

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

**Crowne Plaza Hotel  
Alexandria, Virginia  
May 6, 2008**

Board Approved: July 2008

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## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of August 4, 2007 by consent** (Page 1).
- Draft Coastal Sharks FMP:**
3. **Move to accept the current updated NMFS species groupings for section 4.1.1** (Page 13). Motion made by Dr. Daniel, second by Mr. Grout. Motion passes (Page 14).
4. **Section 4.1.2: Move to approve option A** (Page 14). Motion made by Mr. Augustine, second by Mr. Himchak. Motion passes (Page 14).
5. **Section 4.3.1: Move to approve option B (one region)** (Page 15). Motion made by Dr. Daniel, second by Senator Damon. Motion passes without objection (Page 16).
6. **Section 4.3.3.1: Move to approve option E** (Page 16). Motion made by Dr. Daniel, second by Mr. Augustine. Motion passes without objection (Page 16).
7. **Section 4.3.3.4: Move to approve option B (annual possession limits by species group)** (Page 16). Motion made by Dr. Daniel, second by Mr. Augustine. Motion passes without objection (Page 16).
8. **Section 4.3.4.3: Move to approve option B (commercial fork length of 4.5 feet for LCS species removing sandbar sharks from the list of species)** (Page 16). Motion made by Dr. Rhodes, second by Mr. Damon. Motion substituted.
9. **Move to substitute to approve option A (Page 20). Motion made by Mr. Augustine, second by Mr. Adler.** Motion carries without objection (Page 21).
10. **Move to approve option A (Page 20).** Motion made by Mr. Augustine, second by Mr. Adler. Main motion as substituted carries without objection.
11. **Section 4.3.5 (Seasonal Closures): Move to remove from the document** (Page 23). Motion made by Mr. Bowden, second by Mr. Calomo. Motion substituted (Page 26).
12. **Move to substitute to accept Section 4.3.5 as written.** Motion made by Dr. Daniel, second by Mr. Berg. Motion carries without objection.
13. **Move to accept Section 4.3.5 as written.** Motion made by Dr. Daniel, second by Mr. Berg. Main motion as substituted passes (14 in favor, 1 opposed).
14. **Section 4.3.8.1 (Dealer Permits): Move to accept Option C (Page 27).** Motion made by Mr. Adler, second by Dr. Daniel. Motion substituted (Page 27).
15. **Move to substitute to accept Option A (Page 27).** Motion made by Mr. Augustine, second by Mr. Boyles. Motion passes without objection (Page 28).
16. **Move to accept Option A (Page 27).** Motion made by Mr. Augustine, second by Mr. Boyles. Main motion as substituted passes without objection (Page 27).
17. **Section 4.1.3 (Fishing Season): Move to accept Option A** (Page 27). Motion made by Mr. Alder, second by Sen. Damon. Motion carries without objection (Page 27).
18. **Section 4.2.1 (Recreationally Permitted Species): Move to accept Option C (Page 28).** Motion made by Dr. Daniel, second by Mr. P. White. Motion passes without objection (Page 28).

