. VONDERWEIDT: The next issue is commercial possession limits. This hasn't changed since the last time. Just basically, the alternatives would be species group or individual species. Highly Migratory Species manages by species groups, sets quotas by species groups, so the technical committee recommended that as the most logical alternative to stay complimentary.

CHAIRMAN SMITH: Any objection to these options as they're on the board? Seeing none, moving on, size limits.

MR. VONDERWEIDT: Okay, commercial size limits, this is one where the technical committee kind of went around and around and felt that this is a good way, if we went with the alternative to open and close when the federal quota is open and closed; that we could still kind of control our fishery through size limits and also possession limits, but we'll get to that.

It's also a good way to protect nursing grounds if you only allow catch of a certain size. Jack can probably talk specifically to that. But, basically this just gives the board lots of flexibility to set by sex, by size, by region or season different size limits, based on migration patterns and things like that.

CHAIRMAN SMITH: Comments? Any objections to leaving it right as it is? Okay, seeing none, we'll move on.

MR. VONDERWEIDT: Commercial gear restrictions have changed a little bit after the last technical committee meeting. The TC felt that there are kind of two gillnet fisheries out there. There is a bycatch fishery, which is less than five inches, and the directed shark gillnet fishery, which is greater than five inches.

When managing, if we have measures for bycatch reduction, which is the soak time of your net, the technical committee felt that it wouldn't be smart to require small-mesh gillnets to follow shark regulations, because then they would just throw out their catch of sharks, the sharks would die, it wouldn't be reported, so why not just let them land it. That's why these are split here; and when we get to bycatch reduction measures, the gillnet requirements to reduce bycatch are only for large mesh. Basically, they recommended all of the gears, except for longlines, because of the bycatch issues.

MR. AUGUSTINE: Thank you, Mr. Chairman. Aren't longlines an allowed method for commercial fishing in federal waters?

MR. VONDERWEIDT: Yes.

MR. AUGUSTINE: I understand why we're trying to limit, through the use of longlines, the number of fish that are killed indiscriminately where longline soak time is exceptionally long. I have no idea nor do I have a dog in this fight, but it seems rather strange that we just go ahead and take out one type of fishing gear, not knowing how many states and/or what number of commercial fishermen are allowed to use longlines in state waters now.

I don't believe we have in New York; I know we don't. But, I don't know how this would affect other states or whether or not they have other built-in restrictions as to soak time or number of hooks and that sort of thing. I understand what the technical committee wants to accomplish here, but I'm not sure that necessary research or evaluation has been done as to what the effect it will have. If someone could address that, I would appreciate it.

DR. DANIEL: I think that came from us in North Carolina when we were unable to deal

with the closure off of North Carolina that we talked about before. We opened state waters to give our fishermen some opportunity, but one concern that we had was these miles of longline gear in state waters where it's a very restricted area and the potential for conflict and interaction with the protected resources.

That's when we came up with using a more traditional gear in close-shore waters of what we call a trot line. It's basically 500 yards with 50 hooks, and that's what is identified here as a short line that the technical committee has recommended. I am unaware of any other state that would have longlines in state waters, but we tried to avoid it in North Carolina.

MR. AUGUSTINE: You are referring to all of the South Atlantic states, as far as you know? I want to make sure that there is equal treatment for all states; and if in North Carolina you have eliminated them and it has been an acceptable practice, then, by all means, I think we should do exactly what you said.

DR. MUSICK: Yes, longlines have been illegal in Virginia state waters since the early nineties, but we do allow these shorter trot lines that Louis talked about.

MR. AUGUSTINE: A follow-on, Mr. Chairman. Is the trot line described in such a way that it's not considered as a longline, so there is not a conflict here? I fully support this. Thank you.

MR. VONDERWEIDT: This was developed, actually, in cooperation with Dr. Daniel, and it's defined exactly the same as North Carolina's language. They use the words "trot line"; however, some places define a trot line as a line that's hooked to the shore and then hooked to a boat, so short lines encompass that, but they don't restrict it to that definition.

MS. SCHULZ-HAUGEN: Just a point of clarification. Our longline definition is more than two hooks, as long as it's the main line and things like that, so that might need some consideration on the federal side in terms of how the gear is defined.

MR. ADLER: Thank you, Mr. Chairman. At the beginning of 4.3.4.4, it does say that longlines should be prohibited gear in state shark fisheries. And then, what is Option F, longlines? Are we in or out here?

MR. VONDERWEIDT: He is looking at the TC recommendation and not the management –

CHAIRMAN SMITH: Well, no, he is also in the whole document. In the itemized list longlines are still in there, as they are in the slide. He is saying the preamble paragraph says longlines should be removed.

MR. VONDERWEIDT: In the TC recommendations, it says longlines should be removed, but not in that.

CHAIRMAN SMITH: I read it just a minute ago here. That's it right there, 4.3.4.4. We're kind of kibitzing here for a minute. It says it there, too.

MR. VONDERWEIDT: Okay, so that was actually taken out?

CHAIRMAN SMITH: Yes, okay. So we're clear, the sentence in the preamble paragraph of 4.3.4.4 should be removed, which says, "Longlines should be a prohibited gear in state shark fisheries", and Item F in the outline below should be removed. Any objection?

MR. ADLER: Okay, if you remove both of those, then you don't have a discussion on it at all?

CHAIRMAN SMITH: Yes, maybe leave it in the preamble text and take out –

MR. ADLER: Or leave it in there as an option.

CHAIRMAN SMITH: But we don't want it to be an option is how I understand the group. I don't hear anybody saying we want to have longlines in state waters.

MR. ADLER: We don't know, but we want to hear the comment on it. I mean, put it one place or the other, I guess.

CHAIRMAN SMITH: Okay, I haven't heard anybody – unless you're saying Massachusetts wants to keep the door open to that, I don't hear anybody saying we want that door open, which is why the preamble paragraph clears up that gear, and the options that don't allow it as a discussion point. I'm just saying as a strawman that's how it seemed to be developing. If you

want it differently, let's talk about the differently.

MR. ADLER: Okay, now, in other words, if it's out, is it illegal or is there going to be no discussion on whether they should allow longlines. Whether you like them or not, I mean, it's just that – or is the question going to come up, well, a longline is okay, and then are we going to say, well, no, we've already determined that or let's talk about it or something.

I think if you want to talk about eliminating longlines, you probably need to put it somewhere in the document, whether it be in the preamble, which would cause the pro-longline people to mention it; or there, whatever you want, but somewhere it should be listed, I mean, just so it can be discussed.

CHAIRMAN SMITH: Okay, I guess the issue, then, is do we want this to be a gear that's open for discussion in state waters in the public hearing process? If we answer that question, then we can figure out how the document ought to characterize it.

MR. ADLER: Why not; why wouldn't it at least be open for discussion?

CHAIRMAN SMITH: I don't care one way or another, but I was hearing a lot of reasons why it's a lot of gear in a small confined area. The North Carolina approach, I saw people nodding at that time. But, again, if somebody wants – Bill, if you want the discussion open for Massachusetts or if any other state wants the discussion open for public comment, then we should go a certain way here. If anybody wants it in, we should leave it in.

MR. ADLER: Okay, another thing is gear restrictions, if it's not listed, that means it's okay.

CHAIRMAN SMITH: Not if we leave the sentence that says, "Longlines should be prohibited gear in state shark fisheries." And if you take F out, that resolves it. It's not a subject for discussion.

MR. ADLER: Okay, because now you've left it in there somewhere and somebody will comment on the preamble and say, "No, don't do that," so at least you've left it in.

CHAIRMAN SMITH: Yes.

MR. ADLER: Okay, one or the other.

MR. RHODES: Well, I just had a question; are longlines prohibited in all states currently or are some states allowing longlines. As Louis said already, North Carolina is prohibited; South Carolina is prohibited.

CHAIRMAN SMITH: Virginia is, Jack said. Florida is.

MR. RHODES: So, it's already not an option because it's prohibited in every state water already, or are some states still allowing longlines?

