

ATLANTIC STATES MARINE FISHERIES COMMISSION

Quality Hotel     Arlington, Virginia

SPINY DOGFISH AND COASTAL SHARK MANAGEMENT BOARD

April 23, 2001

**Table of Contents**

Attendance ..... ii  
SUMMARY OF MOTIONS ..... iii  
WELCOME/INTRODUCTIONS ..... 1  
APPROVAL OF AGENDA/MINUTES ..... 1  
UPDATE ON COUNCIL ACTIONS ..... 1  
REVIEW PUBLIC COMMENT ON PID ..... 3  
DISCUSSION OF MANAGEMENT OPTIONS ..... 6  
APPROVAL OF CESS NOMINEES ..... 24

ATLANTIC STATES MARINE FISHERIES COMMISSION

Quality Hotel      Arlington, Virginia

SPINY DOGFISH AND COASTAL SHARK MANAGEMENT BOARD

April 23, 2001

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**Attendance**

Board Members:

|   |                                   |
|---|-----------------------------------|
| Pat Augustine, NY Gov. Appte., Chair                  | Lew Flagg, ME DMR                 |
| John Nelson, NH F&G                                   | Ritchie White, NH Gov. Appte.     |
| Rep. Mary Ann Blanchard, NH Leg. Appte.               | Bill Adler, MA Gov. Appte.        |
| Dr. David Pierce, MA DMF                              | David Borden, RI DEM              |
| Ernest Beckwith, CT DEP                               | Dr. Lance Stewart, CT Gov. Appte. |
| Bruce Freeman, NJ DF&W                                | John Connell, NJ Gov. Appte.      |
| Tom Fote, proxy for Sen. Bassano, NJ Leg. Appte.      | Charlie Lesser, DE DFW            |
| Pete Jensen, proxy for Del. Guns, MD Leg. Appte.      | Eric Schwaab, MD DNR              |
| Jack Travelstead, proxy for William Pruitt, VA MRC    | Red Munden, NC DMF                |
| Melvin Shepard, proxy for Rep. Redwine, NC Leg Appte. | David Cupka, SC Gov. Appte.       |
| Susan Shipman, GA Coastal Res.                        | Kathy Barco, FLGov. Appte.        |
| Harry Mears, NMFS                                     | Bill Cole, USFWS                  |

Ex-Officio Members:

Lt. Col. William McKeon, LEC Rep.

Other Commissioners:

Andrew Manus, DE DFW

Paul Diodati, MA DMF

Staff:

|                     |                  |                  |
|---------------------|------------------|------------------|
| Dr. Joseph Desfosse | John H. Dunnigan | Dieter Busch     |
| Tina Berger         | Carrie Selberg   | Heather Stirratt |

Guests:

|                              |                       |
|------------------------------|-----------------------|
| John Pappalardo, CCCHFA      | Columbus Brown, USFWS |
| Sonja Fordham, CMC           | Bob Ross, NMFS        |
| Margo Schulz-Haugen, NMFS    | Rich Seagraves, MAFMC |
| Dennis Abbott, NH            | Jeff Marston, NH F&G  |
| I. Louie Fass, Fisheries NOW | Karyl Brewster-Geisz  |

**There may have been others in attendance who did not sign the attendance sheet.**

Spiny Dogfish and Coastal Shark Management Board

April 23, 2001

**SUMMARY OF MOTIONS**

**1. *Motion to approve the agenda.***

Motion by Mr. Adler, second by Mr. Cole. The motion carries with no objection.

**2. *Motion to approve the minutes of the January 31, 2001 Board meeting.***

Motion by Mr. Adler, second by Mr. Cupka. The motion carries with no objection.

**3. *Move that the Board adopt Spiny Dogfish PID Option 3 for the fishing year May 1, 2001, through April 30, 2002; that is a 4,000 metric ton, or a 0.8 million pound constant harvest strategy throughout the management unit, (both state and federal waters).***

Motion by Dr. Pierce, second by Mr. Nelson.

*Move to separate the question into two motions.*

Motion by Mr. Borden, second by Mr. Nelson. Motion to split carries with 9 in favor, 5 opposed and 1 abstention.

The first motion was then:

*Move that the Board adopt Option 3 of the Spiny Dogfish PID for the fishing year May 1, 2001, through April 30, 2002.*

The motion was perfected to read:

*Move that the Board adopt a constant harvest strategy of the Spiny Dogfish PID for the fishing year May 1, 2001, through April 30, 2002.*

The motion failed with 8 in favor and 8 opposed.

**4. *Move Option 2.***

Motion by Mr. Munden, second by Mr. Cole.

The motion was perfected to read:

*Move that the Board adopt emergency action to require the states to implement federal seasonal quotas and trip limits for spiny dogfish for the fishing year beginning May 1, 2001.*

The motion was further perfected to read:

*Move that the Board to adopt emergency action to require the states to implement federal seasonal quotas and trip limits for spiny dogfish for the fishing year beginning May 1, 2001, excepting any state with less than 1 percent average annual landings.*

A substitute motion was offered:

*Move that for the period May 1, 2001, through April 30, 2002, a 4,000 metric ton quota be established throughout the management unit, state and federal waters.*

Motion by Dr. Pierce, second by Mr. Flagg. The motion to substitute fails by a show of hands.

Move to amend the main motion:

*Move to amend by deleting the words "and trip limits" from the main motion.*

Motion by Mr. Flagg, second by Mr. Adler. Motion to amend fails with 5 in favor and 9 in opposition.

An Emergency Action requires a 2/3 majority to carry (11 of 16). The main motion failed with 10 in favor and 6 in opposition.

ATLANTIC STATES MARINE FISHERIES COMMISSION

SPINY DOGFISH AND COASTAL SHARK MANAGEMENT BOARD

Quality Hotel and Conference Center Arlington, Virginia

April 23, 2001

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The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Quality Hotel and Conference Center, Arlington, Virginia, April 23, 2001, and was called to order at 10:00 o'clock a.m. by Executive Director John H. Dunnigan.

**WELCOME/INTRODUCTIONS**

**EXECUTIVE DIRECTOR JOHN H.**

**DUNNIGAN:** Welcome to the meeting of the Spiny Dogfish Management Board. As you know, it is the Commission's practice, when the Chair and the Vice-Chair are not available for a meeting, to have the senior staff person in attendance act as Chair. In this case, our Chair, Pat Augustine, is still in route. He has run into traffic trying to come down from New York this morning. The Vice-Chair is David Pierce who is here, but because of the issues that are before the Board, and so that he can accurately argue for the positions of the Commonwealth of Massachusetts, he has asked to be relieved of taking the Chair. So, under the Commission's normal practice, if there's no objection, I will assume the Chair until Pat Augustine arrives. Thank you.

Also, around the table, I'd like to introduce to the Board one new ASMFC commissioner who is here. Maryann Blanchard is our legislative commissioner from New Hampshire. We welcome her and look forward to working with her. I've met her and she's a much nicer person than Dennis Abbott ever was.

Let me announce it now and then we'll probably repeat it a couple of times during the week. But on Thursday morning, when we have the Policy Board meeting, we're going to have breakfast brought in to this room and up front. So, It will be a continental breakfast. The meeting starts early, don't get up earlier and have breakfast. We won't be approving travel vouchers for breakfast on Thursday morning when we

have food here. Any other introductory items before we get going? Thank you.

At this time I'd like to ask Joe Desfosse to call the roll. (Whereupon the roll was taken by Dr. Desfosse.)

**DR. JOSEPH C. DESFOSSE:** I believe you have a quorum.

**EXECUTIVE DIRECTOR DUNNIGAN:** Thank you very much. As I said, there's no New York representative here, but Pat Augustine and Brian Culhane are on their way. As soon as Pat gets here, he'll take over the Chair.

**APPROVAL OF AGENDA/MINUTES**

You have in front of you, in the briefing materials, the agenda for this meeting. Are there any comments on the agenda? **Move to be accepted by Bill Adler; second by Bill Cole. Is there any objection? Without objection, the motion is approved.**

You have in your briefing materials the minutes from the Board's meeting on January 31, 2001. Are there any comments on the minutes? **Move by Mr. Adler to accept the minutes; second by Mr. Cupka. Is there any objection to the motion? Without objection, motion is approved.**

The next item on the agenda is an update on recent Council actions to bring the Board up to speed as to where the Councils are relative to spiny dogfish management. I think I'm going to ask Red Munden to lead this off.

**UPDATE ON COUNCIL ACTIONS**

**MR. RED MUNDEN:** Thank you, Jack. The Joint Spiny Dogfish Committee has not met since the last meeting of this Spiny Dogfish Board of the Atlantic States Marine Fisheries Commission. We have a meeting scheduled for May, the week of May 8th through the 10th meeting of the Mid-Atlantic Council in Ocean City, Maryland.

What we are planning on doing is just holding a meeting of the spiny dogfish members who serve on the Mid-Atlantic Council to discuss the actions that are taken by the this Board today and determine what direction we want to take relative to Amendment 1 to the spiny dogfish plan. Amendment 1 has been delayed because we have other fisheries management plans that have recently taken on a higher priority than Amendment 1.

What I would like to do, Mr. Chairman, is to ask Rich Seagraves with the Mid-Atlantic Council to give us an update relative to the annual specifications and the recommendations from the Mid-Atlantic Council that are pending right now.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much. I recognize Mr. Seagraves.

MR. RICH SEAGRAVES: Thank you, Red. As Red has noted, the 2001/2002 specification package was submitted to the National Marine Fisheries Service back in February. This was a result of the first Spiny Dogfish Monitoring Committee meeting, making recommendations based on the current FMP. Those recommendations were for a 4 million pound quota to be equivalent to an F of 0.03 as per the fishing mortality rate specified in the current plan.

In addition, the Monitoring Committee recommended a 600 pound trip limit for Quota Period 1 and a 300 pound trip limit for Quota Period 2. The annual quota is divided. I think it's 58 percent in Period 1 and 42 percent in Period 2.

In addition, the Monitoring Committee recommended a 500,000 pound experimental allocation. These recommendations were made to allow for the experimentation in a male-only fishery and also for other scientific work to determine discard rates and also the mortality of discards, since discards are such a large issue in this fishery.

Those recommendations went to the Joint Spiny Dogfish Committee. Again, it's a Mid-Atlantic/New England Joint FMP. The Committee recommended the same quota; however, I believe a 5,000 pound trip limit was the recommendation from the Joint Committee. The Mid-Atlantic Council adopted the Monitoring Committee's recommendation including the -- so it would be a 4 million pound quota, 500,000 pound experimental fishery, trip limits of 600 and 300 pounds. The New England Council adopted everything the same except the different trip limit. They adopted the 5,000 pound trip limit. Now this was submitted to the National Marine Fisheries Service; it was published in the Federal Register.

Currently, I'm not exactly sure where we are and what day we're on, but the synopsis there is that basically the Mid-Atlantic Council's version was adopted in terms of trip limits. The proposal was for a 4 million pound coastwide quota, allocated as per the FMP with 600 and 300 pound trip limits. However, they did not necessarily disapprove, but did not allow for the 500,000 pound experimental fishery, and the reason was that there is no provision currently yet in the FMP to allow for that. They point out that it was only through a secretarial interim action that that was possible in the first year. If we wanted to include that in the future, we'd have to amend the FMP.

So, that's where the specifications are; and, again, the fishery is scheduled to reopen May 1, pending the publication of the final rule for the 2001/2002 specs.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. If I may add one other thing, although it's not directly related to Council business, but Rich brought it up, and that concerns the 500,000 pounds set aside for an experimental fishery only.