## INDEX OF MOTIONS (continued)

19. **Section 4.2.2 (Landings Requirements): Move to retain as written (Page 28).** Motion made by Sen. Damon, second by Dr. Pierce. Motion carries without objection (Page 29).
20. **Section 4.2.3 (Fork Length): Move to modify Option A to require sharks caught in the recreation fishery have a fork length shark at least 4.5 feet, no size limit for small coastal sharks or smooth dogfish (Page 30).** Motion made by Dr. Daniel, second by Mr. Boyles. Motion carries (Page 30).
21. **Section 4.2.4 (Authorized Recreational Gear): Move to accept Option A (Page 30).** Motion made by Mr. Augustine, second by Mr. Woodward. Motion passes without objection (Page 30).
22. **Section 4.2.6 (Recreational Shore): Move to accept Option A (Page 30).** Motion made by Dr. Daniel, second by Mr. Augustine. Motion passes without objection (Page 31).
23. **Section 4.2.7: Move to accept Option A (Page 31).** Motion made by Dr. Daniel, second by Mr. Augustine. Motion carries without objection (Page 31).
24. **Section 4.3: Motion to retain as written (Page 31).** Motion made by Sen. Damon, second by Mr. Augustine. Motion carries without objection (Page 31).
25. **Section 4.3.4.1 (Permit/License Requirements): Move to accept Option A (Page 32).** Motion made by Mr. Augustine, second by Mr. P. White. Motion carries without objection (Page 33).
26. **Section 4.3.4.2: Move to accept Option B (Page 33).** Motion made by Dr. Pierce, second by Sen. Damon. Motion carries without objection (Page 33).
27. **Section 4.3.4.4 (Authorized Commercial Gear): Move to accept Options A, B, C, D, F, G, and H (Page 33).** Motion made by Dr. Daniel, second by Mr. Boyles. Motion carries (11 in favor, 3 opposed, 1 abstention) (Page 37).
28. **Section 4.3.4.4 (Authorized Commercial Gear): Move to amend to include hand-baited hydraulically-hauled benthic longline (Page 34).** Motion made by Dr. Pierce, second by Dr. Stewart. Motion fails (5 in favor, 8 opposed, 2 abstentions) (Page 36).
29. **Section 4.3.4.5 (Bycatch Reduction Measures): Move to accept Option A with reference to 'longline' removed and accept Option B as written in the draft (Page 37).** Motion made by Dr. Daniel, second by Mr. Himchak. Motion passes (Page 37).
30. **Move to amend to accept Option B as written in the draft (Page 39).** Motion made by Mr. Stockwell, second by Mr. Augustine. Motion carries (Page 41).
31. **Section 4.3.4.6 (Finning and Identification): Move to accept as written with the modification to remove the word 'heads' (Page 41).** Motion made by Mr. R. White, second by Mr. Augustine. Motion passes (Page 44).
32. **Move to substitute to accept as written with the modification "must have carcasses with the 2<sup>nd</sup> dorsal and anal fin retained through landing" to replace "must have heads, tails, and fins attached naturally to the carcass through landing."** (Page 42). Motion made by Dr. Pierce, second by Mr. Himchak. Motion fails (Page 44).

## INDEX OF MOTIONS (continued)

### **Spiny Dogfish:**

33. **Move to initiate an addendum to remove the spiny dogfish quota seasonal split and rely on the 42/58 south/north regional split as a hard quota with regional payback of overages** (Page 51). Motion made by Dr. Pierce, second by Mr. Culhane. Motion carries (Page 51).
34. **Move to initiate an addendum to establish state-by-state quota allocations for spiny dogfish including quota transfers between states** (Page 51). Motion made by Dr. Daniel, second by Mr. O'Connell. Motion carries (10 in favor, 4 opposed, 1 abstention) (Page 53).
35. **Adjourn by consent** (Page 34).

## ATTENDANCE

### Board Members

|   |  |
|---|--|
| T. Stockwell, ME proxy for George Lapointe (AA) | Bernie Pankowski, DE, proxy for Sen. Venables (LA) |
| Pat White, ME (GA)                              | Timothy Targett, DE (GA)                           |
| Sen. Dennis Damon, ME (LA)                      | Tom O'Connell, MD DNR (AA)                         |
| Doug Grout, NH (AA)                             | Russell Dize, MD, proxy for Sen. Colburn (LA)      |
| Ritchie White, NH (GA)                          | Kyle Schick, VA, proxy for C. Davenport (GA)       |
| David Pierce, MA, proxy for Diodati, (AA)       | Ernest Bowden, VA, proxy for Del. Lewis, Jr. (LA)  |
| William Adler, MA (GA)                          | Louis Daniel, NC (AA)                              |
| Vito Calomo, MA, proxy for Anthony Verga (LA)   | Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)  |
| Mark Gibson, RI (AA)                            | John Frampton, SC (AA)                             |
| Eric Smith, CT (AA), Chair                      | Robert Boyles, SC (LA)                             |
| Lance Stewart, CT (GA)                          | Malcolm Rhodes, SC (GA)                            |
| Sen. George Gunther, CT (LA)                    | John Duren, GA (GA)                                |
| James Gilmore, NY (AA)                          | Spud Woodward, GA, proxy for S. Shipman (AA)       |
| Pat Augustine, NY (GA)                          | Bill Sharp, FL, proxy for Gil McRae (AA)           |
| Peter Himchak, NJ, proxy for David Chanda (AA)  | April Price, FL (GA)                               |
| Erling Berg, NJ (GA)                            | Margo Schulze-Haugen, NMFS                         |
| Roy Miller, proxy for Harley Speir, DE (AA)     |  |