CHAIRMAN SMITH: The real issue is does any state want to have this in the document as an option for public comment to have it as a type of gear in the states' waters only? I see New Jersey and New York shaking their head no. I heard North Carolina, South Carolina, Georgia, Florida, Virginia, no, Delaware, Maryland.

MR. ADLER: It's legal in our state.

CHAIRMAN SMITH: Okay, so you want to keep the door open?

MR. ADLER: Yes, I just want a discussion at least, because it's legal.

CHAIRMAN SMITH: Okay. Then, in that case what I would suggest is we take out or amend that sentence to say, "Consideration should be given to whether longlines should be prohibited gear in state shark fisheries", and then leave F on the board. Is there any disagreement with that? Pat, you don't want to disagree; this is too complicated. Hold your thought. Any disagreement with that, we revise the sentence in the preamble, as I just described, and we leave F in? No disagreement. Pat.

MR. AUGUSTINE: I want a point of clarification. Mr. Chairman, is the gentleman from Massachusetts believing now that we're going to band longlines from all fishing in state waters in the state of Massachusetts? My sense is that there may be an interpretation here that – I was under the impression leave longlines in state waters fishing for sharks. We don't do that in New York, and I don't know if any other states

in the northeast do that. Do you do it in Connecticut?

CHAIRMAN SMITH: But what he said is longline is an allowable gear in Massachusetts waters, and they would like the opportunity to discuss the point of whether they should be allowed for shark fisheries during the public comment process, so we've sort of just decided to leave the door open for them to have that discussion. David.

DR. PIERCE: By shark fisheries, you mean smooth dogs, too, correct?

CHAIRMAN SMITH: All sharks regulated by the plan.

DR. PIERCE: Right, we have smooth dogs in our waters. We have small-scale longlining trawling for smooth dogs in our waters. We're actually prepared to take some actions on our own to dramatically restrict the commercial fishery for smooth dogs in our waters because it really isn't much now, and we don't want it to become an important fishery.

It's very minor, but if, indeed, we do have continued small-scale fishing for smooth dogs in our waters, like we have now for spiny dogfish, we would want that to be allowed. It's a desirable way of catching fish. It's certainly far better than gillnets. So, unless I'm missing something –

CHAIRMAN SMITH: I'll try and explain it this way. When they fish longlines in Massachusetts, are they longer than 500 yards with 50 hooks on them for smooth dogfish, because that's allowed in this. That's a discussion point in this. They call it a short line.

DR. PIERCE: Longer than – how long?

CHAIRMAN SMITH: 500 yards and 50 hooks.

DR. PIERCE: Longer than 500 yards. Well, we're likely going to be restricting the length of the gear that can be fished in our waters, but I can't say at this time what the nature of the restrictions are going to be.

CHAIRMAN SMITH: Okay, so we left it the way you want to have it?

DR. PIERCE: Yes.

CHAIRMAN SMITH: So we're fine. Okay, so we'll amend the first sentence and we'll leave F in.

DR. PIERCE: Yes, and also for the benefit of the board, I would say that before the end of this year, we will have in place, in our waters, some very restrictive measures for the taking of smooth dogfish in order to preempt the possibility of that fishery getting going. We don't want that to happen; so, just stay tuned. We'll keep the board apprised as to how we're progressing with those restrictions.

MR. RED MUNDEN: Thank you, Mr. Chairman. If it's not too late in the game, it may be better to change the language describing this gear to "authorized commercial gear", and that would answer the question that Mr. Adler raised as to whether or not longlines were restricted or not. This category could be renamed "authorized commercial gear".

CHAIRMAN SMITH: Any objection to that? Seeing none, we will do that. Thank you, good idea. Doug.

MR. GROUT: That was my comment.

CHAIRMAN SMITH: Okay, great, consensus in the south and the north. This is a victory. Okay, the next issue is bycatch reduction measures, always a winner.

MR. VONDERWEIDT: So, basically, this language mirrors the HMS regulations or the HMS language for bycatch reduction measures. You'll see here it says the TC recommended Option A as longlines and Option B is gillnets. The technical committee does not endorse requiring or allowing longlines; however, if we do allow longlines, they endorse requiring these bycatch reduction measures. I guess ideally the TC would like to see longlines prohibited and go with Option B, which is the gillnet bycatch reduction measures.

CHAIRMAN SMITH: I had to read that Option B twice because I read past the parenthetical, and it looked like the mesh size smaller than 2.6 kilometers, and that's a heck of a mesh size. The fact is it's mesh size of five inches; and length of nets, we might want to say shorter, just to be clear. Any objection to having this on the board and in the document as described, as indicated?

MR. HUDSON: Where says “all longline vessels” under Option B, could that also include the short-line vessels to operate with the same protocol since basically we’re talking about hooks and turtles spaces.

CHAIRMAN SMITH: Good point. Any objection to that, longlines or short lines? Okay, good, we’ll do that. Louis.

DR. DANIEL: Maybe I’m at the wrong point again here, but I’m a little bit concerned what the longline fishery is going to look like with the new assessments and the new quotas. One of the issues that I felt really needed to be discussed by this board in some way, shape or form is with the potential closure to the sandbar sharks, how you have a bottom longline fishery occur without having significant discards of protected resources, that would include now, sandbars and duskies and others.

So, it’s a real concern to me in how we can maybe best take advantage through recommendations to the Service, how we can best take advantage of the small coastal fishery and some type of bycatch allowance of large coastals that would – I mean, I’m not sure – and Rusty may certainly know – what the implications are to the bottom longline fishery and whether or not it’s appropriate to prosecute that fishery knowing the potential bycatch concerns that are going to exist.

CHAIRMAN SMITH: I know I’m not competent to comment on that. Anybody want to discuss that? Rusty.

MR. HUDSON: You know, with the sandbars, Louis, they’re not just restricted to bottom longline guys. So, some of the bottom longline guys outside of 300 feet, for instance, through the South Atlantic Council, can encounter prohibited species, but then so does the pelagic longline guys.

But, back into the state waters again, your short-line situation is kind of a different scenario. Except for what Margo was saying, they’re going to have to write a description of that fishery gear in the federal stuff in order to get it there. The bottom longline fishery inside of 300 feet is essentially for shark.

And, like you’re suggesting, a small coastal thing, some people have been doing that with hook and line, particularly near shore and near state waters, but they get a lot of bycatch of large coastals when they’re targeting small coastals. So, you’re right, there probably needs to be a mechanism to allow some, but then if you’ve got small coastal open all yearlong, as it has been in most cases, versus the large coastal being closed so much of the year, you kind of get into a gray, fuzzy area, unless, of course, this bag limit suggestion in Amendment 2 winds up answering that question for you. So, we haven’t got to that final rule yet.

DR. DANIEL: And, I guess what I’m thinking is with having small coastals available year-round right now and no closures and having a much more limited amount of large coastals available and even protected species in terms of sandbars, where the sandbar fishery is basically going to be relegated to a few vessels for research, then wouldn’t it behoove us to have the large coastal quota caught up as incidental take in the small coastal fishery, so that when those guys are operating year-round in this short, trot line type fishery, that they’re able to retain those blacktips and those few other large coastals that they’re catching, rather than hoping that they catch those large coastals during that one-week window or two-week window, whatever it allows, and allow the fishery to go on.

I’m trying to come up with a way to not promote the small coastal fishery, but at least provide opportunities where opportunities exist. That seems to me to be an option that we can work with the Service on to try to come up with a way to minimize the unknown and unquantified discards that will result from all these protected resources and what could be a valuable small coastal fishery in near-shore waters and taking advantage of some bycatch of large coastals as well.

CHAIRMAN SMITH: What does that strategy do – I see the advantage to the small coastal shark fishery, but every advantage on a limited resource for one fishery takes it away from another one. Are there going to be large coastal shark fishers that are potentially sore at a loss of opportunity – in other words, they don’t fish for small coastal sharks, but the large ones are what they do even if it’s a one-day or whatever limit. Are we disenfranchising them in order to make the small coastal shark fishery more productive

with small sharks and the bycatch of large sharks?