At our last Board meeting I indicated that North Carolina intended to allow a state water's fishery for males only. When spiny dogfish showed up off our waters, we found that there were about 10 females for every male. The fishermen decided that it wasn't worth the effort to sort through 10 fish to keep one. Also, the males were smaller than anticipated, and they felt like they could not get the desired size product once they processed the male.

So, we only had a couple of fishermen who expressed an interest in participating in the male-only fishery, and that fishery has not been prosecuted in North Carolina waters this spring.

As Rich pointed out, the 500,000 pound experimental fishery was a one-shot set aside, a one-time set aside. If it is not taken by the end of this fishing year, which ends the end of April, then we will not have a provision for an experimental fishery for the upcoming year. At least in North Carolina waters, it does not appear that a male-only fishery is feasible. That's the end of the report for the Mid-Atlantic Council, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much. Are there questions for Red Munden or for Rich Seagraves? Mr. Mears.

MR. HARRY MEARS: Thank you, Mr. Chairman. Not a question, just a few closing comments on the proposed specifications. Rich already

indicated what they were. A proposed rule was published on March 30; the public comment period ended on April 14th. A final rule incorporating the public comments from the proposed rule is in process and should be published in the immediate future.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Questions or comments for Red or for Rich? Mr. Jensen.

MR. W. PETE JENSEN: Clarification. What are the trip limits? I missed --

MR. SEAGRAVES: Six hundred pounds for May 1 through October 30th; November 1 through April 30th is 300 pounds per trip. It's also modified to be for a possession limit with only one landing every 24 hours.

EXECUTIVE DIRECTOR DUNNIGAN: Other comments, questions on the status of the Federal Management Program for spiny dogfish? Ms. Shipman.

MS. SUSAN SHIPMAN: That period will last through April 30, 2002? Is that what the specifications are for?

DR. DESFOSSE: Yes.

DR. DAVID PIERCE: Yes, Rich, it was just mentioned that progress on Amendment 1 has been delayed for obvious reasons and many other priorities. Can you give us an update as to when there will be some significant effort placed into the development of that amendment and what would you envision as a time table for the completion of that amendment?

MR. SEAGRAVES: Okay, as Red has indicated, there will be a meeting of the Mid-Atlantic side of the Committee to discuss priorities at the next Mid-Atlantic Council meeting in Ocean City. So, at that meeting there will be discussions about exactly where to put this amendment in the priorities. The Mid-Atlantic Council wants to consider -- one of the recommendations part and parcel to develop the 2001/2002 specifications was to place Amendment 1 at a very high priority.

This was a recommendation of the Joint Spiny Dogfish Committee. As you're aware, I think you may have helped make that motion. The Council adopted all the recommendations essentially, other than the 5,000 pound trip limit, but did not adopt the high priority specification of dogfish within our planning activity.

So, it's a priority, but it's not of the highest priority. There are a number of other pressing issues, Amendment 9 to squid mackerel butterfish, black sea bass, problems in the fluke management arena and so on and so forth, which I'm sure you're well aware of.

So, the Council still has it in the priority list. It's not the highest priority. Essentially, based on the outcome of the actions here today, I think will drive exactly where we place it -- where, you know, the Committee decides to place it, and ultimately, the Council.

So, we don't have a firm schedule. It's in there if the Committee decides to go forward with it. That's something, you know, that the Executive Committee and the Chairman of the Mid-Atlantic Council has to decide.

EXECUTIVE DIRECTOR DUNNIGAN: So, if I understand your answer, you really don't know when it's going to be up for action by the Spiny Dogfish Committee of the Mid-Atlantic Council -- the amendment?

MR. SEAGRAVES: In other words, no. The direct answer is they're going to decide at this next meeting, make a recommendation, and then the Council has to decide where they want to place it ultimately in a priority list.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Other comments or questions on the status of federal management? Ms. Fordham.

MS. SONJA V. FORDHAM: Sonja Fordham, Center for Marine Conservation. I wanted to point out that the Federal Register Notice on the 2001 specs for dogfish noted that the federal quota was exceeded by 67 percent. There's no mechanism within the FMP to subtract that overage from this year's quota. I thought that was important for your discussions. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Other comments or questions; status of federal management? If not, we're going to move ahead.

#### REVIEW PUBLIC COMMENT ON PID

The next item on our agenda is to review the public comments on the Spiny Dogfish Public Information document. And for that, we turn to Dr. Desfosse.

DR. DESFOSSE: There were two documents that were handed out to you or placed in front of you before the meeting started. One is a summary of all of the public hearings and the written and e-mail comments that we received in regards to the Spiny Dogfish Public Information Document. The second is a decision document which we'll go into in more detail. I'll give a general overview of the public hearings and the public comments and, I think we'll take questions, if you have any questions at that time, before we get into the decision document.



In general, most of the fishermen that attended the public hearings were supportive of a state-by-state quota system based on the constant harvest strategy and then allowing the states to set the management measures that would be applicable to their fisheries, which best meets the needs of their fishermen.

Many also questioned the science and the surveys behind the dogfish assessment, stating that it was not reflective of what they were seeing out there in the ocean, especially this year. There seemed to be an abundance of dogfish.

They also suggested that the states be given time to research their historical landings. They felt that the landings that were in Table 1 were lower than the actual situation.

There's a letter from the National Marine Fisheries Service included in your package, urging the Commission to take a risk-averse approach, stating that the strategy in the federal FMP, the constant mortality strategy will likely result in increased protection and lower mortality for adult females, especially in the early years of rebuilding. There will also be increased landings as the population grows.

The environmental organizations, they were supportive of adopting a conservative approach to the spiny dogfish management. In the summaries and the decision document, I termed it a CMC Coalition. I'm not sure if it's actually a coalition, but the letter that was from CMC and a number of different organizations, they supported the states adopting the federal FMP provisions.

There was a letter also from the Environmental Defense which supported the continuation of the emergency action, provided that a state waters' FMP is developed in coordination with the Councils, which is compatible to the federal management program.

So, that's the public comment summary in a nutshell. Do you want to stop here?

EXECUTIVE DIRECTOR DUNNIGAN: Any questions for Joe? Dr. Pierce.

DR. DAVID PIERCE: Well, not so much a question but the comments regarding the letters that have been submitted, and there is one letter that was not in the package. It was a letter read at the public hearing in Massachusetts submitted by the Cape Cod Commercial Hook Fishermen's Association. John Pappalardo is the director of that association. He's here today, as a matter of fact. I thought it was important for all Board members to get a copy of that letter that you actually received a while ago.

It was submitted back in, I think, October or

November of last year in response to an ASMFC action to shut down state waters fisheries, in support of the federal action. There's a lot in that letter. A lot of very important points have been raised regarding national standards issues. Since this association represents a great many fishermen, over 900 members from industry and surrounding communities, I thought it would be helpful to make sure you did have that.

In addition, there is a copy that I made available this morning. It should have been mailed to you earlier on. If it didn't reach you, now you have it. It's a brief letter written by Paul Diodati, the director of the Division; a letter that pretty much summarizes the Division of Marine Fisheries position on dogfish management at this point in time; certainly, on the constant quota approach, the 4,000 metric tons or 8.8 million pounds. This letter was written by Paul and sent to a large number of members of the general public and environmental organizations to clarify our position on dogfish management.

On the back side of that one sheet, you also see a figure that should be familiar. This is the figure that describes the rebuilding strategy or rebuilding trajectory, I should say, for female biomass, adult biomass, relative to the target level. The point being to make a comparison between this constant quota strategy and the federal constant mortality strategy, and to make the point that while both strategies achieve the same goal, the Division strategy does provide for a small sustained fishery.

Of course, this strategy, if adopted by this Board, would provide for, in some instances for some states, a small sustained fishery, improved data collection and, of course, greater economic benefits. So, those are the two additional pieces of information we thought you would find useful.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Nelson.

MR. JOHN I. NELSON: Thank you, Jack. In going through the packet that Joe provided as far as the comment summaries for the public hearings, I noted for New Hampshire, although in my summary I had referenced some written comments by Eric Anderson, who is the President of the Commercial Fishermen's Association, and then Mr. Johnson, a citizen who also came and then provided some written comments, and I don't see those in the packet. It might have been -- I don't know if there was a mix up with the fax, or whatever, Joe, but if we can, in the future, just make sure those get out.

If I could take a second, Mr. Chairman, because of

them not being -- especially, Mr. Anderson's, who is focusing directly on the issue associated with the dogfish issue --

EXECUTIVE DIRECTOR DUNNIGAN: Please do.

MR. NELSON: I have summarized what took place at that meeting. It was the industry asking -- the industry was well represented there, and again, as I said, Mr. Eric Anderson, as the president of the Commercial Fishermen's Association, represented the membership. They really were concerned about not having flexibility. They really wanted to try to see if there was some way in which the ASMFC would allow flexibility which they don't feel the federal plan allows.

They pointed out, as a number of you are well aware, the continuing restrictions and problems that they are all facing in other fisheries, and those types of things are going to continue. I won't go on about this, but they did want to endorse the constant harvest approach, and they also wanted to endorse the concept of either state or regional quotas to be worked out amongst the other states. They're certainly willing to put their trust into the other state officials working together to try to come up with something that's reasonable.

I think I'll leave it at that, Mr. Chairman. I did note that that was not in there, and I did want to try make sure that was represented and, hopefully, that can be circulated some time in the future.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Dr. Desfosse.

DR. DESFOSSE: Basically, I screwed up. When I was putting the documents together -- I know exactly where those letters are and they got lost in the shuffle of papers. So, it wasn't something intentional.

MR. NELSON: No, I didn't think it was intentional, Joe, at all.

EXECUTIVE DIRECTOR DUNNIGAN: They ended up in the Menhaden file.

MR. NELSON: Mr. Chairman, that was because I tried to be efficient and I sent both at the same time, and so I'll accept part of that blame.

EXECUTIVE DIRECTOR DUNNIGAN: Well, we thank you kindly. Other comments or questions on the public hearing process and the information that was developed there? Dr. Pierce.

DR. PIERCE: Yes, just a couple of other short points. I did chair that public hearing in Massachusetts, and I want to thank Joe for his coming up and lending a hand. It made it quite easy for me to run that public hearing. He had all the background information and

did a very good job with regard to describing the public information document and all the issues.

I'm not going to provide much detail as to what was said, except to point out that it was very well attended. And Massachusetts, as well as New Hampshire processors -- one in particular who did attend our meeting in Massachusetts -- and they did indicate that this year's fishery was very critical for them to stay in the dogfish business and to retain some of their frozen fish market.

They've already lost their fresh fish market. It was the obvious consequence of the needed restrictions to deal with dogfish conservation and our need to rebuilding strategies. So, that was an important point that they wanted to make. This is a very critical year for them. Their overseas buyers are asking questions, will there be a fishery this year of any magnitude? They're looking elsewhere, so this has gotten those dealers quite concerned. As a matter of fact, one dealer indicated that if there isn't a fishery this year, then he'll no longer be buying and processing dogfish.

I've already commented on the Hook Association, John Pappalardo and some of his comments, and I think there were just a couple that need to be highlighted. One is that the Atlantic States Marine Fisheries Commission Industry Advisors have not been asked to meet. He expressed that concern. They've been ready to meet but they haven't been able to meet, for whatever reason. Yet, he and his organization expressed concern that ASMFC may decide to keep the fishery closed this year without the benefit of having the industry advisors get together.