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

### Ex-Officio Members

|   |  |
|---|--|
| Russell Hudson, Advisory Panel Chair        | Dr. Jack Musick, Technical Committee Chair |
| John Tulik, Law Enforcement Committee Chair |  |

### Staff

|              |                   |
|--------------|-------------------|
| Vince O'Shea | Chris Vonderweidt |
| Robert Beal  | Toni Kerns        |

### Guests

|                        |                       |
|------------------------|-----------------------|
| Jack Travelstead, VMRC | Craig Shirey, DE F&W  |
| Dan McKiernan, MA DMF  | John Frampton, SC DNR |
| Harold Mears, NMFS     |                       |
| Steve Bowman, VMRC     |                       |

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 6, 2008, and was called to order at 1:45 o'clock p.m. by Chairman Eric Smith.

### **CALL TO ORDER**

**CHAIRMAN ERIC M. SMITH:** Ladies and Gentlemen, if you would take your seats for the start of the Coastal Sharks and Dogfish Management Board, we are at the appointed hour. My name is Eric Smith; I'm the chairman of this Board for the next four hours, and then Dr. Daniel takes over as the new incoming chairman, as I understand it.

Chris Vonderweidt is our staff member on this species board. Dr. Jack Musick is chairman of the technical committee. Rusty Hudson is chairman of the advisory panel, and John Tulik is representing the Law Enforcement Committee for this board. That's the range of participants you see at the head of the table.

We've got a lot to do today. We're really going to try and go through a decision document and end up with decisions on all of the management issues for our Draft FMP on Coastal Sharks. The way I'm going to handle public comment has become sort of a standard now for the commission for the last year or so.

We have had public hearings on these issues, so I'm not going to take public comment from the audience unless there is an issue that is amended on the floor and it effectively becomes a new issue, in which case I'll take limited public comment to try and keep us on track to finish our agenda item at 5:15.

The way I will do that is if there are a number of hands in the audience on any issue, I'll take one person in favor, one person opposed and see if that clarifies it for the board. I might take another one for and another one against and pretty quickly conclude the debate that way and then bring it back to the board for discussion.

So, just nobody is alarmed, I've been accused of being heavy handed before, and it's entirely justified, I might add, but that would be the way how I would handle public comment. When we get to Item 5, which is input on the draft FMP, I

will probably remind you about this again, but in the interest of time and trying to keep our attention on decisions on the document, Chris is going to summarize pretty much all of the reports, the public hearings, the comments we received, the advisory panel report, the law enforcement committee, and the technical committee report.

He will briefly summarize the key points on those issues and then if you have questions – I'm hoping that you've looked at the documents that were on the CD or the back table and you can answer many of those on your own so that we try to restrain the desire to have questions and answers on things that we really don't need to talk about when we're trying to make decisions on the plan.

### **APPROVAL OF AGENDA**

With that simply as a way to proceed, I'm going to go back into the beginning of the agenda and look for board consent on the agenda. Are there any other issues on the agenda that anyone would like to add? And, again, this is coastal sharks or spiny dogfish. Seeing none, without objection the agenda – Peter.

**MR. PETER HIMCHAK:** Mr. Chairman, I have a recommendation or actually a charge to the technical committee on spiny dogfish that I would like to make at the end of the meeting.

**CHAIRMAN SMITH:** Thank you. Any other additions to the agenda? Seeing none, without objection it will be accepted as amended by the addition of Peter Himchak's issue.

### **APPROVAL OF PROCEEDINGS**

**CHAIRMAN SMITH:** Approval of proceedings from the October 29<sup>th</sup> meeting; is there a motion? Pat Augustine; second, Pat White. Any comment on the proceedings? Seeing none, without objection the proceedings are approved.

### **PUBLIC COMMENT**

Is there public comment from the audience on issues that are not on our agenda? This is the time of the agenda where things that you may want us to consider in the future, but that are not part of today's agenda. This would be the time for you to come to the public microphone and

show us your views. Seeing none, thank you, we'll go on.

## **PDT SUMMARY AND REVIEW OF AMENDMENT 2**

CHAIRMAN SMITH: We're on Item 4, the PDT Summary and Review of Amendment 2 of the FEIS. That's the National Marine Fisheries Service plan on these species. Chris Vonderweidt.