DR. DANIEL: I think that's a question that we need to ask.

CHAIRMAN SMITH: How do we make sure – and I don't know if it's in this section right away, but we're going to need a spot to put that concept in there and fill the words in. You're going to have to work with Chris to fill the words in. Does anybody object to the concept that Louis is floating? Jack.

DR. MUSICK: I don't quite understand how that can work. If you hit the quota and close the large coastal shark fishery, the large coastals are still being taken. I mean, you're going to exceed the quota unless you reserve so much of the quota for bycatch in the inshore areas, and then you're going to have the problem of a fisherman saying, "Hey, I can still catch some large coastals, so I'm going to target them in shore here." I mean, it's a sticky wicket.

DR. DANIEL: No, you've misunderstood my proposal, and that is to only have the large coastals taken as bycatch in the small coastal fishery. You would not have a directed full-scale open large coastal fishery. How do you –

DR. MUSICK: In federal waters, as well?

DR. DANIEL: Right. How do you take advantage – and that's why I say working with the Service – how do you take advantage of this – as Margo said – this small amount of large coastal quota that lasts for maybe a couple of weeks? We're talking about the Service even eliminating regions because the quotas are so small. How does the industry best take advantage, in an overall sense, of this small amount of quota?

One of the proposals is maybe like a 20-shark bycatch – 20 large coastal bycatch allowance, non-sandbar bycatch allowance, in other fisheries, and that may get you through the year without having a closure and staying within the quotas for the large coastals, but spread it out over time, as opposed to having it all occur for a two-week period. Then you have got the small coastal fishery operating year-round with a bycatch of large coastals that have to just be tossed overboard.

DR. MUSICK: That could work.

CHAIRMAN SMITH: Or worse, closed if the bycatch limit closed the directed fishery. Rusty.

MR. HUDSON: With the fact that the small coastal shark assessment final report is still being prepared. We don't know what management is going to pick as a quota, but keep in mind that the 1 million pound small coastal shark quota has never been caught. Whenever half of it has been caught, it traditionally has not been by hook-and-line guys but gillnet guys who have just come under a great deal of restriction with the whale plan.

So, once you start having people cranking up for small coastals, they're going to have to do stuff in order to avoid the large coastals. That means they're going to have to use smaller hooks, lighter leaders and other types of restrictions. Once you get a few of those longline/short line guys, whatever, cranking up, that quota will probably be met between them and the gillnet guys and then close. So, it's not a thing you can count on as a year-round thing.

DR. DANIEL: Well, I'm just trying to think outside the box. From what we've seen with the assessments over the last few years, one year we're okay and the next year we have a 400-year rebuilding time, you know, the flip flops that we've seen, it's very difficult to get our hands around it.

Is the way that we're managing it now, go out and catch all the large coastals you can in a short amount of time, go over by potentially 300 percent, have to take it off the next year, disadvantage the industry, or do you try to do something a little different, co-oping with NMFS to make sure we stay below the quotas, but minimize the discards. That's the idea.

CHAIRMAN SMITH: Okay, I've got it now. I just want to know where we put it. If the group agrees that concept needs to be developed for further review in October, somewhere around 4.3.4.5, which is bycatch reduction measures, we would need a bycatch strategy for integration of the small coastal shark fishery and large coastal as a bycatch-only fishery, and that's going to require Louis and his staff, working with Chris, to develop that. Does the board agree that concept should be developed? I am hearing a lot of yeses, so let's do that. Jack.

DR. MUSICK: You have to realize, though, NMFS has to agree to do it in federal waters. Otherwise, it ain't going to work.

CHAIRMAN SMITH: You've said that twice. I've got that, it's got to be coordinated with the Service. Chris.

MR. VONDERWEIDT: This is also going to be contingent on HMS's timetable for their Amendment 2, to make sure that we get it in, so I don't think that we can come back and look at it again at the October meeting. We have to get something sent to them before that as a recommendation.

And just kind of coming to mind, we recommend the two areas for management, I can work with Louis for that in particular and also put together a bunch of recommendations and then send them a letter on behalf of the Shark Board as to what we want to do. I think that's the best strategy as far as getting our wishes considered in the HMS Plan. Correct me if I'm wrong on the timetable.

CHAIRMAN SMITH: You may not be wrong on the timetable, but let's explore this a little more carefully now. We need to understand that if we pursue it the way Chris just described it, to be within their public comment period for their amendment on the HMS Plan, we preclude our future consideration of not doing it in October or after the public comment period; and when we get ready to decide in January, the Service may have already decided to do it, and we may have decided, gee, on reflection, you know, it was good idea in August, but it stunk in November.

So, let's be sure we know what we're about to do here and not have objection. It's not just the concept that we're going to look at again. It would be a public comment from this board, essentially, without having seen the words, to the Service on their HMS Plan. Are you going to be comfortable with that? Hold that thought while we get Margo's comments.

MS. SCHULZ-HAUGEN: Well, I guess I would be interested to hear if the board would be interested in meeting again if we were to consider extending the comment period to cover the board meeting? I'm not saying we can, for sure. We're going to have to take that back and then see what that does to some of the other

actions we're working on. I would be interested to hear if the board would be interested in that.

DR. DANIEL: I'd also be interested in hearing what the technical committee had to say about it. I also think that in addition to my staff, I'd want to work with Carol and Margo to make sure that everybody is cool with what we're proposing, and we'll have an opportunity maybe to talk about it in a little while when they give their presentation. That might work.

CHAIRMAN SMITH: So, it sounds like what we need – and let me just float this as a strawman – a letter from the commission, whether it's this board or it's the policy board, much like the discussion we had on sturgeon earlier, to the Service requesting an extension of the public comment period, to extend beyond the date of our annual meeting, so that we have an opportunity to look at this again. That's one letter of request to them.

At the same time we charge the technical committee of looking at this concept and fleshing it out a little with Louis' staff and hopefully with Margo's staff and Chris to have that concept developed for us to look at at the annual meeting. Then we decide on what kind of comment we want to offer on the HMS Plan Amendment 2. Does that strategy make sense? You can't guarantee it, but you can only say you'll try, right?

MS. SCHULZ-HAUGEN: That's right.

CHAIRMAN SMITH: Well, here is what happens if the Service can't extend the public comment deadline. Louis is free to make that comment as the state of North Carolina, and other states are welcome to comment, pro or con, as they see fit. We're all tuned in now to the idea that he's suggesting. In fact, in three weeks he may decide, "No, on reflection that's not a good suggestion, but it was a nice discussion topic"; or, he may comment.

Hopefully, we get the benefit of whatever comments go in, and then states can comment – and, again, this presumes they are not able to extend their comment deadline to beyond the annual meeting. So, states still can comment on that concept. Are you comfortable with the way we are now? I haven't even written it down, so I'm not sure I'll remember it, so you better be comfortable with how I described it.

So, if we need a record of this to recall this, he can get it in about a week or a couple of weeks. Okay, so everybody comfortable with this? We have about eight pages more to go in this document. Does anybody want to take a five-minute break and come back in? It's 4:35. We had time allotted until 5:15. We'll probably hit that, more or less. You want to keep going, okay. I have Roy. We're still on this issue, so I'm sure before we leave it, you're comfortable with where we're at.

MR. MILLER: Mr. Chairman, have you moved on to Option B up there yet?

CHAIRMAN SMITH: No, but we can if no one else has a comment on the concept thing. Okay, B.

MR. MILLER: Yes. Concerning Option B, I have a couple of comments. One, I'm curious as to why it singles out only large-mesh gillnets. Is that because of the Marine Mammal Act? Two, if all gillnets in inshore waters greater than five inches must be checked every two hours, if the option were chosen, it would be eliminating the Delaware Bay gillnet fishery for American shad and striped bass, because they're anchor net fisheries.