He also noted something that the Division has emphasized for quite a long time now, and that is that dogfish is important to some of the small Massachusetts ports such as Plymouth, such as Scituate and also to Chatham. For Scituate and for Plymouth, those two ports -- the small scale fishermen, small inshore fishermen in those ports have been hit relatively hard, well, very hard by groundfish closures, so that they're looking to find some additional opportunities in groundfish. Dogfish has provided an additional opportunity, certainly last year. So, that's pretty much it. Simply put, I guess, from what I gathered from the public hearing in Massachusetts, if there is to be any fishery for this fishing year, it has to occur through an ASMFC initiative today.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Other comments or questions about the public hearing process and the information that was developed therein? Okay, seeing none, it appears that we're ready

to move forward into the decision-making part of what we have on the agenda for the meeting.

#### DISCUSSION OF MANAGEMENT OPTIONS

Given the fact that I knew 30 seconds before we started that I was Chair, I might be a little bit behind the eight ball on this, but as I understand it, you all have in front of you a document that is labeled Decision Document for Spiny Dogfish Measures in support of an ASMFC fishery management plan. I'm going to briefly outline the way I understand what these options are about so that we just know where we're starting and how to proceed. Then if I'm wrong, I'll let Joe correct me or anybody around the table.

There are three basic options that are included in this document. The first is to extend our current emergency action for another year. The second is to adopt the federal regulations as specified in the Council's Fishery Management plan. The third is to implement management measures based upon a constant harvest strategy. If the Board decides to go with that third option, then you need to proceed through all of the other materials that are on the next seven pages to decide how you want to implement that constant harvest strategy this year.

If you don't, if you focus on Option 1 or Option 2, then all of that material becomes relevant to the Board in deciding what it's going to do long term in its ultimate fishery management plan. But they are not relevant for consideration at this meeting, because we will have gone a different direction. Option 1 is to extend our current emergency which is states must close at the same time that federal waters are closed.

Option 2 has a little bit more to it than that. I'm a little unclear, frankly, as to what the relationship between Option 1 and Option 2 is; you know, whether you can extend the emergency and also give some direction as to how to proceed with the FMP. Otherwise, how we would implement Option 2. So, those are my understandings and I'd like to ask Joe Desfosse to comment on that. Then I'll go to the Board and we'll make sure that we have a good understanding before we get started as to how we're going to proceed. Joe.

DR. DESFOSSE: Okay, my understanding of the differences between Options 1 and 2 is that under Option 1 you extend the emergency action. State waters are closed whenever the federal waters are closed. You continue to develop a management plan for spiny dogfish that would apply to state waters.

Under Option 2 you would simply be adopting and recommending to the states that they implement all of the provisions of the federal FMP on a year-to-year basis. So, basically, the Plan Development Team would draw up an FMP which would mirror the federal FMP.

EXECUTIVE DIRECTOR DUNNIGAN: But under Option 2, what applies during 2001?

DR. DESFOSSE: The measures that would be implemented in federal waters would then apply to state waters.

EXECUTIVE DIRECTOR DUNNIGAN: And we would have to presumably then prepare an emergency action that would make that effective against the states this year?

DR. DESFOSSE: Yes.

EXECUTIVE DIRECTOR DUNNIGAN: Okay. So essentially your choice is to extend your current emergency, to adopt a broader suite of federal management measures by a separate emergency action, or to go with a different approach of constant harvest strategy.

Again, to make it effective this year, we'd have to do it by emergency action, and at that point we'd have a whole suite of actions that we'd have to talk about. Those seem to be the three choices that we have. Mr. Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. Just a process question that my understanding is regardless of which one of these options we select, it's going to require a two-thirds vote in order to implement it by emergency action, is that correct?

EXECUTIVE DIRECTOR DUNNIGAN: The rules of the Commission require two-thirds of the entire voting membership of the Board.

MR. BORDEN: All right, thank you.

EXECUTIVE DIRECTOR DUNNIGAN: There was a hand up over here. Mr. Flagg and then Mr. Mears.

MR. LEWIS FLAGG: Just a brief clarification, Jack. I think the main difference between Option 1 and Option 2 is that if you adopt Option 2, you would be adopting the trip limits, the 600 and 300 trip limit provisions; whereas, Option 1, you wouldn't necessarily have that trip limit provision in there.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you for that clarification. Mr. Mears.

MR. HARRY MEARS: Thank you, Mr. Chairman. I'm trying to recall our earliest discussions extending back to last year that led to identifying these

three options. My readings of Options 1 and 2 are not far different from those that have already been expressed. But part of my understanding in terms of Option 2 would be the eventual adoption by the Commission of an Interstate Fishery Management Plan for spiny dogfish that would implement what otherwise would be done through an emergency action.

So, in fact, if Option 2 were selected, at least part of my concept of what Option 2 would be, it establishes a transition period or a bridge between the emergency action we have currently to a stand-alone interstate plan that would no longer require an emergency action. So, I'm wondering if anyone agrees or disagrees with that interpretation?

EXECUTIVE DIRECTOR DUNNIGAN: Anybody agree or disagree? Dr. Pierce.

DR. PIERCE: Option 2 would mean that all Board members have read the federal plan, understand what the objectives are in the federal plan, know what the federal plan is trying to accomplish, that through Option 2 we collectively buy into that plan with all of its strength and weaknesses. But first and foremost, it presumes that we're all ready to buy into the federal plan as it is written. I would suspect that would be a difficult option for us to pursue since it would be a surprise to me that every Board member has digested that federal plan to the extent where you understand all the strengths and weaknesses.

So, it's pretty much a carte blanche that's a tacit to approval -- well, it's not tacit, it's an approval of the federal plan as it exists right now, and we're just instructing the staff to do all that's necessary to implement the federal plan as a state plan. That's my take on it.

EXECUTIVE DIRECTOR DUNNIGAN: Is it your understanding that that's basically with respect to this interim period while we're going through the plan development process?

MR. PIERCE: No. My understanding was it would be more long term and then would dovetail into Amendment 1 since Amendment 1 is going to be developed. But as we heard, it won't be ready this year; it may not be ready next year, who knows? It's going to take some time to develop that amendment.

So, we would be adopting the federal plan as it exists right now in its entirety, with its social and economic impact analysis and all that has gone into development of that plan in preparation for Amendment 1. We'd be obviously actively involved with the development of that amendment as it would affect the federal plan as it exists right now.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much, David. Harry.

MR. MEARS: Just for the record, Mr. Chairman, my interpretation would be the same as Dr. Pierce's.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much. So, we understand the relationships of Options 1, 2 and 3? All right, here's how I want to proceed. The Chairman is here, but I'm letting him catch his breath and get over all of the accidents that he saw on his way down, that he has just been telling Joe and I about.

What I'd like to do is keep the Board focused at the moment on the differences generally between Options 1, 2 and 3. I don't want any motions right now. I want to see if we can develop a sense within the Board as to which of these directions, since they're all sort of different, there seems to be the largest consensus towards going. We're going to let that discussion go for a while.

We'll take a little bit of public comment, and then we'll come back and see if we can get a decision out of the Board. Then obviously, if we choose Option 2 or 3, there are some further decisions that we're going to have to carry on with -- in the case of Option 3, a lot of them.

So, we are an hour and fifteen minutes away from lunch. Let's see if we can keep this thing moving. The first thing we're going to do is to take general comments on how we feel about Options 1, 2 and 3. We'll start with Mr. Borden and then Dr. Pierce.

MR. BORDEN: Thank you, Mr. Chairman. A couple of comments. First in terms of process, my suggestion here is there have been a tremendous amount of deliberations that have taken place in terms of these options. I think there's a general understanding of the implications of each of the scenarios. So, I would urge us not to carry on a significant discussion of the options, but very quickly take a few general comments, particularly from members of the audience that are here, and then allow somebody on the Board to make a motion to adopt one of these options.

Now Option 1 and 3 are clear what is intended there. Option 2 is also at least quite clear in my own mind. If Option 3 ends up being the preferred option, what we would do is simply try to deal with a motion that encompasses the language incorporated in the bold on the top of that, which is to implement the management measures based on the constant harvest strategy and not get into any of the specification.

In other words, just pick that title. If the motion passes, then it would be appropriate to move on and try

to flesh out what is meant by that. I'm just a little bit concerned that given the fact, as you correctly point out, we have an hour and a half, or an hour and fifteen minutes to deal with this issue, there's a lot to be discussed, especially if that's the option that ends up being preferred. I think we're better served by getting on with a motion.

EXECUTIVE DIRECTOR DUNNIGAN: I agree, that's how I intended to proceed. Did you want to indicate that you felt we ought to go in favor of one of these three directions or do you want to hold off on that?

MR. BORDEN: I would actually prefer to have a couple of comments from the public and then I'll be happy to put a motion on the table.

EXECUTIVE DIRECTOR DUNNIGAN: Okay, thank you.

DR. PIERCE: I agree with the Chair and I agree with David. There need not be prolonged discussion on these different options. I was prepared to make a motion, but I'll defer to David when it comes time to do that.

Clearly, Massachusetts supports Option 3. That's of no surprise to anyone. I've already mentioned some of the letters and some of the documentation that gets to this issue of why Option 3 makes a great deal of sense. Why both strategies -- well, there are negligible differences between projected stock rebuilding with both strategies. With regard to the Division of Marine Fisheries position on Option 3, we've obviously continued to advocate low and very defensible levels of directed fishing that will support some of the existing processing capabilities and markets.

One important point made by Paul Diodati in his letter published in the Division News was that the constant harvest strategy is a balanced approach that should be at the forefront of environmentally and economically sustainable fisheries management. Now, the approach is precautionary. Both the federal and the constant harvest strategy are precautionary. They rebuild to the same female biomass in about the same period of time.

Yes, indeed, there is a bit more harvest initially with the constant harvest strategy and rebuilding period than with the federal plan. But, it's long been our point that with Option 3, by doing so, we'd better deal with the issue of regulatory discards, which we believe, at this point in time, are quite significant.

We have come to that conclusion through an analysis of some sea sampling data and data we've collected ourselves where, for example, right now in

the Gulf of Maine, certainly in the fall and this early winter, it was very typical for vessels targeting pollack, cod, monkfish with gillnets in federal waters in the Gulf of Maine, to get discard rates of 15,000 pounds and greater.

So, dogfish is abundant. Discards are occurring and this particular strategy, Option 3, does enable us to better deal, not completely deal with, obviously, but better deal with the regulatory discard issue. So, I'll stop right there and not drone on and hear what other people have to say about these options.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Let's take a couple of comments from the Board and then we'll go to the public. Mr. Jensen.

MR. JENSEN: Perhaps I missed something, but just a little finer definition. Under Option 1, states could do whatever they wanted to do and then it would close when the federal is closed, right?

EXECUTIVE DIRECTOR DUNNIGAN: Correct.

MR. JENSEN: In the discussion on Option 2, I heard a couple of things said. One I heard is adopt the federal plan. But I think what we're talking about is adopting the essential elements of the federal regulations as opposed to specifically adopting everything the feds have done. Is that a good understanding?

EXECUTIVE DIRECTOR DUNNIGAN: I believe so, yes.

MR. JENSEN: Yes, because I don't think we want to adopt the plan nor do we want to adopt all of their regulations.

EXECUTIVE DIRECTOR DUNNIGAN: I think the idea, as clarified by Dr. Pierce and Mr. Mears, is that while Amendment 1 is going forward, the states would implement the federal regulatory structure.

MR. JENSEN: Right, and then we would adopt that Option 2 by emergency regulation to run through May of 2002. Clear? Is that right?

EXECUTIVE DIRECTOR DUNNIGAN: It would be effective initially for six months and could be extended for two one-year periods.

MR. JENSEN: Then the next thing we would do is we would begin adoption of an FMP based on constant harvest strategy over some period of time?