MR. CHRISTOPHER VONDERWEIDT: Thank you, Mr. Chairman. I'm going to just kind of give an overview of the final environmental impact statement for Amendment 2 of the Consolidated Highly Migratory Species Fisheries Management Plan. Just to give everybody an understanding of the timeline that we're looking at for making a decision on this plan, if you look at Agenda Item Number 6 is taking final action on the management options.

After that, staff is going to go and give a final document, which hopefully we'll get a go-ahead at the summer meeting, so just keep that in mind where you haven't made a final decision yet in this plan. The reason I'm saying that is because right now we're in the cooling-off period or the wait period for the final environment impact statement – this is written into Magnuson – and that will end on May 19<sup>th</sup>.

I've spoken with HMS and they hope to have a final rule published by June 1<sup>st</sup>, so we will be able to go back and review, if we make a decision today, and may, for some reason, change something between now and June 1<sup>st</sup>, which I have been told is rather unlikely, we can alter our plan. It seems to work well with our timeline.

For large coastal sharks, sandbar – and this was proposed and they did go with the final – sandbar will be prohibited without a research permit. It was formerly in the Large Coastal Shark Species Complex. There will be a 115 metric ton annual quota with trip limits to be determined by individual cases for the research that they would like to conduct. Sandbar is prohibited for all sectors, recreational and commercial, without a research permit.

As far as large coastal shark regions, their proposal was one region that would go from Maine down to Texas. They have made an Atlantic Region, which goes from Maine to

Florida, which is basically our management unit; and a separate Gulf of Mexico Region. They have allocated quotas to both of those regions, so that lines up very nicely with our management unit that we have here.

Non-sandbar large coastal sharks, there is a 187.8 metric ton Atlantic quota until 2012, and this is to make up for overages that we don't really have to go into the details of that, but for the next four years it will be 187.8 and will increase slightly. There will be trip limits of 33 fish per trip for directed – this will increase slightly after 2012 – then a three fish per trip limit for incidental permit holders. All fins in the commercial fishery and recreational fishery need to remain attached naturally. The fishing year spans from January 1<sup>st</sup> to December 31<sup>st</sup>.

For small coastal and pelagic sharks, HMS has gone with one region that spans Maine through Texas. The quotas and trip limits are status quo, which means there are no trip limits. There is a 454 metric ton pound quota for the entire fishery. Porbeagle – and you will notice this is highlighted in red – originally it was proposed to be a prohibited species, and we asked for a 2 metric ton allowance.

I will go into that with a comparison on the next few slides, but right now there is a 1.7 metric ton commercial quota for the entire region. You know, porbeagles are pretty much concentrated in the New England area, so just keep that in mind. Pelagic is status quo. There is no trip limit; 488 metric tons plus 273 metric tons for blue pound quota, and the only reason they split blues out is for discard information because they get discarded a lot. The fins must be attached for all small coastals and pelagics as well.

The recreational permitted species, if you'll remember back, there was a lot of debate about this and blacktip, spinners and bull sharks were not included originally. The board wrote a letter asking for these three species to be included, which they are now included. Basically, when they came out, they had a list of the most commonly caught, easily identifiable species, because recreational fishermen don't always know the regulations. It could be a weekend fisherman or something.

Their strategy was non-ridgeback large coastal sharks plus tiger, because tigers are pretty easily identifiable, so those are large coastal shark



species that are listed there, and all the small coastal shark species are included. Pelagics are all included, except sandbar is research only. This is for commercial and recreational. Silky was excluded because they're often confused with sandbars, which is kind of driving the whole plan, and also prohibiteds are still prohibited.

Recreational continued, so this hasn't changed, but just to give you an overview of what is going on, there is a trip limit of one shark per vessel per trip plus each angler can keep one bonnethead plus one sharpnose per trip, and fins must remain attached. Also, for reference staff just handed out a copy of this presentation, so you can use this when we go over setting the actual management options as a reference for what happened.

The letter to NMFS, what we asked for was an Atlantic Region for all sharks. What we got was an Atlantic Region for large coastal sharks. What we asked for was a July 16<sup>th</sup> fishing season start. If you'll recall, we asked for that specifically because the plan is suggesting a closure that ends July 15<sup>th</sup>. It goes from May 15<sup>th</sup> to July 15<sup>th</sup> from Virginia up to New Jersey. There was concern that sharks wouldn't be available at the end of this closure for the large coastal shark fishermen.