So, I would object to the inclusion of checking the nets every two hours. I'm not saying that's a bad idea, necessarily, but that's a very controversial concept, and I don't think the Delaware Bay jurisdictions are ready for that particular fight just yet. Thank you.

MR. VONDERWEIDT: It was brought around by the technical committee. There are kind of two fisheries for sharks. There's bycatch and then the directed. The directed fishery typically uses gillnets greater than five inches. That was the number that the TC felt was the most appropriate. If require this for all gillnets, we would be removing any bycatch of sharks that happens in other fisheries, others smaller than five inches, and so they wouldn't get counted toward the quota. They wouldn't be allowed to be landed if we – so, this is a way to only require the directed shark gillnet fishermen to have to conform to the bycatch reduction measures.

MR. MILLER: I'm sorry, Chris, I must have missed something in that. If this passes as written, if this becomes the preferred option, it

says that gillnets of mesh sizes greater than five inches must be checked every two hours; does it not?

MR. VONDERWEIDT: Yes.

MR. MILLER: That refers to all gillnets; does it not?

MR. VONDERWEIDT: Yes. Well, I guess it would refer to commercial shark fishermen gillnets, and that's actually one thing that the technical committee is still working on is the commercial shark fisherman definition. It's something that we've been kind of throwing around ideas for, but we haven't come to yet, but we're trying to get regulations for just specifically shark gillnet fishermen.

MR. MILLER: Mr. Chairman, if I may, gillnets set in Delaware Bay at a certain time of year, if they're greater than five inches, they're going to catch American shad, they're going to catch striped bass, they're going to catch sandbar sharks. Those nets are not generally set specifically for sandbar sharks. So, I'm pointing out that by making it mandatory to check the nets every two hours, you eliminate anchor netting as a source of commercial fishing in Delaware Bay.

CHAIRMAN SMITH: For other species?

MR. MILLER: Correct.

CHAIRMAN SMITH: Right. Okay, Jack.

DR. MUSICK: I am going to reiterate what Chris just said. If they're not targeting sharks, it shouldn't affect them. This is for the target fishery, for the directed shark fishery. We're in the process of defining that now. It's not supposed to relate to other fisheries.

CHAIRMAN SMITH: Okay, that should be made clear in the document, then, and probably resolves Roy's concern, right? So, it has got to refer to the directed shark fishery, Option B. Okay, Doug.

MR. GROUT: Jack usurped me, put the word "directed" in there.

CHAIRMAN SMITH: Yes. Okay, everybody agree, no disagreement, moving on, shark identification, 4.3.4.6.

MR. VONDERWEIDT: Okay, as we discussed at the last meeting, shark identification has been a problem, especially in state waters. In order to effectively identify sharks, the federal HMS is proposing, in their Amendment 2, to have the head, tail, fins attached to the carcass through landing. Right now Option B is what the federal requirements are.

The technical committee felt that should be tweaked a little bit, and that it was unnecessary to have the head for identification purposes, so just keep the tails and fins attached to the carcass. You could still gut and bleed and remove the head.

CHAIRMAN SMITH: I don't see where Option C says you have to leave the head on there.

DR. MUSICK: It doesn't.

MR. VONDERWEIDT: No, it just says what you have to keep attached.

CHAIRMAN SMITH: Okay.

DR. MUSICK: Rusty has a comment.

MR. HUDSON: Shark ID is a very terrible problem, particularly in some of the states that do not require species-specific situations. Now, I have been in touch with law enforcement at NMFS about the upper caudal on the tail; and if it was important to them or not to have that still left on the animal.

A thresher shark, for instance, is going to have an upper tail equal to the length of its body, if not longer, after the head is removed. Second off, keep in mind that under the federal quota any shark, small coastal or large coastal, that is generally just identified as a shark will be deducted from future sandbar quotas. So, you may not even have, on the federal level, a sandbar fishery at all if there is a continuation of small coastals being landed as shark and then generically then put into the large coastals.

That is what has been going on for years. That is deducted from the large coastal quota any time any small coastals have been landed and not identified, and with the fact that you have these large coastals and this ID problem that needs to get solved. The fins are part of the solving of the problem, but NMFS has never really monitored

the fins for identification or size frequencies of the animals.

So, I believe that on the federal level your situation of guidance right now with the fins and tails attached, there is not a diagram showing us how to dress that shark. You're changing a quarter century of behavior of the market by having to keep these fins attached. Then, furthermore, you've got to cut through that pre-caudal pit through the vertebrae in the tail in order to release the blood from the artery in order to bleed the animal properly.

Otherwise, the urea is going to build up in the meat and it's going to make it basically ammoniated in the fresh meat market. There are a lot of considerations that NMFS has not provided us with the stuff. Then you've got the further problem of bringing that animal to the beach.

And under the hazard analysis and control point situation, HACCP, you're going to have animals, particularly in the 90 degree heat down there in the summertime, there's going to be heating up HACCP 40 degree core temperatures. There is a lot of comment that the directed shark is going to be submitting to NMFS about this particular change in marketing behavior.

But, species ID is extremely important when we get to the assessment workshop stage. I mean, we need that, and I'm sitting here emphasizing to you that we need that ID, but we have the downside of the way the NMFS management is with regards to lack of ID.

CHAIRMAN SMITH: Okay, did the advisory panel have a recommendation on how to resolve this? I mean, has the technical committee recommendation solved some of the problems from the HMS Proposal or does it not?

MR. HUDSON: Whenever we had the one and only AP meeting with the regards to the Atlantic States last August, it preceded the technical committee. I was supposed to be at the following technical committee meeting, but I did not get an invite. Now I will be at the one next month. So, at that stage I will be a little better able to bounce things back and forth.

But at the same time, right now the current rule is the second dorsal and anal fin stays on the animal, Option B. That's the federal law that

went into effect under the consolidated HMS FMP last October. So, we have to be able to understand that we're getting ready to change the whole landscape again. So, I would like to be able to share some of those thoughts when I'm with the technical committee in September and see what we can understand both about the federal level and how it's affecting this Atlantic States Fishery Management Plan.

CHAIRMAN SMITH: The solution to the problem you see may happen with this meeting in September?

MR. HUDSON: Roger that, because it will be the first time the AP, as the chair, by proxy is sitting with the technical committee.

CHAIRMAN SMITH: Okay, I'm just trying to decide what we do to this slide or the document to reflect the concern you have and the potential solution. Jack.

DR. MUSICK: I don't know if anything is going to be resolved about this at that meeting, because the meeting is going to be focused on areas that are currently nursery areas in state waters. That was the big hold and a lot of the questions that came up at the last meeting, so we couldn't finish this document. So, that meeting is going to be focused on this.

We're all between a rock and a hard place in that Rusty needs better ID. We, as biologists, need better ID. Enforcement really needs better ID. They have probably the hardest job. That's the reason we have taken C. It's a compromise between leaving the heads on. In C you're still allowed to head and gut the fish and bleed them, but just leave the fins on.

I think that we can provide keys that are fairly simple for the enforcement people to be able to identify those carcasses, which in part are going to protect part of Rusty's large coastal quota in addition to making sure they're not landing protected species or species in which quotas are even filled.

CHAIRMAN SMITH: I still want to get to the point of, Rusty, does Option C solve your problem in whole or in part; and if it doesn't solve it, then what do you recommend we put in here to solve it?

MR. HUDSON: As I said, the change in the disposition of the animal is what is being asked for in Option C and also by the feds in their Amendment 2. It's a big change after a quarter century. So, having the fins attached, that does the ID part, yes, because then, again, that gives you a better species-specific approach.

I need to see a diagram, and the fishermen need to see a diagram because we've also got the further problem of putting the stuff in the fishhold. You can't stack them with the dorsal sticking up. You've got to be able to cut through most of the fin and leave some skin attached in order to fall it down. That's why we call them logs, so you can stack them up.

This is going to even be a bigger problem when you get into the small coastals because if somebody inadvertently cuts one fin off, they have got to throw whole animal overboard, so it's promoting a discard, a regulatory discard. So, there are several things that need to get hammered out on all this. Otherwise, the status quo is what Option B is at the moment.