EXECUTIVE DIRECTOR DUNNIGAN: I think the question of what the state FMP would look like is not determined at this stage.

MR. JENSEN: Right, but I mean that would be the third step, whatever it is determined to be.

EXECUTIVE DIRECTOR DUNNIGAN: Whether it's constant harvest strategy or the same.

Under Option 2, it appears that we're deferring to the federal government to work on Amendment 1. When we see what they come out with, then we'll be ready to move forward ourselves.

MR. JENSEN: Okay, so there would not be a decision today on implementing a management strategy based on constant harvest strategy?

EXECUTIVE DIRECTOR DUNNIGAN: Only if that's the option that you choose to follow as an emergency rule.

MR. JENSEN: Okay. All right, that clears it up.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. I have a couple of comments concerning Option 3. The Mid-Atlantic Council authorized the Spiny Dogfish Board to move ahead with a shopping list, if you will, of items that would be considered for Amendment 1, whenever we get to that point.

The constant harvest strategy, Option 3 on this discussion today, is one of those options. But, I would remind the Board that if you go back to the initial concept behind the Council plan, was to eliminate the directed fishery on spiny dogfish because the stocks had been declared overfished.

We felt like that draconian measures would be necessary in order to allow the stock to recover. At this point in time, the Mid-Atlantic Council has not made a decision relative to Option 3 or Option 1 that we have before us today. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. At this point I'd like to give the public their opportunity then to indicate, if they wish, in addition to the public record that has been developed through the hearings, what their views are on these three choices and which one of those three the Management Board ought to follow. Are there any members of the public that would like to come to the microphone and speak and share their views as to what the states ought to be doing in this case? Ms. Fordham.

MS. FORDHAM: Thank you for this seat, by the way, I appreciate it. Sonja Fordham, Center for Marine Conservation. As discussed, you have two letters that are on behalf of most of the major environmental and scientific organizations involved in shark conservation in this country.

I just want to run through the points quickly. We're asking you to take the most precautionary approach still available for this slow-growing species. We based this position on several factors. Sharks are slow growing, late to mature. Spiny dogfish mature

females are severely depleted as a result of undergoing several years of recruitment failure, a record low number of pups for this stock. As the Technical Team pointed out, the intermediate age classes that are crucial to rebuild the population are also now in serious decline.

As I mentioned before, the 2000 quota was exceeded by 67 percent. Not only will that not be taken off this year's quota, but has not yet even been looked at by the technical people. The effect on the population has not been examined or considered for the future of the stock and the effects on the rebuilding program. And that rebuilding program already spans nearly two decades. So, we are continuing to urge you to adopt a strategy that's consistent with the current federal fishery management plan and that would be most closely aligned with Option 2.

This option would complement the existing federal program. It is, as Red pointed out, consistent with a federal goal to end the directed fishing on spiny dogfish. It would protect the intermediate age classes, particularly the females that are essential to rebuilding. We believe it would minimize discards over time as this strategy allows quotas to increase with the population.

We stand in strong objection to Option 3. Contrary to what you heard before, it is not considered by the technical people or NMFS to be equivalent. It does carry more risk for this exceptionally vulnerable stock. It allows continued fishing. All of the directed fishery will be targeted on the mature females, the largest females left and those about to mature. It allows for more than double the federal quota. We believe that it will increase discards over time as the population rebuilds and the quota stays at this constant harvest rate.

Finally, we believe that it runs counter to the precautionary approach, which is not only warranted by the biology of this species, but has also been articulated in the U.S. policy under the National Plan of Action for sharks in the United States.

Lastly, frankly, I think the states have been engaged in these economic and ecological arguments over dogfish for a number of years through the Council process. The result of that debate was the current Federal Fishery Management Plan that asks for an end to the directed fishery. We urge you to pass state regulations that would complement this plan. We urge you to make sure that the emergency action stays in place until your new management measures are enacted. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Other members of the public. Mr. Pappalardo.

MR. JOHN PAPPALARDO: John Pappalardo, Cape Cod Commercial Hook Fishermen's Association. Actually, I have a question or a question/comment. I haven't heard any discussion or challenge at this table in the three meetings that I've attended with regards to the rebuilding plan, whether the constant harvest strategy or the federal FMP -- you know, I've heard that the constant harvest strategy is more risk prone, but yet I haven't heard anyone say that they won't arrive at the same place at the same time. So, I think, you know, I'd like to hear some discussion about that.

Secondly, you hear people say if you go with the federal plan, landings will increase in later years. Well, maybe the potential for landings, but there aren't going to be any processors around to collect these landings. You also hear people on the other side of the issue say that discards will increase over time. Well, why can't we adjust the trip limit over time? These are just some questions that I have. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you, John. I'm going to treat those as comments and suggestions for the Board to consider. Other members of the public that would like to make a comment to the Board on each of these alternatives and which one you think the states ought to be pursuing?

Okay, seeing none, I'm going to come back to the Board. I'd actually hoped that we'd almost have an informal survey of the Board as to where you wanted to go with these before we put any motions up. But as long as we're going to keep the motions simple, one, two, or three, we can try to proceed and see if we can build a consensus that way. Mr. Freeman.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. I have a question on Option 3 relative to the amount. That option essentially, the so-called constant harvest strategy, determines the specific catch of 8.8 million pounds. It was spoken earlier of the Council's quota which is 4 million. If in fact Option 3 is adopted, it carries with it that specific amount? That amount can or cannot be varied?

EXECUTIVE DIRECTOR DUNNIGAN: It carries with it that specific amount.

MR. FREEMAN: Therefore, an additional amendment would have to be made if, in fact, Option 3 is placed up on the board?

EXECUTIVE DIRECTOR DUNNIGAN: Correct.

MR. FREEMAN: Another question concerning Options 1 and 3. Regardless if either of those were adopted, there is no FMP for the Commission. That

still would require the Commission to adopt such an action. On Option 2, the Board could essentially adopt the Council's FMP; is that correct?

EXECUTIVE DIRECTOR DUNNIGAN: In fact, none of these options imply an FMP for the Commission.

MR. FREEMAN: I understand that.

EXECUTIVE DIRECTOR DUNNIGAN: These are all interim actions that we're taking. Option 2 would allow the federal process to go through Amendment 1. Option 1 allows the Commission to continue preparing its initial FMP.

MR. FREEMAN: But on Option 2, the Commission either could accept the Council's FMP or develop its own?

EXECUTIVE DIRECTOR DUNNIGAN: Correct. Mr. Adler.

MR. WILLIAM A. ADLER: Back on the federal, when they talked about the update from the Council and the 500,000 pound experimental fishery, that part about the one in ten were males, and therefore a male fishery was not very good, is that what I heard?

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. Preliminary data collected by our fishermen indicate that the females outnumbered the males by about 10:1. So, there were ten times as many females in coastal North Carolina waters during the January/February period where the fish were out -- looking at whether or not a male-only fish would be feasible, we find a 10:1 ratio of females to males.

MR. ADLER: The shortage is females, I thought. I mean, we've heard arguments we have to save this fishery because the females are in short supply. You know, how does that work there if one in ten is males the rest or so -- there's a lot of females and yet females are the ones that are in trouble here?

MR. MUNDEN: That's correct. The Fishery Management Plan is designed to direct the effort off of the mature females. I do not know what size these fish were, but I know they found a concentration of females in North Carolina waters during the early part of this year.

MR. ADLER: So there seems to be a lot of females?

MR. MUNDEN: In this particular situation, when it was an informal survey.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Dr. Pierce.

DR. PIERCE: A couple of good points were made

by members of the audience regarding is this a precautionary approach or not? Is it risk averse or not? It's so qualitative in terms of judging whether it's risk averse or not precautionary. But I think the best way to explain the differences between the two strategies in terms of whether one is risk averse or not is just, again, to look at the figure.

I mean, this is the figure that shows the differences. It factors in the uncertainties. It gives you a visual look at the difference between the two approaches. For all practical purposes, they're just about indistinguishable with an important difference being that with Option 3, with the constant quota strategy, we do provide for three important objectives that ASMFC should set for itself short term and long term.

That is the small sustained fishery, improved data collection and greater economic benefits. Those are three very important objectives. So, look at the figure, this tells the story.

We're hoping that by, you know, reading the story, the Board will conclude that it makes a great deal of sense to, for this year, in order to have a fishery this year as opposed to no fishery whatsoever, because the federal plan does not provide for any fishery, and for that matter almost no landings of dogfish, Option 3 is the sensible way to go.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Any other general comments on Options 1, 2 and 3 relative to each other? Ms. Shipman.

MS. SHIPMAN: Just a question I want to get clear in my mind. Is it my understanding that there is agreement among the Technical Committee that we -- Technical Committees, I guess, of the Mid-Atlantic Council and New England that we are looking at an overfished stock and that the rebuilding time is 20 years? Is there agreement there?

EXECUTIVE DIRECTOR DUNNIGAN: Does anybody want to comment on that? Dr. Pierce.

DR. PIERCE: That's correct, Susan. With the data that we have in hand, it has been concluded through the Technical Committee and, of course, through work of the Northeast Fishery Science Center, that with either of these strategies, the constant quota or the constant mortality, we will rebuild to the target, the spawning stock biomass target, for mature female biomass, not all ages and all sexes, but we'll get to that target in about the year 2018/2019, thereabouts.

So, clearly, it's a very long rebuilding schedule to get there. But fortunately, when looking at the projection models, we see that we are climbing, for the

most part, with one small dip. There is a big difference between these projections and some of the previous projections that we've seen where with much higher landings you don't see this sort of a figure. You just see a drop off to the X axis, which is, obviously, something we're trying to avoid. So, fortunately, with the strategies we have before us, both alternatives, we get to the target some time in the future.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Rich Seagraves would you like to comment on the technical issue?

MR. SEAGRAVES: Thank you, Mr. Chairman. The latest projection that we have is that under the constant fishing mortality strategy, which is what the federal FMP adopted, it's 17 years. Under the constant harvest of 4,000 metric tons, it's 18 years. So, when the Technical Committee evaluated this, they had basically three or four summary conclusions.

One was that, yes, both plans get you to the same place in roughly the same period of time, give or take a year, you know, given the length of time we're talking about. Essentially, they are the same at face value.

The second conclusion was that the current federal FMP is more risk averse in that it takes less earlier on. So, there's a great uncertainty about what's going to happen in the year 2017. We're probably more certain about what's going to happen over the next several years.

So, in fact, we don't have any strict probability analysis or risk analysis that says one gives you X percent of risk and this one is a certain percent higher. We haven't done that. But just simple logic tells you that if you take more adult females, roughly double earlier on, that it's going to pose more of a risk relative to the other strategy.

Now, if this were applied as strictly a bycatch fishery, and discard mortality rates were very high, then there would be no difference at all in the two. The concern is that the additional landings will be focused on the largest, most valuable members of the stock, which will include mostly females.

So, again, there's no strict quantitative risk analysis that we have done that could tell you how much better one is over the other. There was some disagreement on the Technical Team. We weren't at 100 percent consensus about whether or not they were equally risk averse. Although the general consensus was, just based on the fact that if you take twice as much, and if they are going to be mostly females, it's obviously going to slow rebuilding to some degree, initially.

That poses some risk to the stock. Remember, this



is basically a one-to-one stock recruitment function up to a certain point. So, as you reduce the female stock biomass, you see a concomitant reduction in pup production. In fact, some of the problems that exist is you can't just talk about females, you've got to look at the size distribution of those females.

The smaller -- now we're reduced down to most of the females, more than half are not sexually mature. Those that are sexually mature are smaller than what we've seen historically. They produce fewer pups and the pups, on average, are smaller.