Two metric tons of porbeagle was asked for; 1.7 is in the final rule. We asked for commercial and recreational can land the same species. It's all the same species except for silkies, which can be misidentified as sandbars. We also asked for them to alleviate the North Carolina closure to just ban from January 1<sup>st</sup> to May 14<sup>th</sup>, and it's status quo.

DR. JOHN MUSICK: The silky regulation may be redundant because they are a ridgeback.

MR. VONDERWEIDT: I guess the big question is, is this compatible? The letter that was written, our concern was that some of these proposed alternatives were incompatible with our plan. If you look at it, it's pretty much compatible with the goals and objectives of our plan. The one region for small coastal sharks and pelagics could be construed as problematic; however, the pelagic quota is never taken. There is not a big pelagic fishery in state waters.

They have combined the Gulf Region, which has very small landings, and the South Atlantic, which is kind of the majority of where the landings come from. So if you look at those two as a whole, they never land the entire quota, so it's unlikely that those fisheries will ever get closed. So the January 1<sup>st</sup> season, we had asked for the fishing season to start on July 16<sup>th</sup>, because we were worried that the quota would get taken up before the northern states could harvest.

The strategy here is with a 33 fish per trip limit, which was estimated to be about a thousand pounds of large coastals on average, should allow the entire non-sandbar large coastals to be available all season so all fishermen will have a crack at them. As far as recreational species, the silky is the commercial-only species, so that's the one difference here. Nobody can land sandbars. The North Carolina closure could be considered unfortunate; however, it's not incompatible with the goals that were set forth back when this was initiated back in 2005. Questions?

CHAIRMAN SMITH: Any questions of Chris on a very fine summary? Louis.

DR. LOUIS B. DANIEL, III: Just for clarification, the 33 fish with a directed permit and three fish with an incidental, how will we handle that in state waters – and Margo may be able to help me – if they have a directed permit and the fishery is closed, they're not allowed to fish for sharks, right? So, in state waters they wouldn't have to have the federal permit to have the 33 fish is my understanding. Is that a correct understanding?

CHAIRMAN SMITH: Margo, do you want to shed some light on that?

MS. MARGO B. SCHULZE-HAUGEN: If they've got the federal permits, a condition of the federal permit is that they follow federal regulations no matter where they're fishing or where they are. So, if they have the federal permit and the federal season is closed, they should not be fishing. If they have only a state permit and they're only in state waters, then they would be bound by the state rule.

DR. MUSICK: Our recommendation from the technical committee is that state waters should close when federal waters close.

CHAIRMAN SMITH: Yes, we'll get into those as we get into the document itself. Other questions for Chris? Okay, seeing none, Item 5, and again Chris is going to summarize a number of these milestone events, the hearings, the comment, advisory panel, law enforcement and technical committee. We'll hope that the questions you might have, as you're listening to the presentations, you can find them in the presentations that you've picked up on the table or at the CD. Thanks.

### **FINAL DRAFT FMP FOR ATLANTIC COASTAL SHARKS**

MR. VONDERWEIDT: Thank you, Mr. Chairman. Staff is going to hand out two documents right now. One of them is a matrix that gives the input from all the different groups, and the other one is just simply Chapter 4, which are the management options from the fisheries management plan, because it's a little bit easier, so you can just follow through with that document.

You'll notice that it has the same page numbers as the actual PDF, so that should be easy enough to follow along with. Also, I'm going to put in there the National Marine Fisheries Service recommendations as we have considered them to be a valuable partner throughout this process. You can find that letter that they sent us on Page 291 of the PDF with all the other public comments that we got.

With that being said, the public hearings, generally opinions varied greatly from state to state and by the different stakeholders. I think it's safe to say that there were no unanimous coast-wide decisions, so I'm just going to go through the generalities based on the different stakeholders. Again, there is full detail in the report "Summary of Public Hearings by State".

The commercial general feelings, I guess is the best way to put it, there were a majority of federal permit holders at the hearings who definitely had a lot to say about the preferred alternatives of Amendment 2. They strongly questioned the National Marine Fisheries science. They want large quotas and large trip limits for large coastal sharks. They were strongly opposed to leaving the fins attached naturally. They want a system that allocates the quota regionally and seasonally rather than using

the fishing year starting period to actually allocate the quota.