DR. MUSICK: Eric, I think if we take C and allow fishermen to partially cut through the fin, that you or somebody else should be advising the commission on exactly how to write C, so it's done so you can do it in a reasonable manner and stack those carcasses, but the fin is still there for ID purposes.

MR. HUDSON: To answer that, I agree. I just recently sent to NMFS a copy of I.B. Barrymore's Dressing of a Shark, you know, the way that we normally do it. I had to correct her, though. Originally she had it cut off in front of the dorsal. I had to get her to redraw that drawing. Now we have to redraw a bit further. Mike Clark has it in his e-mail in slot.

But, that has to be redrawn a little bit further because of the fact that you're leaving them pectoral fins on there. Those you don't have to cut through, but the dorsal you do, and you have to make a modification on the upper tail. You do not need that upper tail in order to make ID, but you need the lower part of the tail on there, and then you have to be able to cut through that artery in that pre-caudal pit. So, all of that would have to be drawn out. I am hoping that NMFS can get that done somehow before they go to final rules.

CHAIRMAN SMITH: While we're all pondering this to try and find out if there's an answer to the question I keep asking, what do we say here and in the document that satisfies the concern. Let's take an audience comment. Sean.

MR. SEAN MCKEON: Sean McKeon, North Carolina Fisheries Association. If Option C or something that resembles Option C is eventually the option that goes through, will the agency look to their 5 percent fin-to-carcass ratio and see that that is changed if it in fact – we're going to have a lot of problems with being over 5 percent. We were told that the solution originally was just bring everything in together.

I'm just wondering if they're going to readdress that issue if this becomes the way that the sharks have to be brought in. Will they look at that 5 percent rule? And as we have been told, they understand it's not the correct percentage, and will they look at that? There is a possibility if this does happen, that people are going to be over 5 percent quite a bit of the time, and we hate to see them prosecuted.

MR. SCHULZ-HAUGEN: Well, this is a comment we're getting a fair bit, wondering how this would all play out with reporting systems. I don't think we've ever said 5 percent was an error, but this is a long-standing issue, and we're looking at changes. People are commenting on, well, what fin should stay on, what fin would be able to be removed. So we're looking at all the comments.

Five percent is in the statute, so that is something that would take congress to change, but I think our view at this point is that the statute does not require sharks to be processed at sea, and so requiring fins to be landed attached would be one way that we can get the IDs, but also allow for some processing at sea, so that we don't lose that ID information. So, there is a lot in this issue, and we're continuing to look at it. We're very interested in the public comment as well.

CHAIRMAN SMITH: Let me suggest this and see if this can be a path to success on this one. Let the advisory panel and the technical committee block out some time at the September meeting to develop an additional option or revised language for the board to review in October. That gives Rusty the opportunity to get some language in there that fixes the perceived problem here and the technical committee gets a

chance to review it to make sure that we don't lose either the species identification or any of the – and the Service, hopefully, is involved in that meeting, too, so we kind of get a collaborative effort, and then we look it again in October. Does that sound agreeable? Okay, without any objection, we'll do that. Louis, question?

DR. DANIEL: Well, a comment. My expectation would be exactly what Sean just described, was have ourselves in a position where we can look at that 5 percent ratio. We did some work – I think Dewey is on the technical committee – Dewey Himilright did some work with my staff in Wanchese, looking at the fin-to-carcass ratios and the percentages, and they were quite a bit higher than the 5 percent, cutting them the way that the fishermen cut the fins.

It's not a huge number, 7 percent, in that neighborhood, but it has resulted in a lot of fines unnecessarily. So I would expect that this would give us an opportunity to address that 5 percent rule and some of the problems that have been associated with that.

CHAIRMAN SMITH: Well, as I understand it, it may give us an opportunity to define that better, but the 5 percent is a statutory limit. Pardon me?

MR. VONDERWEIDT: Not in state waters.

CHAIRMAN SMITH: Only in federal waters, okay. That's important. Rusty.

MR. HUDSON: With regards to the 5 percent, she is right, it is part of the Shark Finning Act that was passed back in 2000. But, if you are having the stuff landed, it's a modification of the logbook. If you're going to be requiring to still track that 5 percent situation and then mine the logbooks three years later, that's kind of that gray area that people are wondering about that you're going to have to do in final rules.

But there is another problem, Louis. In North Carolina you're the only ones that convert from dress to whole weight using the 2.0, which is the legitimate conversion. NMFS uses 1.39, and, of course, that was based on dressing something like a swordfish. So, basically, you have to now look – in fact, you're going to even have more of the animal left, and that conversion is going to be changed and possibly taint future assessments

with the way the new animal is going to be weighed up. So that is something else that will have to be considered on the federal level and may affect the state plans. But, I agree with the idea in working for a short period of time at the technical committee meeting.

CHAIRMAN SMITH: Okay, let's be cognizant of the hour and let's try and keep our future comments directed at how we make this public hearing document suitable for getting public comment. Obviously, this whole identification issue is going to be a huge one and we aren't going to solve it today. Let's move on to 4.3.4.7, finning.

MR. VONDERWEIDT: This kind of deals with what Louis and Rusty just said, but the Finning Prohibition Act is only in federal waters, but it says it's got to be 95 to 5 percent ratio, and that language is exactly the same in our draft as in the federal plan. Option A is to have identical language. Option B is to not have anything that deals with that. I guess a possibility would be to develop C with something like a 7 percent ratio, depending on what the TC said.

DR. MUSICK: We might add another option just based on the conversation here, is that we could rewrite A as another option altogether, or add it to A, that finning is defined as the act of taking a shark and so on and so forth; finning sharks will be prohibited. Vessels that land sharks must land fins in proportion to carcasses with a maximum 5 percent fin-to-carcass ratio by weight or land sharks with fins attached. If they're attached, that solves the problem. The only reason that we used 5 percent before is that the fins were coming in separate from the shark.

MR. AUGUSTINE: Just a quick response, Mr. Chairman. Along the same lines that Dr. Musick just pointed, it's almost a little bit ludicrous to say the vessels that land sharks must land fins in proportion to carcasses with a maximum of 5 percent fin-to-carcass ratio. It's, again, back to that point I brought up about catching sharks. You don't go out and catch a particular type shark. It jumps on your bait.

Here we're saying that basically, if I interpret it as a layman – I'm sorry, as an outsider who didn't know what I was reading, it would mean I cannot land a shark that has more than a 5 percent weight ratio of fins than carcass. I am not being funny about it; I'm serious. That's

what it says. It says that the carcass can only have a maximum of 5 percent fin weight.

How do I know that when I bring in the log? I mean, I'm sorry, it's overkill. It seems to me that it might simply state – I know what the federal law says – finning sharks will be prohibited in state waters. Vessels that land sharks must have fins and tails attached. It should be something that is simply stated, as Dr. Musick pointed out, as opposed to even having the 5 percent to carcass ratio in there. Logically that makes sense. Thank you, Mr. Chairman.

CHAIRMAN SMITH: Does the group want to amend Option A to simply say if you're landing them from state waters, you have to have the fins attached?

MR. AUGUSTINE: Fins and tails.

DR. MUSICK: Caudal fin; that will work.

CHAIRMAN SMITH: Chris is pointing out that is Option A under the previous section. The point is you wouldn't have to prohibit finning if Option A under this issue prevailed. Is there a reason in a state water fishery to have a fin-to-carcass ratio? That's basically what Pat is saying. If you feel we need to have that, then we have to have Option A as it is and we talk about what kind of language we add to it. If you don't need a state waters only fishery to have a finning ratio, then implicit in that is you're saying that there is no finning. Rusty.

MR. HUDSON: You're really saying Option C, because the head is what can be removed and you can take out you eviscerate the animal. So, by leaving the fins and the tail, the tail, of course, is the caudal fin. Now there is a lower caudal and an upper caudal. The enforcement says they probably don't need the upper caudal, but the lower caudal is definitely needed, because that is a valuable fin.