So, the real problem here is this reduction in the adult females. And that's why to focus on what impact any particular strategy is going to have immediately on the rebuilding of those adult females.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you, Rich. Stay there for a second. Red, I've got you, but, David, did you have a question for Rich?

MR. BORDEN: One quick question, Mr. Chairman. On your point about probability, could you repeat that because I'm not sure I understood what you meant by that? I assume that there's at least a 50 percent plus probability of restoring the biomass to the appropriate levels with both strategies by the timelines that you specify. Is that correct?

MR. SEAGRAVES: Paul Rago would be better to answer exactly what the probability of rebuilding is under either one. My point was that relative to one another, there's no comparative analysis that says strictly this one has a 38 percent chance and this one has a 42 percent chance or something like that. We don't have that analysis, we haven't had it yet. It's something we need to do. But again, it was just basically simple logic that removed the more females earlier and the rebuilding is apt to be more risky.

EXECUTIVE DIRECTOR DUNNIGAN: David.

MR. BORDEN: Yes, it makes me very apprehensive, to say the least, Mr. Chairman, that we don't know the answer to that, given some of the recent litigation that we've had about this issue of achieving a 50 percent probability. I mean, in that last statement that we don't have that analysis in either case, really concerns me.

EXECUTIVE DIRECTOR DUNNIGAN: Well, I think the comment was that Dr. Rago would be a better person to ask the question of. Mr. Munden.

MR. MUNDEN: I only wanted you to allow Mr. Seagraves to provide comment.

EXECUTIVE DIRECTOR DUNNIGAN: Thanks, Red. Mr. Mears and then we'll see if we can get a motion up.

MR. MEARS: Mr. Chairman, in further response to Mr. Borden's question, I believe that's a key point and one of the issues which we tried to stress in our letter concerning the public information document, that in fact what we have on the table before us is an option to consider a different management strategy where increased numbers of dogfish, presumably high numbers, higher numbers of mature females that would otherwise be taken, would be taken pretty much in accordance with a theory in this chart.

What we don't have, what we're expressing caution on is the probability, given the depressed abundance of mature females, the depressed abundance of pups that we are seeing through the surveys on the best available information we have, that the option to do other than we have in place now is nothing more, nothing less than an option. And it does deserve, in fact it demands, an analysis to further characterize what the probability is through risk analysis of each of the type approaches which have been put on the table.

There is no question in my mind, as I've indicated during past meetings with this Board, there's no way this resource can be managed without state and federal cooperation. That's one of the reasons we're talking about alternative management strategies. It's also one of the reasons that I believe we're deliberating today on whether or not further attention should be given to a constant strategy, a constant harvest strategy approach.

The point I'd like to make is that given the information we have before us, the state of the stock and the clear fact that we have an overfished resource, we have lower abundance of mature females in the population, leaves us, as managers, with few other choices than to continue the current risk-averse approach we're on now. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. I have a question for Dr. Pierce. Dave, can you advise us as to what time series Steve used for his analysis to come up with the constant harvest strategy? What period of years did he use?

DR. PIERCE: Yes, Steve Correia, who did the analysis for us, he worked very closely with Paul Rago to make sure that all the assumptions were the same in both models, constant quota, constant fishing mortality, that the models were the same. That was first and foremost in his mind, to make sure that there would be no criticism down the road that we used a slightly difference approach or a slightly different assumption, so it was done exactly the same way.

As a consequence of our doing it exactly the same way, we might suspect we got the agreements of the Technical Committee that, indeed, for all practical purposes, both approaches are conservation equivalent; although, as indicated by Rich, there is a difference between the two, and that being that you take a little bit more early on than later on.

But, regardless, you still end up with that particular strategy with the sorts of rebuilding trajectories that we see here in these figures. So, there's been no deviation from the approach already used for the assessment of dogfish in terms of projections.

EXECUTIVE DIRECTOR DUNNIGAN: Red.

MR. MUNDEN: To that point, Mr. Chairman, I believe Steve made the presentation to the Technical Committee last August or September, and he used landings through 1999; is that correct, Dr. Pierce? Did Steve use landings through 1999? My question is whether or not 2000 landings were included in this analysis?

DR. PIERCE: The year 2000 landings?

MR. MUNDEN: That's right.

DR. PIERCE: I don't think so, largely because in 2000 the fishery was seriously curtailed. As you know, a major drop in landings from around 22 million pounds -- actually more than 22 million, 40 million or so, 50 million or so, dropping from that level down to a lower level, in this particular case the year 2000, around 7 million pounds, thereabouts, which was, of course, the amount of dogfish landed in Massachusetts through our adoption of constant harvest strategy applied region wide, because we didn't set that amount specifically for Massachusetts waters and we shut our fishery down when, region wide, the 7 million was taken.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Ms. Shipman.

MS. SHIPMAN: Well, my comment would be in light of the information presented to us from the Technical Committee and given the rebuilding schedule you're looking at, I think a risk-averse approach is warranted in the early years of the fishery. I, for one, prefer Option 2.

EXECUTIVE DIRECTOR DUNNIGAN: Are we ready to get a motion up, and then I'm going to let the Chairman run his meeting. Dr. Pierce.

DR. PIERCE: Well, I'll make a motion, Mr. Chairman. **I move the Board adopt Spiny Dogfish PID Option 3 for the fishing year May 1, 2001, through April 30, 2002; that is a 4,000 metric ton, or**

**a 0.8 million pound constant harvest strategy throughout the management unit, (both state and federal waters).**

I'll stop there, Mr. Chairman, since, as indicated by David, there's no sense going -- there's no sense making this motion more complicated than it could be if the Board does not want to go in this direction.

MR. NELSON: **Second.**

EXECUTIVE DIRECTOR DUNNIGAN:

Seconded by Mr. Nelson. Mr. Chairman, it's your meeting.

CHAIRMAN PAT AUGUSTINE: Thank you, Acting Mr. Chairman. Comments? Mr. Mears.

MR. MEARS: Mr. Chairman, the motion that's made is indefensible. Certainly, it's understood that we're talking about a new management approach toward regulating the resource, but certainly such a motion made today would be irrelevant today to immediate action that could be made in federal waters, which leads me to a question to the maker of the motion.

It's unclear, Dr. Pierce, if this implies a continued analysis of the constant harvest strategy through the Amendment 1 process or independent of it in collaboration with the Councils?

CHAIRMAN AUGUSTINE: Dr. Pierce, would you respond?

DR. PIERCE: I would assume that the analyses would continue to be refined. For example, whatever information comes out of the year 2001 survey would factor into that analysis to see what the difference between the two strategies would be; constant harvest, constant F.

But I don't understand, Harry, why you feel this is indefensible, why this option -- this would have to be as an emergency action, I would assume, since obviously May 1 is almost upon us. The justification is there, we've already referred to it, I won't go over that ground again. We do rebuild to the same target at about the same period of time as the federal strategy, but this would allow us to have some fishery this year as opposed to no fishery this year.

I would again emphasize the federal strategy of 4 million pounds with landing limits of 600 and 300 provide for no fishery, no landings of dogfish, per se, since processors can't be in business to handle that sort of bycatch allowance, because there's no predictability as to when the bycatch would come in. This gets to some of the economic needs of the industry and obviously the economic needs of one particular state,

Massachusetts, the inshore fishermen out of the ports I've mentioned.

We fully recognize that most of the states around this table don't have a vested interest in dogfish. I mean, you're at this table, Board members, and, appropriately so, yet you really don't have, most of you -- North Carolina perhaps the major exception -- you really don't have a vested interest in dogfish. We do. So, clearly, if you were to adopt this motion, you would be doing so in support of one of your states, one of your member states, Massachusetts, that obviously feels this is a major issue for us, an important issue for us.

And we're looking for your support, your support that shouldn't get you in trouble because, as I've already said, the analysis has been done. We get there at the same time as the federal plan. That's what it's all about.

CHAIRMAN AUGUSTINE: Thank you, Dr. Pierce. Mr. Mears, would you respond, please?

MR. MEARS: Just a brief reply in that it does run counter to what's legislatively in place under the Magnuson Act that the basic tenant of managing the fishery today, here and now, is to minimize, if not preclude, a substantive directed female on mature females, which is being looked at as one of the priority objectives which must be taken now to start efforts to end overfishing on the basis of the information we have.

CHAIRMAN AUGUSTINE: Thank you, Mr. Mears. Any further comments from the Board? Mr. Jensen and then Mr. Freeman.

MR. JENSEN: What is the estimate of discards under the 4 million pound quota?

CHAIRMAN AUGUSTINE: Who would you like to answer the question, Pete?

MR. JENSEN: Whoever can answer it.

CHAIRMAN AUGUSTINE: Anybody beside Dr. Pierce? All right, Dr. Pierce, but make it short this time.

DR. PIERCE: Thank you, Mr. Chairman. I always appreciate your good guidance. We have no idea how many dogfish are being discarded.

All we can do is rely on the information provided to us by fishermen involved in monkfish fisheries, groundfish fisheries. I did mention before you came, Mr. Chairman, that the Division of the Marine Fisheries did do some sea samplings on board, a gillnet in the Gulf of Maine in December in response to a continued outcry from gillnetters in the Gulf of Maine, that they were catching tremendous numbers of dogfish to the extent where the nets were plugged and they

couldn't fish anymore for their target species. On one trip 15,000 metric tons -- 15,000 pounds of dogfish was discarded. And that, I'm told, is typical, maybe even on the low side of what has been happening in the Gulf of Maine and elsewhere.

So, regulatory discards are a major problem, and not just regulatory discards, but discards as a phenomenon occurring in many different fisheries because fishermen cannot get away from dogfish. That's why they've always been called a nuisance species, now, of course, a valuable species for commercial harvest.

CHAIRMAN AUGUSTINE: Thank you, Dr. Pierce. Does that answer your question, Mr. Jensen? Mr. Freeman and then Mr. Munden.

MR. FREEMAN: I had the same question, but I direct it to Rich Seagraves. Rich, does the Council have any estimate of discards or are we in the process of making that determination through any means?

MR. SEAGRAVES: I don't have the number at my fingertips. We do have an estimate of what the implied discards are. They're high. I do believe they exceed, by a considerable amount, the 4 million pounds. As we started developing this FMP, it was recognized early on that discards were going to be a significant problem because they're taken by so many, you know, indirectly by so many bottom tending, gears, gillnets, otter trawls, et cetera, and hook gear as well.

One of the strategies that we -- and then the big question is, okay, if you have a high discard rate, how many of those are actually going to die? And the FMP assumes 75 percent. So, it's fairly conservative in terms of that. There are not good current estimates based on observed information. That was a call that the Stock Assessment Group made. We heard testimony on both sides that they were highly resilient, that they would all live, don't worry about it. We heard testimony that they're all dead.

Obviously, it depends on the situation, where the fishery is occurring, the time of year, how long the net has been set. Where it's a gillnet that's been out for a couple of days, you're probably going to have a high mortality; if it's a short set, probably fairly low. In otter trawls it's expected it would probably be fairly high for longer duration tows. So, we have, in fact, no real good estimate of total discard mortality, which is really the critical issue.

We can estimate historically based on a ratio in incidence of spiny dogfish, in all the various fisheries, but no matter which way you cut it, those estimates are

going to be high. That's recognized. We didn't try to hide that. That's highlighted in the FMP. But the problem is you're still faced, under Magnuson, of rebuilding the adult female part of the stock.

So, the strategy that we took was basically -- we almost remained neutral to discards. We assumed that discards would remain the same after the FMP was implemented as before. Now, the estimates on discards that we had prior to development of the FMP showed that about 50 percent of the discards came from the directed spiny dogfish fishery itself.