The general recreational feelings, the same regulations in state and federal waters is simple and good; use the federal species groups; 4.5 foot size limit; one large coastal shark, one sharpnose and one bonnethead possession limit; keep the fins attached for enforcement; and the seasonal closure is necessary for the stock to rebuild, the one that is proposed for the commercial and recreational fishery.

Non-traditional stakeholders, they would like to protect the sharks. They would like regulations that are identical to federal regulations. They would like the fins to remain on. They would like to reduce bycatch of threatened and endangered species. They are in favor of the seasonal closure and the commercial size limit which is in there to protect the pups.

Moving on to public comment, we got a written letter from the National Marine Fisheries Service. We had 21 individual comments, 6 environmental organizations, 1 state, 1 aquarium, 3,224 form e-mails on the behalf of the Ocean Conservancy. A lot of these comments were pretty general. They didn't address specific issues or opinions.

The written comments, general agreement was to protect the sharks; include smooth dogfish; the same recreational species as the National Marine Fisheries Service – and there is a matrix of all these side by side on the briefing materials – recreational size limit greater than 4.5 feet; recreational shore and vessel, one large coastal plus one sharpnose, plus one bonnethead; and then also possession limit by species group.

The written comment general agreement continued, commercial possession limit by species group; keep the fins attached. They're in support of the seasonal closure. About 75 percent of the respondents support the federal dealer permit requirement.

CHAIRMAN SMITH: Okay, any questions for Chris on the public comment part of his presentation? Okay, thanks. Advisory panel, Chris.

MR. VONDERWEIDT: Thank you, Mr. Chairman. This is the National Marine Fisheries Service Technical Committee, Advisory Panel,

and Law Enforcement Committee input side by side. Staff passed around the matrix so you can follow that and it follows the format of the FMP numbering as well.

General comments from NMFS is they would like to see complimentary regulations between state and federal waters. Identical species groups; quotas; trip limits; seasons are all paramount to the goals of the plan. The technical committee general comments are to meet the goals of the plan you need to have species groups in recreationally permitted species that are identical to federal specifications; quotas and trip limits that are identical to federal specifications; federal permits need to be required for dealers; and the head, tail and the fins must remain attached.

The advisory panel general comments are resources need to go towards education. The fundamental problems with this fishery is that people can't identify the sharks and don't know the regulations. They would like to broaden research to all the species. People are concerned that most of the research is focused on blacktips and sandbar right now, and they'd like it to get expanded to all the species.

Allocation quotas using region and season and not fishing year. There is also concern over the low turnout by the AP. There were three members plus the chairman at the first AP meeting. There were six members plus the chairman at the second one. They would like the commissioners to encourage their members to attend the meetings or replace them.

Also, it's important to note that the Amendment 2 Final Environmental Impact Statement that I went over before wasn't available prior to the AP meeting. It's just the way things shook out, so they were commenting generally on the proposed regulations; the preferred alternative, which is very similar, but it's a little bit different, so just keep that in mind.

The law enforcement committee, they think the officers need training. They would like to attend the HMS ID Workshops. That was their preference of how to get that training. They think consistency between state and federal regulations closes loopholes and makes enforcement a lot easier.

Jumping into the actual plan, I'm just going to go over an option, refresh what it is, and then go through what the groups thought. Species groupings proposes to establish identical species groups as NMFS with the flexibility to change at a board meeting. You'll see here large coastals, small coastals, pelagics and prohibited, in order to be consistent we would need to have non-sandbar large coastal sharks and sandbar research only criteria.

The National Marine Fisheries Service would like us to be consistent with the federal plan. The technical committee would like us to be consistent with the federal plan. They would like to move sandbar to the research group. The advisory panel did not reach consensus. Remember that this group is fishermen and non-traditional stakeholders. There was support for species-specific management.

There was support for sandbar research only. There was support for consistency with federal. The LEC would like to attend the HMS workshops. Smooth dogfish, the options here are to include smooth dogfish as its own species group; include it with the small coastal species group; and leave it out of the plan.

The National Marine Fisheries Service would like us to include it, and in the letter that they wrote they said that they would consider adopting the same regulations in federal waters as it is primarily a state fishery that doesn't overlap with the species that they currently manage. The technical committee would like to include smooth dogfish.

They're worried that the fishermen are catching females right now, which could lead to the same problems that we're seeing with spiny dogfish as far as a large abundance of males and a small abundance of females. They'd like us to be proactive and use trip limits until an assessment can be done, so don't initially have a quota for smooth dogfish; do what Massachusetts is doing, they have a hundred-pound trip limit, something along those lines.