The upper caudal is a bone which has very little value at all. So, taking the head off is a good thing to do because the gill is going to also be a source of the urea and ruin the meat. You have to be able to pull the kidney line out, eviscerate the animal, take the head off, the gills out, but if you leave the fins attached, particularly in state waters, you're close enough, and they're probably going to be day boats. It's not the same as our guys being out on the pond for four days.

CHAIRMAN SMITH: So, that sounds like Option A could simply have the ratio omitted and just say, "Finning is prohibited".

MR. HUDSON: Finning is described as just taking the fins and throwing the rest of the animal away. Basically, you've got to have a carcass to go with the fins if there was that situation, but here you're leaving the fins attached to the carcass, so it becomes a moot point.

CHAIRMAN SMITH: So Option A becomes "Vessels that land sharks from state waters only fisheries must land them with the fins attached". Does everybody agree with that? Okay, I don't see any objection. Let's leave it in there for now even if it's a little redundant, because otherwise we're going to be bouncing back and forth between issues. Don't go back; amend Option A.

MR. ADLER: What is the purpose of Option B in there?

CHAIRMAN SMITH: In a state waters only fishery, this board might decide there is a reason we want to allow that, even though the federal rule for federal waters says it's not allowed. I grant you that's a hard sell, but I think that's why it was in because they were charged with all reasonable alternatives. If we think that's an unreasonable alternative, we should take it out of there.

MR. ADLER: Well, I just thought it was confusing.

CHAIRMAN SMITH: Did I get that wrong? Okay, wait a minute, George first, then Jack.

MR. LAPOINTE: Because of this issue, do we want to make this a management board recommendation; that we go with A? I mean, the second option looks –

CHAIRMAN SMITH: We can pull the second option out of there and just have only Option A in there. That's a choice we could make.

DR. MUSICK: I think you need to do that, and here is the reason. There is a law that was passed by congress that outlaws finning by American fishermen or in American waters. It's not legal.

CHAIRMAN SMITH: The federal law applies to federal waters. That's what Chris is saying. If that's a fact, then, depending on your point of view, the state waters can be an economic opportunity at the expense of undercutting the rule in the federal waters; or, it can be a loophole to the need for a consistent finning prohibition.

Our opportunity is if this board doesn't think it wants to get public comment on the opportunity to leave finning as an allowed activity in state waters, we should take Option B out. Okay, does the board want it in or out? Does anybody want it in? I see no one; let's take Option B off the table. Of course, that sort of resolves the Option A issue because now it reinforces the language we just agreed to, which is the fins have to stay intact. That concludes finning. You're going to rewrite it so there is no Option A; it's just a paragraph that says finning cannot be allowed in –

MR. VONDERWEIDT: Can I just make sure that I understand this?

CHAIRMAN SMITH: Sure, go ahead. Chris is going to recast it to make sure he's got it right.

MR. VONDERWEIDT: Okay, just to make a hundred percent sure of what we just agreed on, Option B, the practice of finning is allowed, is stricken. As we modified Option A, which would no longer become an option, this would be how it would be written in the plan, done deal. We would say that sharks have to be landed with all their fins, which goes back to 4.3.4.6, where we just talked through and what Rusty had a problem with, is by requiring fins, it might create a burden for the fishermen, but it will also help identification. I just want to make sure that we're a hundred percent satisfied with this is basically requiring Option C, the tails and fins have to be attached.

CHAIRMAN SMITH: Well, subject to them coming up with language that in a processing mode leaves the fins attached, but they're retractable or they're foldable. That's what they're going to work on. Okay, racing on.

MR. VONDERWEIDT: Okay, this goes back to what I said before. Basically, the TC was short on time in the three days with what they had to go through, so we weren't able to complete the nursing area and pupping ground closures.

We're going to revisit that on September 24th and 25th. We're hopeful that we can have options for the board at the October meeting.

CHAIRMAN SMITH: Any discussion? Good, moving on, logbook requirements, 4.3.7. Louis.

DR. DANIEL: Before you get past 4.3.6, recommendations to the Secretary and the seasonal closures off of North Carolina, you know, we came forward and proposed this management plan through Pres to do two things, essentially. One was to make certain that all states closed when the federal quotas were reached, which I think has already been identified as a critical need by the technical committee.

The other one was to take a look at the closed area specifically off North Carolina and how that area could be mitigated by complimenting other closures in state waters that the feds did not have any control over when they put in the closed area off North Carolina. I'll be drafting some language to that effect.

The other point, however, that I would like to bring up for this part of the discussion for the Secretary is the critical need for us to have all the information that is being used in these assessments. I'm not aware of any assessment or any management plan that we've ever dealt with where information used in the assessment was not made available to folks to review, and that is what is occurring through some of the data programs, as I understand it, for the shark assessments, and that there are proprietary data that we've not been able to look over. That raises a real concern. If it happened with weakfish or summer flounder, we'd all be going crazy, but the fact that it's happening in sharks, it's not been mentioned.

CHAIRMAN SMITH: Well, I don't know what it has to do with 4.3.6, but I'm intrigued by it.

DR. DANIEL: Well, it's a recommendation to the Secretary because the Secretary is the one responsible for conducting these assessments and doing these SEDAR-type assessments. So, I don't know that we have any control over that, but what I understand is there's data sources in North Carolina and Virginia and various locations where there are lengths' data that's critical to determining the age information and a lot of stuff that's in proprietary hands, that we

can't get a hold of that information, but yet it's used in the assessments.

CHAIRMAN SMITH: Who is the proprietor?

DR. DANIEL: VIMS and UNC-Chapel Hill, and I'm not sure of any others. Rusty certainly knows. But those are the issues that have been raised to me that do raise some significant concerns about, you know, when we go and do an open process to review the data that are available, if we don't have an opportunity to look at them, where the public doesn't have an opportunity to look at them, it does bring into question the validity of some of these assessments that are, indeed, having some pretty significant impacts on the regulated public.

CHAIRMAN SMITH: Can you enlighten me?

DR. MUSICK: Yes. It's been stated they were used in the assessments or included as an appendix in there. They're available, and I don't know what you're talking about, Louis.

CHAIRMAN SMITH: Let's all remain composed. I think a point was raised and apparently the data is available. It may not have been readily apparent at a certain time in the assessment, but if it's really available, then there should be no problem, and you guys will have to chat about that.

MR. HUDSON: There was VIMS data used, but the lengths of the individual sandbars were not provided, and that's a conversion into age and understanding what size animal was done. The selectivity curve, one size fits all, is inappropriate to be applied to the VIMS data, because basically we don't know the length of the animals that are involved in that 30-something year series.

DR. MUSICK: I can tell you they didn't use our length data. All they used was the abundance data.

MR. HUDSON: Basically, it's something that was needed for the age-structured assessment, and we have yet to be able to get it. We would like to ask you for it, Dr. Musick, on record.

CHAIRMAN SMITH: Okay, it seems to me that any of the data that goes into a stock assessment, unless it's confidential because of the rule of three type of thing, which you have to watch out

for, should be available to any of the agencies participating in the assessment. If that's not happening, then that's a problem and we ought to fix that problem. But, these things usually – you know, it's a communication thing. Usually a little bit of talk afterwards will kind of square that away, and maybe it's not as big a problem as it seems, I hope. Sean.

MR. MCKEON: I'd like to follow up on the points that Louis made and also that Rusty made. We asked our congressional delegation to ask the agency to give us some of the data that we were told was proprietary, that the proprietor was Jack Musick. What the National Marine Fisheries told us was, "Yes, the taxpayer paid for it; yes, it's being used to regulate, but we don't own it. It's proprietary and we're under no obligation to give it to you."

That's what they told us through our congressional delegation. What they're doing – what we were told by the attorneys was that it was a somewhat legal loophole that they're using that ought to be, I think, addressed by this commission, certainly, as you are weighing in on this issue.