So, one of the arguments that was made in the FMP was that, yes, we'll probably on one side of the coin will increase discards if we really close the fishery down, because any incidental landings would then have to be discarded. But we should have some gain from the directed -- a reduction in the directed fishery because half of the discards were coming from that side, at least from the estimates we had there.

So, the assumption is that we could take 4 million pounds and that discards will remain the same in the future, not only discards, but discard mortality, which is really the critical issue. And we frankly don't have an answer to that question.

One of the highest priorities, the biggest discussions around the table is we need better information. We have information on discard rate, the incidents of which they're taken. And it's high. The question is how many are going to survive? It would have, obviously, a great bearing on how quickly this stock rebuilds. So, the assumption with the 4 million and the current FMP is it's the same. If discards go down, stock rebuilding will occur faster. If the discard mortality rate, the rate and the mortality goes up, it would be slower. So, we kind of took the approach that since we don't have the answer, let's move forward and measure what happens as we move on.

The critical issue is how many of the discards would be expected to die. And also, I guess, around the table discussions that we had -- and this is a very difficult issue -- is that, well, if discards are high, why not just take those in a directed fishery? The concern is that if you set the quota at 4,000 metric tons, that you'll have a directed fishery on the largest members of the stock that are the most valuable, everybody agrees to that. Then in addition to that, you're probably going to have about the same level of discards because the 8 million can be taken so quickly.

The fishing power of fleet is so great that even if you double the quota, you're probably looking at a fishery that's going to be open for a period of weeks,

especially given the fact that they need to be handled in bulk and all these industry concerns that have been raised in terms of low value fish, about 15 cents a pound. It has to be handled in high volumes to make, you know, any money. And they need a certain amount for a container load, so on and so forth.

So, we would assume that any directed fishing that occurs is going to be concentrated at the fairly small period of time. It makes sense economically. However, that means that the direct and non-directed discard portion of it, the complement of it may or may not actually be about the same. So the Technical Committee said if you applied a 4,000 metric ton fishery across all size classes as a bycatch fishery, there would be absolutely no difference between that and our strategy. If it's focused on adults and then you have the additional discard mortality, it's probably not the same. But there is no good answer to the problem, other than just try and apply reason and predict what might happen.

Our feeling has been that all things being equal, we should try to keep the directed fishery as small as possible, allow for the most rapid increase in the adult female part of the stock as we can get. The managers are left with, okay, the draconian impact that has had on the industry and trying to work out ways to ameliorate that. But that's your decision.

CHAIRMAN AUGUSTINE: Thank you, Mr. Seagraves.

MR. FREEMAN: Mr. Chairman, one other question.

CHAIRMAN AUGUSTINE: Mr. Freeman, go ahead.

MR. FREEMAN. One other question to Rich while he's here. Rich, relative to the groundfish survey, is it agreed from a technical standpoint that that can monitor the stock? I know we have difficulty with various species of fish, but the groundfish, so-called groundfish survey, would give you good indicators of stock size?

MR. SEAGRAVES: Yes, I think there was general agreement amongst the SARC and also the Technical Committee that of all the species that we try to assess, this is probably the one that the survey does the best on. It's not perfect. There's a lot of variability in the numbers, if you look at the annual surveys. But what we're looking are three-year moving averages.

I would like to make one technical point. The question was earlier about the rebuilding strategy, 4,000 metric tons versus constant F. In fact, they're based on the stock, starting stock size based on the

survey. And it's based on 1997 through 1999. So we take the pool of the total stock that exists based on that three-year average survey. You take the number at size and you have a population size, and then fishing mortality rates are then applied to that stock. And one strategy is an F of 0.03 over 17 years. The other strategy is whatever F gives you of 4,000 metric tons, and that produces those two lines that you see.

In fact, it's not really contingent upon what the fishery was in that particular year. It's based on the stock conditions based on the survey.

But to answer your question directly, it's felt that the survey is pretty good relative to other species. Again, it's not directed toward spiny dogfish. But the long-term trends are readily apparent in the data.

CHAIRMAN AUGUSTINE: Thank you, Mr. Seagraves. Does that answer your question, Mr. Freeman? Okay, Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. I'd like to make two points. The first applies to discards and discard mortality. Rich pointed out that the FMP assumes a 75 percent mortality rate for discards. I believe the plan is more specific in that it assumes a 50 percent discard mortality for fish that are caught in trawl nets; a 75 percent mortality for spiny dogfish taken in gillnets and 100 percent mortality for recreationally caught spiny dogfish.

I guess that's where we come up with this 75 percent average. But the information based on the study that was conducted in North Carolina in a gillnet fishery in 1999 indicates that the discard mortality is closer to 10 percent for nets that are soaked for 24 hours. I have provided that information to Paul Rago. But, when we were developing the plan, some of the members of the Spiny Dogfish Committee challenged the assumptions that discard mortalities were about 75 percent. Paul Rago said, "Well, provide me with data that I can use. If not, we'll just have to go with these assumptions". So, therefore, the plan does make those assumptions.

The second point I'd like to make, Mr. Chairman, concerning Option 3, what I see here is that under the proposal, the constant harvest strategy, we will have an 8.8 million pound TAL level for state waters; whereas, it has already been pointed out, the recommendation from both the Mid-Atlantic Council and the New England Council is for a 4 million pound harvest for the upcoming year.

So, the difference between the TAL that will be established for the federal waters and state waters will benefit only those non-federal permit holders. So, I

think it's important that we keep this in mind. We're going to end up with another situation very similar to what this body and the Mid-Atlantic Council and the National Marine Fisheries Service had to go through with summer flounder. Thank you.

CHAIRMAN AUGUSTINE: Thank you for those points, Mr. Munden. Any other comments? Dr. Pierce and then Mr. Adler.

DR. PIERCE: Yes, regarding the issue that was just mentioned, this does not favor state waters fishermen over federal permitted fishermen entirely because where the state waters fishery, the markets can be -- will exist, small scale as they may be. That will allow federal permit holders to land their bycatch and sell it as opposed to not being able to land any bycatch at all because there won't be any processors there to buy it. That's one point.

And then, again to answer Bruce's question about the survey, does the survey provide useful estimates of abundance, well, yes, they're very helpful. It's all we've got. It's a swept area biomass estimate. There's problems using that sort of an estimate for a species like dogfish that's pelagic, up and down in the water column. But I'll just point out for your benefit, Bruce, that these intermediate size dogfish that will provide the necessary future rebuilding, they were assessed to be 205,000 metric tons in 1997.

Then in 1998 it dropped from 205,000 metric tons to 69,000 metric tons, and that's an impossible drop. Then in 1999 biomass of that intermediate size dogfish rose again to 140,000 metric tons. So, it's up and down, up and down. There are wide swings in abundance estimates as acknowledged by the Northeast Fishery Science Center. It's just the nature of the beast. These swept area surveys are not very precise. That's all we've got to use, however.

CHAIRMAN AUGUSTINE: Thank you, Dr. Pierce. Mr. Adler.

MR. ADLER: Thank you, Mr. Chairman. Given the toss up in the methods that we've been discussing -- either one seems to be pretty close to the same -- I find it appalling that we would be supporting something that would contribute to the waste factor here in the discards such as is present in the federal plan.

Also, the constant harvest strategy, if you want to talk risk averse, I would consider the constant harvest strategy risk averse to the socio-economic reasons, the markets, the fishermen, points that they took.

Also, we heard at the public hearings what the fishermen seemed to be saying was that there were dogfish around. Given that we are doing a plan that is

equal -- just about equal, whatever -- that they supported the constant harvest strategy, and I think that we should listen to them. Also, the constant harvest strategy seems to use the fish rather than waste them. And there has been a reduction in the directed fishery if people are worried about discards in the directed fishery.

The fact that what the constant harvest strategy proposes does already have a very small directed fishery, and also probably if we are falling with this overnight sets, or short sets of gillnets, which is what the fishermen can do, that they can reduce the discard when they are directing down to the level that we heard or somewhere near there.

So, for all of these reasons, I would hope that we'd support this motion, because it just seems to make sense from the socio-economic, from the planned technical advice and from the fact that we can eliminate some waste here while we still do our rebuilding that we have to do. Thank you.

CHAIRMAN AUGUSTINE: Thank you, Mr. Adler. Final comment? Mr. Borden.

MR. BORDEN: Mr. Chairman I would suggest that in the interest of time, there are really two issues before us, that this motion is comprised of two separate points. One is the issue of whether or not we want a constant harvest strategy. The second one is what are those levels? Is it going to be 4,000, is it going to be eight or what are the numbers? And then there's a whole other group of secondary issues that are related to that, whether or not there are state quotas and so forth.

If we can't reach closure on the first motion, then all the rest of this discussion is irrelevant. So, **I would move to separate the question into two motions. The first motion would be the first three lines and put a period after 2002.** If that motion doesn't pass, then all of the rest of the discussion on the specifics is really irrelevant.

CHAIRMAN AUGUSTINE: Thank you, Mr. Borden. Do I have a second for amending the motion? **Mr. Nelson seconds.** Discussion?

MR. NELSON: **Move the question.**

CHAIRMAN AUGUSTINE: Mr. Nelson called the question. Caucus? Does anybody need to caucus?

MR. BORDEN: Thirty seconds, Mr. Chairman.

CHAIRMAN AUGUSTINE: Thirty seconds. Time is up. All in favor of splitting this motion into two parts, all in favor raise your hand, **nine in favor; opposed, five opposed; abstentions, one abstention;**

**null votes. The motion passes.** Now we have the first part of this motion. Mr. Borden, would you read what it is you want this motion to say?

MR. BORDEN: **Move that the Board adopt Option 3 of the Spiny Dogfish PID for the fishing year May 1, 2001, through April 30, 2002.**

CHAIRMAN AUGUSTINE: Thank you, Mr. Borden. Discussion? Mr. Cole.

MR. BILL COLE: Would the same clarification of in-state and federal waters apply to this part of the split motion as in the second part where it's identified?

CHAIRMAN AUGUSTINE: Mr. Borden, do you want to respond to that?

MR. BORDEN: I'm sorry, Mr. Chairman?

CHAIRMAN AUGUSTINE: Mr. Cole, would you please repeat?

MR. COLE: When you split the question, the phrase "in state and federal waters" was carried over to the second part of the split, would "state and federal waters" also be implied in the first part?

CHAIRMAN AUGUSTINE: Yes or no.

MR. BORDEN: I'm not sure how to answer the question.

CHAIRMAN AUGUSTINE: Mr. Dunnigan is shaking --

MR. BORDEN: Our plan is going to apply to state waters, state permit holders and federal water regulations, and it would apply to federal permit holders.

CHAIRMAN AUGUSTINE: Does that answer your question, Mr. Cole? Mr. Dunnigan, do you want to further clarify? It's pretty clear. Mr. Schwaab.

MR. ERIC SCHWAAB: I'm sorry, Mr. Chairman, it's not clear to me what adopting Option 3 will consist of if we approve this motion. What elements of Option 3 are we talking about then?

EXECUTIVE DIRECTOR DUNNIGAN: Not yet. **The motion is just is this the direction that you want to go in to have a constant harvest strategy as your state management plan in the interim.**

CHAIRMAN AUGUSTINE: Go ahead, Mr. Freeman and Mr. Borden.

MR. SCHWAAB: So this vote is whether we use the constant harvest strategy or not?

EXECUTIVE DIRECTOR DUNNIGAN: Correct.

CHAIRMAN AUGUSTINE: Mr. Freeman and then Mr. Borden.

MR. FREEMAN: **I would ask the motion maker if he'd simply rephrase the motion and leave out the words Option 3.** Just put in what he wants so far as

the quota is concerned, and that alleviates this problem.

CHAIRMAN AUGUSTINE: Mr. Borden?

MR. BORDEN: **That's an acceptable perfection** if it's agreeable to the seconder.

CHAIRMAN AUGUSTINE: Mr. Nelson, do you agree?

MR. NELSON: I concur.

CHAIRMAN AUGUSTINE: Mr. Nelson agrees. Further discussion?

MR. BORDEN: Yes, Mr. Chairman, this may make some members a little bit more comfortable with the motion. My intent here is simply to try to expedite the deliberations here, and basically as almost a statement of intent, what we intend to move forward.

Now, the assumption that's bedded in that is that after this, there will have to be a whole series of motions that spell out exactly what it means. At the end of that whole process, if you're going to put it in place between now and May 1st, you're going to have to make a motion for emergency action.

So you can go through the whole process, vote to construct the best plan that you can conceive of and at the end you've got to vote, you either vote it up or down.

CHAIRMAN AUGUSTINE: Thank you for that clarification, Mr. Borden. Further comments? Caucus? Okay, Mr. Borden would you read the word changes for Joe, please?

MR. BORDEN: **Move that the Board adopt a constant harvest strategy of the Spiny Dogfish PID for the fishing year May 1, 2001, through April 30, 2002.**

CHAIRMAN AUGUSTINE: Thank you, Mr. Borden. Is the Board all clear? Caucus? Thirty seconds. Okay, let's have a vote now. All in favor of the motion as read, raise your right hand, please. Nine. Let me have one more show of hands there, one vote for each state. I have eight. Opposed, same. Can I vote? Yes. I'm opposed. You're not opposed, so it's eight and eight. Any null votes; abstentions. Eight to eight. I guess it needs to have some more language, some more discussion or -- I can't say it failed because it's eight to eight. I need your help, Jack.

EXECUTIVE DIRECTOR DUNNIGAN: **Let me just clarify the vote was eight to eight. The Chair, who is the only New York representative right now, voted against the motion which created the tie, eight to eight.** The motion fails and you're back in business.

CHAIRMAN AUGUSTINE: Thank you for that clarification. Okay, we're back on the board. Do we

need to do the second half of that motion now or is that a moot point? Okay, Mr. Munden.

MR. MUNDEN: Thank you, Mr. Chairman. **I move Option 2.**

CHAIRMAN AUGUSTINE: Do I have second? **Mr. Cole seconds that.** Discussion? Mr. Borden, Dr. Pierce, and Mr. Freeman.

MR. BORDEN: Yes, Mr. Chairman, is this going to be a compliance requirement? Is that what the intent of the maker of the motion is?

CHAIRMAN AUGUSTINE: Mr. Munden, is that a compliance requirement?

MR. MUNDEN: Yes, I believe it would be, Mr. Chairman.

CHAIRMAN AUGUSTINE: Thank you, Mr. Munden. Dr. Pierce and then Mr. Freeman.

DR. PIERCE: Well, I need a clarification. I need to know what the maker of the motion would like to have happen since Option 2 indicates that the Commission FMP would mirror the FMP and its provisions, so that would mean all of the provisions.

Frankly, to my way of thinking, by doing so, if we adopt this, we are adopting the federal plan, as I indicated before, with all the weaknesses and strengths. We're doing so without any input from our industry advisors, no input whatsoever. They've not been involved in this process. Their opinions have not been sought, and that's not the way the ASMFC should do business. This is a rather dramatic step. It adopts the federal plan in its entirety, the objectives, the whole ball of wax. Because if you adopt the plan's regulations, you're adopting the philosophy. You're adopting all within the plan that leads up to those regulations. So this is significant and extremely so.

I suspect that if it passes, this Board will be justifiably criticized by the industry advisors, who up to this point in time have assumed they would be called to be involved in the development of an ASMFC plan and to be given an opportunity to speak to the federal plan and to identify, for the benefit of this Board, where the serious weaknesses are in that plan and where there's some flexibility, at least from the state perspective.

So, obviously, I can't support this action. This is that which I have opposed from day one not only as a Board member, but as a New England Fishery Management Council member who has been part of the discussions on that Council, that I think those of you who know, those of you who have kept track about the Council deliberations, you know quite well that the New England and Mid-Atlantic Council have a

different attitude regarding how dogfish should be managed. The Secretary of Commerce and the Mid-Atlantic Council are calling the shots really on how dogfish are managed right now. So, this is significant.

Essentially, what you're doing, if you adopt this motion, is to say to the Mid-Atlantic Council and the National Marine Fisheries Service, we like where you're going, we like what you've done, we will go with you, and you're saying to the New England Council, we disagree with what you've done. Well, if you're disagreeing with what the New England Council's position has been in the past and still is, then that's going to have to be made very clear to that Council and the industry in the New England area that really is, for all practical purposes, the industry that focuses on dogfish. Thank you.

CHAIRMAN AUGUSTINE: Thank you, Dr. Pierce. Mr. Freeman.

MR. FREEMAN: As I understand the process, the Mid-Atlantic Council is looking at amending the plan. If, in fact, it does amend the plan and it does go before our Board meets again -- I have no idea when the Board is going to meet again -- would this motion then automatically continue whatever system the Council has?

CHAIRMAN AUGUSTINE: Jack, I'll ask you. I believe it will. We're essentially agreeing with what they have in place, which is in accord with the federal plan.

MR. FREEMAN: Correct.

CHAIRMAN AUGUSTINE: So, therefore, whatever the changes are, we agree with whatever it is they're agreeing to put on the table.

MR. FREEMAN: As long as they all understand that because that may or may not happen. But the Council is looking at making changes and those changes may implicate this, so that's fine. Thank you.

CHAIRMAN AUGUSTINE: Thank you, Mr. Freeman. Ms. Shipman.

MS. SHIPMAN: Yes, Bruce covered one of the questions I wanted to ask, but I see this as an interim position of this Commission. I would hope we could communicate to the Mid-Atlantic Council that we would like to see this elevated in priority to work forward with this plan.

A second, I guess, question I have, were not -- I mean the Mid-Atlantic Council and New England Council, whomever the industry advisors are, they have been conferred with and consulted with in development of the FMP. I think I recall asking Tina a question

about the status of our industry advisors, and I believe they were one and the same group. I believe that's what I've been told, so I would submit that the industry has been afforded an opportunity to have input. It may not be the outcome that all of the industry advisors would want, but I would submit that they have had input.

CHAIRMAN AUGUSTINE: Thank you, Ms. Shipman. I'm sure you're absolutely correct on that. They are one and the same advisory panel. Mr. Munden, Mr. Lesser, and Mr. Travelstead.

MR. MUNDEN: Thank you, Mr. Chairman. Our Executive Director has offered some language that would perfect this motion so while the staff is doing that, I would like to take this opportunity to address Dr. Pierce's concern of the original motion.

My feelings are that if this motion passes, that the Mid-Atlantic Council will move forward with Amendment 1 to the fishery management plan, and I would certainly hope that the Mid-Atlantic Council and the Atlantic States Marine Fisheries Commission Spiny Dogfish Board would work jointly to address state concerns, because we have recognized that there are some deficiencies in the existing plan.

Number 1 is that it does not address overharvest during a particular harvest period. Also, there is nothing that prevents us from looking at state-by-state quotas. So, I feel like that this motion would bring the Board and the Council together, along with New England, to manage the stock.

CHAIRMAN AUGUSTINE: Excellent point, Mr. Munden. Are you ready to read the motion?

MR. MUNDEN: **The perfected motion is move that the Board adopt emergency action to require the states to implement federal seasonal quotas and trip limits for spiny dogfish for the fishing year beginning May 1, 2001.**

CHAIRMAN AUGUSTINE: Is that okay with the seconder? Mr. Cole, is that fine? Mr. Cole said it's okay. Okay, discussion on the motion; any further discussion? Mr. Travelstead and Mr. Lesser.

MR. CHARLIE LESSER: Noting that Council plans don't recognize *de minimis* and since Delaware has insignificant catches, would *de minimis* be allowable if this motion passed, to save us the administrative --

CHAIRMAN AUGUSTINE: It would have to be written in the motion, I am directed.

MR. LESSER: Of this motion?

CHAIRMAN AUGUSTINE: It would have to be



written in this motion as a part of it.

MR. LESSER: **Would the motioner be amenable to --**

CHAIRMAN AUGUSTINE: **Mr. Munden, would you be amenable to have that sentence added?**

MR. MUNDEN: Yes, I would, Mr. Chairman.

CHAIRMAN AUGUSTINE: Mr. Lesser, do you want to try to come up with the language or would you like Mr. Munden do it? It's just going to take a sentence. They're working on it. Mr. Travelstead, I sorry I missed you before.

MR. JACK TRAVELSTEAD: Are the trip limits that are specified in this motion known at this point. Has the National Marine Fisheries Service issued the specifications?

CHAIRMAN AUGUSTINE: Mr. Munden, are you aware of that? Mr. Mears, please.

MR. MEARS: We have proposed trip limits out that were in accordance with the Council recommendations from the Mid-Atlantic Council. We do not yet have a final rule.

CHAIRMAN AUGUSTINE: Thank you very much.

MR. TRAVELSTEAD: And when will we have a final rule and what is the deadline for state compliance under this motion?

CHAIRMAN AUGUSTINE: Mr. Mears. Can you repeat that again, please?

MR. TRAVELSTEAD: When do we expect the specifications to be final, and what is the deadline that the states must adopt these trip limits to comply with the motion?

MR. MEARS: I can respond to the first question. As I indicated earlier, in light of the fast-approaching date of May 1, it's on a fast track. I can't give a specific day.

CHAIRMAN AUGUSTINE: Mr. Adler and then Dr. Pierce.

MR. ADLER: I assume that everyone understands that with this type of a procedure, that we will not have markets because there's no need to have a market for 300 pound landings? So it doesn't matter what's going to come later, the markets are gone.

CHAIRMAN AUGUSTINE: Thank you. Dr. Pierce.

DR. PIERCE: Yes, this motion should be weighed against some of the public hearing comments and letters that we've received, and specifically the trip limits. I think the Board still does not understand that

the trip limits of 300 and 600 pounds are pie in the sky. They're foolish. They make no sense. They don't afford fishermen an opportunity to really land their 4 million pounds established by the federal government as a so-called bycatch quota. The Chesapeake Bay Packing, okay, I'll refer to their particular comment that they submitted.

We always tend to go over the comments rather rapidly, and that's unfortunate because a lot of good things are offered up in terms of advice. Well, Chesapeake Bay Packing, Rick Robins makes a very important point. And he says, "By structuring the fishery as a bycatch only fishery, the federal plan virtually eliminates all economic value in the fishery. "Processors are unable to process this species in bycatch quantities and fishermen are unable to cover even the cost of fuel under the restrictive trip limits embodied in the federal plan. Consequently, the federal quota of 4 million pounds is rendered virtually worthless from an economic perspective."

This point of view has been repeated and stressed by the New Hampshire processor, one of the two major processors in New England now. He made that point very loudly and very clearly in, I suspect, New Hampshire and also in Massachusetts, and the Massachusetts processors made the same point. This strategy provides no opportunity for dogfish landings.

And it provides false hope that there's really something there that they can land, some economic benefit they can glean. There is no economic benefit. So those are the important comments made by these members of the industry.

I know their comments to be true from all of my experience with the dogfish industry and management of that industry for the last few years. So, by adopting this motion, we parallel the federal effort which is, frankly, quite ill advised.