And just to be clear, we asked for this data, and we requested it from the agency, and we were told in no uncertain terms that both of the conditions we thought met – that the public could have access to this – the regulated public could have access to it we thought were met. But the loophole is they don't own it, quote, unquote, they only used it; therefore, it's proprietary and they don't have to and won't ask for it from Jack.

I think that I would like to know why some of that data, length-frequency data, that is normally standard operational practice in stock assessments was not in there to the extent it needed to be, and other data that needed to be in there. I think it's crucial at this stage of the game. That fishery is along the shark fishery in the coast that you all are responsible for and weighing in on, and I am thankful that it's before this commission, is about to be decimated. What is driving the model is data that we have no access to. Thank you.

CHAIRMAN SMITH: Thank you. It would seem to me it's inbounds for this commission to comment on something that should be as transparent as all data available to all

participants, unless there is a confidentiality issue involved that is kind of bound up in this whole rule of three type of thing.

I don't hear anybody saying it's in a fishery where there's two operators so you can't give it up for that reason. This is stock assessment information. It's only half bold and half facetious to say, you know, if every participant in the assessment can't have access to the data, then maybe the rule ought to be the data can't be used in the assessment, but I don't know if we have the juice to enforce that.

Obviously, from what Sean says, there's a lot more influential people have weighed in on this than this sorry body, and they didn't get anywhere. So, it's a problem looking for a solution, and maybe the solution is still communication, so now I want to hear what Jack has to say.

DR. MUSICK: I will reiterate what I said before, the data that Rusty is talking about now, the length data, were not used by NMFS. It was primarily a time constraint in getting the assessment done, because they could have used that data. We didn't have any problem with that. Now, let me make a point that Sean was wrong.

Some of this data was paid for with state funds; some of it was – this is a dataset that goes back to 1973. It's the longest-running fisheries-independent shark survey at least in the United States, probably in the world. So, a lot of this data, in fact, during the eighties was collected with private funds. No public funds were used for the vessel time and so on. So, get that straight; it's a mixed dataset that includes some data that were collected with public funds and some data that were collected by benefactors of our university – that were paid for by benefactors of our university.

The second thing is if you come and talk to me about what you want – some of these data, of course, are proprietary because I have papers that are in progress. I have students that – in fact, one student has finished the PhD last year, and we're trying to get those papers out that has – one of those papers is an analysis of length data. So, of course, I'm concerned. Now, if you want an analysis done with that data, I'll have my people do it, but you have to let me know exactly what you want and why you want it. I'm not

going to send you my whole dataset. That's my professional life.

DR. DANIEL: Well, I think it's an issue, and I think it's something that the industry and the technical folks do need to communicate and indicate what it is that's needed. If it's not being provided, then why not? I think if we can get through that – because I can tell you I've heard it for a year now, dealing with the shark issue.

Jack has provided some answers to these issues, and I think he would be willing to provide the information if we specifically request it. We ran into the same thing with the shorts' data in North Carolina. From what I understand, that information has now been made available, but there's something special about shark data or something, and maybe it's the way it's collected or who is collecting it or what is being done with it.

We need to make sure that the regulated community feels comfortable that the information that they're being regulated on is available to them to review. I think they're being sensitive to that issue as an important component of this process.

CHAIRMAN SMITH: I understand the desire in academia to hold on to data for publication purposes and graduate students publishing and all of that, and I respect that. I have a problem if we use it in a government assessment of a public resource that has an impact on people and requires the involvement of lots of other states and not having that part of it very transparent unless there is a confidentiality issue. That's troubling me, too.

MR. AUGUSTINE: Point of order, Mr. Chairman. I think we're beating an issue to death that should not be dealt with in this forum. What we're talking about is an ISFMP issue. It's gone way over bounds. It's obvious there's an issue about some specific data that, yes, is proprietary, period. It's been stated by Dr. Musick.

He has students who have developed protocol and so on, and I'm not sure why he has to sit here and take a beating at our expense while we try to eek out this information that obviously he's been able to supply to the degree he's had to to meet the requirements of NMFS and that sort of thing.

I also would like to know about that data, but in the best interest of this board and where we're going with this fishery, we've got another issue to deal with, and that's to finish through with this document. We have gotten way off track on this, so, Mr. Chairman, may we get back on track.

CHAIRMAN SMITH: You've got a good point, thank you. You've got us back on the track.

DR. MUSICK: May I say one more thing?

CHAIRMAN SMITH: No, let's just move on with the document.

DR. MUSICK: This is going to solve the problem.

CHAIRMAN SMITH: Okay.

DR. MUSICK: Now, I said before if I had a specific request so I know exactly what the industry wants, I would be happy to fulfill that request.

MR. HUDSON: Point taken.

CHAIRMAN SMITH: Thank you. Now, hold on, everybody, for a minute. Okay, we're going to conclude this document, and then we're going to go back to that one recreational issue that we were considering a management board recommendation addition. We're going to try and do that fairly quickly because we also have the presentation on the HMS amendment that is part and parcel to all of this discussion. Thank you, Pat, for getting the train back on the track. 4.3.7.1 is logbook schedule.

MR. VONDERWEIDT: Okay, 4.3.7.1 and 4.3.7.2 are going to be covered by this slide. Basically, logbook requirements were initially included because we were trying to include options that were complimentary to the federal plan. After going back and looking at it – and we discussed it at the technical committee meeting – it doesn't seem likely that the infrastructure is there in states to require logbooks.

We are fully aware that there are ACCSP standards that just came out, and some of the states could fulfill the requirements, but the fact of the matter is that a lot of states don't have them in place that would be able to fulfill

logbook requirements. I have spoken with HMS personnel and they've told me that it's very unlikely for them to be able to accommodate any state logbook requirements, meaning that we would have our state fishermen mail the information to HMS and then they would put the data in.

So, unfortunately, what this would mean is that we would lose the data to cross-check dealer landings' information to see how accurate they are, but if we can't fulfill this requirement, if we're requiring fishermen to fill out logbooks and mail them and they're not going to be used, is it appropriate to eliminate this requirement?

CHAIRMAN SMITH: So we want to decide that after we get this September 24th meeting results or do we want to decide it now? Okay, this is something we ought to consider in October, after we see what the benefit of this evaluation is. Does that take care of one and two?

MR. VONDERWEIDT: That takes care of one and two, yes.

CHAIRMAN SMITH: Yes, that's one and two under that, so now we're up to dealer requirements, 4.3.8.

MR. VONDERWEIDT: This is dealer permits, and I got into this before accidentally, but basically the whole issue with quotas is getting the landings as quick to real time as possible, sending them to HMS; or, if we have our own body that we decide has separate quotas, but making sure that when the fish are landed, we close the fishery in time.

One way to do that, that the technical committee thought, is to require federal dealer permits. This means that any state dealer is allowed to sell – or any state fisherman is allowed to sell to a federal dealer, so this doesn't eliminate anybody from this fishery. This would mean that federal dealer would send their landings to HMS and it would aid in timely closure of fisheries when that group was close to being landed.

The other options are state dealer permits would be required, and then we would get that information to NMFS as soon as possible; or either state or federal permits are not required. "A" would be the technical committee recommendation for those reasons.

CHAIRMAN SMITH: Any disagreement with that as listed? Louis.

DR. DANIEL: Just a point that we've got federal dealer permits now, and we're going over pretty significantly on the quota. So I think what we need to also do is work with the National Marine Fisheries Service to make sure that we get real-time monitoring, and there's not just – you know, having the federal permits is good, but if they don't monitoring it over time and close it when you hit that 80 percent and are cognizant of that, then we run the risk of going over substantially again. I mean, NMFS has heard this from for two years. But, we've got to make sure that happens, and I concur with the options.

CHAIRMAN SMITH: The options are satisfactory, and we just need to deal with monitoring better. Rusty.

MR. HUDSON: Keep in mind that this year there's been at the rate of one per month a Carcass ID Workshop required for these federally permitted dealers. As of January 1st, 2008, if they have not attended this class, they will not be allowed to buy sharks. That's about 250 to 300 dealers of which I don't even think that they've gotten a significant percentage of those people in class and through. This is supposedly supposed to end at the end of this year for those classes unless NMFS has something else planned.

MS. SCHULZ-HAUGEN: The classes will continue, but the requirement, you're right, is as of January 1st, so we're working on getting all those guys certified.

CHAIRMAN SMITH: Okay, are the Options, A, B, C, D agreeable to people? They are, let's move on, reporting schedule, 4.3.8.2.

MR. VONDERWEIDT: This reporting schedule is for dealers, but it would only be for state dealers if we required or if we allowed state dealers to buy and sell sharks. Option A would be weekly; Option B would be the 1st and 15th of every month. This is identical to HMS regulations. It was recommended by the technical committee for that reason. Option C is monthly; Option D is annually. They were put in there just to increase the number of options to keep everything open.

CHAIRMAN SMITH: Any disagreement with those options as stated? Louis.

DR. DANIEL: I think you can take out D.

CHAIRMAN SMITH: Okay, we don't want annual reporting; that's way too untimely, so take out D. Any disagreement? Seeing none, D is out. Reporting requirements, 4.3.8.3.

MR. VONDERWEIDT: Okay, this goes back to what Rusty was saying and also the technical committee is the 95 percent identification standard, and it's recommended by the TC to identify sharks by each species rather than species groups, so that we know exactly what we're catching. Species group was put in there to increase the options for the board. I mean, if it seems unreasonable, then –

CHAIRMAN SMITH: Option D, you say, is –

MR. VONDERWEIDT: Well, Option A would be reporting the quantity of sharks by species groups. There's 20 different species in a species group.

CHAIRMAN SMITH: Right, but is that realistic; do we want that, each individual?

MR. VONDERWEIDT: Yes, I don't think they have a 95 percent identification standard, but, yes, Option B.

CHAIRMAN SMITH: Okay, is it worthwhile having Option A in there if we would never find it acceptable to just report by group? We should take Option A out? Okay, Option A is out, any disagreement? It's out. 4.4, alternative management regimes.

MR. VONDERWEIDT: That's the end of the management options; that's just kind of the standard.

CHAIRMAN SMITH: Okay, then we're done with the document. Now we need to go back to that recreational measure that we thought we might want to put in a management board recommendation. Which one is that?

MR. VONDERWEIDT: Yes, that would be allowable recreational species under Issue 1, 4.2.1, recreationally permitted species. Basically, right now NMFS is proposing – and,

Margo, if you could help me out with this, because I have a list of which species will be permitted, but looking at the different ones, the board would probably be more interested in which ones are being removed. We have an option in here of being consistent with NMFS, but do we want to give recommendations to NMFS as far as their change in recreationally permitted species?

MS. SCHULZ-HAUGEN: You really put me on the spot here. I am going to have Carol find the list for myself. But, we are always interested and are getting comments from constituents and folks on the species that we have proposed; that some shouldn't be on the list because they're confused; some should be on the list because they're not confused, things like that. So, we're very interested in what the commission or the technical committee has to say.

CHAIRMAN SMITH: Is it helpful for you to hear the list or is the concept –

MR. AUGUSTINE: Will the list be included, Mr. Chairman, in a full-blown document that goes out to the public? I think it should. The list of species that the recreational will be allowed to possess, those will be included under the groupings, I would assume; and then the recreational permitted species under 4.2.2?

MR. VONDERWEIDT: What I think the board wants here is that we would like to comment on the proposed preferred alternative for recreationally permitted species, so that would affect our Option D, which means we can only catch the same species as are allowed in federal waters to keep things simple for the recreational fishermen.

MR. AUGUSTINE: Just a point of clarification. But, does that not mean in your appendix or in an area under a table you will identify what those species are for recreational anglers and for the public who basically don't know? Okay, but the question was whether you're going to put it within that particular box where you went on to describe here is what will be acceptable and/or if it's not –

CHAIRMAN SMITH: If it's not unwieldy, it should be in the document right at that point.

MR. AUGUSTINE: Exactly, thank you.

CHAIRMAN SMITH: Okay, that's a good point. The other one, though, is what option do we potentially want to say "management board recommendation", because that was the whole issue that brought us back here; did we have a really strong view that we had a different point of view than what the technical committee had recommended?

MS. SCHULZ-HAUGEN: I found the list, if you want. Do you want me to read the list?

CHAIRMAN SMITH: No, he has it, too. I just asked was it necessary to have it, and I didn't hear anybody say so. Louis.

DR. DANIEL: Well, I think it is, because –

CHAIRMAN SMITH: Do you want to hear it?

DR. DANIEL: Well, it kind of goes back to all of our regulations. It's hard to distinguish between king mackerel and Spanish mackerel and summer flounder and southern flounder during certain times of the year and in certain locations. I mean, yes, sharks are difficult to identify, but the folks that have taken the time to learn how to identify them are going to be disadvantaged by this and not be able to retain a shark that's relatively common and easy to harvest, because they just aren't one of the easily identifiable sharks.

I think blacknose is a good example, that I think they're on that list, that you just wouldn't be able to retain blacknose anymore because they're not easily identifiable. That basically leaves you with hammerheads and nurse sharks and blacktips, maybe, that are not misidentified as a sandbar. I just think that there are some concerns there about going down that road, and I support the technical committee's approach as opposed to Option B.

CHAIRMAN SMITH: Does the board want to leave that slide as is and not identify a management board recommendation or does the board want to identify an option as a management board recommendation? I see one saying leave it as it reads right now. Is there any disagreement with that? Seeing no disagreement, we will leave it as. Okay, does that conclude the review? Okay, that concludes the review, and the next item, which was 5:30, which was going to be – it's not actually a matter of the business. It's a presentation by the

Service. So, is there any other business that the board wants to bring forth? Pete.

MR. HIMCHAK: Thank you, Mr. Chairman. This will be rather quick, I believe. I had asked Chris to contact all the state representatives on the Shark and Spiny Dogfish Technical Committee. What I'm trying to locate is fishery-independent data on sex ratio and separate size by distribution.

I did get some responses. Delaware has a 27-year time series. I'm not sure yet if a ten-year time series off the winter cruise off North Carolina is part of the NMFS Coastal Stock Assessment. That was the second part of my inquiry is what data do you have, and is it getting incorporated into the coast-wide stock assessment?

I bring this up because of the fact that we're trying to develop a gillnet fishery targeting males only in the spring with 5.5 inches, and our trawl survey is catching nothing females. We've already had two cruises, and it's overwhelmingly females in the catch. I know what it is in the harvest. It's concentrating on the females. NEAMAP did not encounter any in their pilot cruise.

I was wondering if we could charge them, since spiny dogfish is rather low in the B list of species, if they encountered them maybe in the spring, and then they could do a sex ratio and separate size distributions for spiny dogfish. I'm trying to find out what is happening in the –

CHAIRMAN SMITH: You simply want the states to respond to the inquiry that Chris sent them?

MR. HIMCHAK: Yes.

CHAIRMAN SMITH: Would the states respond to the inquiry that Chris sent them? Everybody will? Okay, thank you.

MR. HIMCHAK: Okay, and perhaps we could encourage the NEAMAP Survey – they did a banner job on smooth dogfish. They caught about 600 of them – if they could raise spiny dogfish higher on the priority list. Thank you.

CHAIRMAN SMITH: So, board members, this request went to the TC members; and since they're all overworked, some of them probably

haven't responded, so could you go back home and prompt your TC members to respond as soon as they can, and then New Jersey can get the data they need.

MR. GROUT: You might have your NEAMAP board member request the NEAMAP group, that the NEAMAP Survey raise the priority list, because I think it was the NEAMAP Board that approved that priority list.

OTHER BUSINESS

ADJOURN

CHAIRMAN SMITH: Good, thank you for that. If there is no other business before the board, we'll stand adjourned. I thank you all for your forbearance. I have been pushy because I wanted to get done on time and get done completely.

(Whereupon, the meeting was adjourned at 5:35 o'clock p.m. August 14, 2007.)