CHAIRMAN AUGUSTINE: Thank you, Dr. Pierce. Mr. Munden, would you read the corrected motion? Mr. Nelson, did you have a comment first?

MR. NELSON: I guess I need some clarification, Mr. Chairman, and I apologize if I missed it. When we talk about an average annual landings, what's the time frame we're using on that?

CHAIRMAN AUGUSTINE: Who can answer that question? Joe is looking it up right now.

MR. NELSON: Okay, I have a problem with going this way. We've had I think innumerable discussions, and probably the last time was on dogfish again in which we went through emergency action, and the states all expressed their concern about doing

emergency actions and regulations, you know, at a drop of the hat approach or the insistence of doing it at a drop of a hat.

We talk about doing these on a much more methodic basis, you know, maybe once or twice a year. When do we think this thing has to be in place? Why don't we just stay with what we've got if we're not going to go with Option 3? I mean, those are the types of questions I have on this.

CHAIRMAN AUGUSTINE: Joe, do you want to answer that first question?

DR. DESFOSSE: I'll try to answer the first question. If you look at Table 2, these are updated landings, percentage landings for the different reference periods. I believe New York is the only state that goes over and above the 1 percent landings level. Delaware is the only state that stays below the 1 percent. And New York's average landings with the '88 to '97 period there was 0.98 percent. And then the southern states don't have any landings that showed up in the database. So, South Carolina, Georgia and Florida would also be *de minimis*.

CHAIRMAN AUGUSTINE: Mr. Flagg.

MR. FLAGG: Thank you, Mr. Chairman. It seems to me that if in this motion the trip limit provision were deleted, it's really Option 1. Then it really becomes Option 1 and it would be the same. And frankly, I would prefer Option 1 to maintain the status quo rather than impose trip limits on certain states, which is just going to be completely unworkable.

So, it seems to me that we're either back to Option 1, in my view, or that we amend this motion and just delete the trip limits, because that would put us with Option 1.

CHAIRMAN AUGUSTINE: Thank you for that clarification, Mr. Flagg. Mr. Munden, would you read the new, corrected motion?

MR. MUNDEN: Thank you, Mr. Chairman. **The corrected motion in its entirety is move that the Board to adopt emergency action to require the states to implement federal seasonal quotas and trip limits for spiny dogfish for the fishing year beginning May 1, 2001, excepting any state with less than 1 percent average annual landings.**

CHAIRMAN AUGUSTINE: Thank you. Is that all right with you, Mr. Cole? Quickly, just to the point.

DR. PIERCE: I have a motion to make, a substitute motion, Mr. Chairman. I would **move as a substitute motion that for the period May 1, 2001,**

**through April 30, 2002, a 4,000 metric ton quota be established throughout the management unit, state and federal waters.**

This is not the same as the motion that was defeated before because the motion that was defeated before was specific to its being a constant harvest strategy. What I'm saying with this motion as a substitute is that we're looking at just 4,000 for the coming year with no intent to make it a consistent 4,000 metric tons going into the future. So, that's my motion to substitute, Mr. Chairman.

CHAIRMAN AUGUSTINE: Okay, do you have the substitute written down yet? Do we have a second to the substitute? Second to the substitute motion?

MR. FLAGG: **I'll second it.**

CHAIRMAN AUGUSTINE: Mr. Flagg seconds the substitute motion. Discussion? Any discussion on the substitute motion? Mr. Mears.

MR. MEARS: Mr. Chairman, just a similar point to the earlier comment I had on the previous motion. It is outside the purview of this body to vote on or act a motion that includes a management action to implement a management action in the federal waters. There's a whole separate process for this, as everyone knows, under the Magnuson Act involving the Councils.

CHAIRMAN AUGUSTINE: Thank you, Mr. Mears. Any further comments? All right, call the question. Do we want caucus? It's on the substitute. This is only on the substitute. Caucus, do you need caucus? No, all right. Those in favor of the substitute motion, raise your right hand, please. This is on the substitute only, just on the substitute. This isn't on the whole motion, it just on the substitute. Okay, we had how many hands; **two; opposed, a whole bunch, 12; abstain; null; one abstention; null? The substitute fails.**

Back to the original motion. Caucus on the original motion. Mr. Jensen.

MR. JENSEN: Can I admit to some confusion here. I thought Mr. Flagg had suggested earlier that trip limits be taken out of that motion, and you had asked Mr. Munden if he agreed with that and he ended up reading the entire motion as it's on the board. Did I miss something here? Were you suggesting the trip limits be taken out of that, Lew?

MR. FLAGG: I didn't make a motion.

MR. JENSEN: Okay, all right.

CHAIRMAN AUGUSTINE: It was just a comment. It was just a comment, Mr. Flagg?

MR. FLAGG: Yes, but I would like to **move to amend this motion to delete the words "and trip limits" from the main motion.**

CHAIRMAN AUGUSTINE: Do we have a second to that motion, to that amendment? **Mr. Adler.** Discussion? Ready to vote on the new amendment, whether to amend. This is just to amend. All in favor to amend, show of hands? **I have five. Opposed, nine. Abstentions; nulls. It fails.** Mr. Travelstead?

MR. TRAVELSTEAD: Call the question.

CHAIRMAN AUGUSTINE: Mr. Travelstead calls the question on the original motion. Do we need anymore caucus? Okay, show of hands for those in favor of the motion. This is actually an emergency action and Jack informed me it will require a roll call vote and it requires eleven in favor of to make that distinction. So, Dr. Desfosse, would you please?

DR. DESFOSSE: Maine.

MAINE: No.

DR. DESFOSSE: New Hampshire.

NEW HAMPSHIRE: No.

DR. DESFOSSE: Massachusetts.

MASSACHUSETTS: No.

DR. DESFOSSE: Rhode Island.

RHODE ISLAND: No.

DR. DESFOSSE: Connecticut.

CONNECTICUT: Yes.

DR. DESFOSSE: New York.

NEW YORK: No.

DR. DESFOSSE: New Jersey.

NEW JERSEY: No.

DR. DESFOSSE: Delaware.

DELAWARE: Yes.

DR. DESFOSSE: Maryland.

MARYLAND: Yes.

DR. DESFOSSE: Virginia.

VIRGINIA: Yes.

DR. DESFOSSE: North Carolina.

NORTH CAROLINA: Yes.

DR. DESFOSSE: South Carolina.

SOUTH CAROLINA: Yes.

DR. DESFOSSE: Georgia.

GEORGIA: Yes.

DR. DESFOSSE: Florida.

FLORIDA: Yes.

DR. DESFOSSE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

DR, DESFOSSE: Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Yes.

DR. DESFOSSE: **You have 10 yes votes, and six no.**

CHAIRMAN AUGUSTINE: **The motion fails.** Back to the drawing board. Mr. Dunnigan, it's seven minutes after 12.

EXECUTIVE DIRECTOR DUNNIGAN: Well, I'm going to try and help you, Mr. Chairman.

CHAIRMAN AUGUSTINE: Please do.

EXECUTIVE DIRECTOR DUNNIGAN: The Board has considered now Option 3 and not adopted it. It has considered Option 2 and not adopted it. You've got Option 1, then, in front of you and Option 1 is already in place. The Board at its last meeting extended the emergency action through this year. So, if you take no further action today, Option 1 is what will continue to be in place.

CHAIRMAN AUGUSTINE: Thank you for that, Mr. Dunnigan. Any further comments? I think we're almost ready to accept that. One other item from Dr. Desfosse and then Dr. Pierce. Dr. Pierce, go ahead.

DR. PIERCE: Just to clarify the record. In the decision document, under the discussion for Option 1, questions have been raised as to the validity of an emergency action in the absence of the Commission FMP. I assume, Jack, that you've given this some thought and that you've concluded that it would be A-okay to extend this for an additional year, even though we don't have a plan?

EXECUTIVE DIRECTOR DUNNIGAN: I believe the answer to your question, David, if I understand it, is, yes, the Commission's rules do allow adoption of emergency action in absence of a fishery management plan.

CHAIRMAN AUGUSTINE: Thank you. Any other items under other business? Mr. Borden?

MR. BORDEN: At the risk of prolonging the discussion, it seems to me that really what needs to take place here -- some people may be satisfied with this strategy, but to me it suffers some of the same drawbacks as we've all lived through for the past year.

You're going to have differential impacts on the constituents, there's no question about that, as a result of this. So, to me I think what we should do is to resolve ourselves to try to continue to work on this issue between now and the next Board meeting, which, hopefully, will be at the next Commission meeting in July, and at that point, reconsider all of these points and come back with another series of actions. This has got to be resolved. Somehow, we've got to reach closure

on the issue.

CHAIRMAN AUGUSTINE: Thank you, Mr. Borden. I think we've spun our wheels for two hours, and a lot of good information was put on the table today. Joe did a yeoman's job of putting this all together with the public hearing information and so on. But when we leave the room, we're still at status quo and we haven't really taken that next step. I think for that I'm a little sorry we haven't gone farther. Ms. Shipman?

MS. SHIPMAN: It would be my hope we would allocate whatever time is needed in July. If we have to meet into the evening, we have got to resolve this because we are leaving this table with the disparity of harvest between New England and the Mid-Atlantic.

What this option does, basically when those federal waters reopen, which I understand will be May, based on that quota, that's going to be a New England fishery and the Mid-Atlantic is going to get shut out again. I think that's unacceptable to everybody around this table.

DR. PIERCE: I repeat that the limits of 300 and 400, 300 and 600 depending upon the season, don't allow for any landings of dogfish because the processors won't be in business. They won't be buying dogfish. So you should not be concerned about the north versus south disparity. It's just not going to happen.

MR. FLAGG: My thought was that in regards to the emergency action we took last year is that we were compelled to close state waters when the quota period was met. So, there will be a northern quota and a southern quota so that when that 2.3 million pound quota was landed in the northeast, they have to close.

So, there will be an opportunity for -- it was my understanding that there would be an opportunity for a fishery in the south because of the split season and a split quota provision.

CHAIRMAN AUGUSTINE: Thank you. Is that your understanding, Mr. Munden?

MR. MUNDEN: That's correct, Mr. Chairman.

CHAIRMAN AUGUSTINE: Thank you for that clarification. It's very important to know that.

MS. SHIPMAN: I stand corrected, thank you.

CHAIRMAN AUGUSTINE: You're welcome, Ms. Shipman. Any further agenda items? Dr. Desfosse.

#### APPROVAL OF CESS NOMINEES

DR. DESFOSSE: The Commission's Committee

on Economics and Social Sciences has provided nominations for their appointments to the Plan Development Team and Technical Committee. I just wanted to bring that to your attention. The economist would be Dr. John Whitehead from East Carolina University, and the social scientist would be Dr. Peter Fricke from the National Marine Fisheries Service.

CHAIRMAN AUGUSTINE: Anything else, Dr. Desfosse? Then we'll entertain a motion to adjourn. Oh, wait a minute, we can't do it.

DR. DESFOSSE: **I assume then that the Board would have to approve those nominees, pass a motion?**

CHAIRMAN AUGUSTINE: Mr. Cupka.

DR. DAVID CUPKA: **So move.**

CHAIRMAN AUGUSTINE: And **Mr. Cole seconded**. Any discussion? **All in favor, show of hands, 12. Opposed; null. It carries.** Thank you. Anything else, Jack? Anything else, Joe? Motion to adjourn? Mr. Adler. Second? Anybody. I'll second it. All in favor? Adjourned. Thank you very much.

(Whereupon, the meeting was adjourned at 12:15 o'clock p.m., April 23, 2001.)