The advisory panel would like to include – they'd like to be proactive rather than reactive where an overfishing determination comes out and we respond by shutting down the fishery. That's very stressful on them. They'd also like to see resources put towards an assessment. The law enforcement committee, so that it's

enforceable, to include as long as the officers have ID training.

The fishing season, there are three options here; January 1<sup>st</sup>, July 16<sup>th</sup> or other. Option B, July 16<sup>th</sup> was because the seasonal closure which would end July 16<sup>th</sup> for northern states would allow them to harvest first. The National Marine Fisheries Service was concerned that the different fishing year will hinder quota coordination and monitoring.

The technical committee said use trip limits and regions to allocate the quotas rather than fishing season. The advisory panel said use regions and seasons to allocate rather than using the fishing season; however, they didn't state a preference for an actual fishing season. The law enforcement committee said they're enforceable if they're consistent between state and federal. Recreationally permitted species; "A" is catch and release; "B" is recreational retention of any species not on the prohibited list, so that would include sandbars; Option C is the same as federal waters. And, again, sandbars are research only, and commercial can catch silky, but recreational cannot.

The National Marine Fisheries Service wants Option C, which is consistent with federal regulations and include smooth dogfish. The technical committee would like "C", which is consistent with federal regulations. They wanted to point out that they did add blacktip, spinner and bull as we asked, and this minimizes confusion.

The advisory panel did not reach consensus. There was support for excluding blacktip, spinners – or, there was a comment that said, "We do not support this because it excludes blacktips, spinners and bull." There were two comments to that. Option B, there were two people that voted that way, and so they did in fact include blacktip, spinner and bull, so that changes things. You can use that information, however. Then there were three people who preferred Option C, which is consistent with federal regulations. The law enforcement committee would like to change the language from "targeting" to "catch", and there is more information on that in the law enforcement committee summary.

The landings requirement, and this is basically heads, tails and fins need to remain attached to

the carcass. This is recreational fishery only. The National Marine Fisheries Service supports. They like it because it's consistent. The technical committee supported it as consistent. The advisory panel, five of the six members supported the measure. Recreational fishermen don't generally use the sharks for meat.

It was said that recreational anglers will take a picture and throw it away. There was one member who was opposed because small boats can't ice down a shark as easily as large boats in the EEZ can do, so it might not allow people to do that if they have to keep the head, tail and fins on. The law enforcement committee is in support of this measure. It simplifies and aids ID.

Recreational minimum size, the options here are 4.5 feet with an exemption for bonnethead, sharpnose and smooth dogfish. Option B is any number greater than 4.5 feet. "C" is by individual species. "D" is species group basis, and "E" would be no minimum size limits. NMFS likes "A" because it's consistent, and they asked about a smooth dogfish size limit. The technical committee liked "A" with an exemption for smooth dogfish.

The advisory panel, three of the members liked "A" because it's consistent, 4.5 feet. One member liked "C" because he felt that 4.5 feet was too big for all the different species groups. One person liked "D" because they felt that 4.5 feet wasn't large enough. The law enforcement committee felt that one size limit or no size limit is enforceable.

Authorized recreational gear; handline rod and reel or handline rod and reel plus a circle hook requirement or no gear restrictions in the recreational fishery. The National Marine Fisheries Service liked "A". It was consistent. They thought that circle hooks might be a little bit premature at this point. The technical committee liked "B", rod and reel, including circle hooks.

They pointed out that even though there have been no direct studies on sharks and circle hooks, all the studies have shown benefits for the survivability. The hooking, the fish don't swallow so they can be released alive. They also wanted to point out that it has never been tried because it has always said to be unenforceable, but it hasn't been tried so how will you know.

They also wanted to point out that enforceability does not equal compliance. The advisory panel liked including the circle hooks. It seemed that every member of the advisory panel who used them was a proponent for them. They would like to include the language “corrodible”. The law enforcement committee thought that circle hooks are unenforceable except by area and/or bait type, which wouldn’t work for this fishery since it’s multi-species.

The shore angler possession limit, one shark from the large coastal, small coastal or pelagic, plus a bonnethead, plus an Atlantic sharpnose, plus a smooth dogfish; Option B, a bonnethead and a smooth dogfish, so this is just eliminating the large coastal; Option C, one non-prohibited shark per calendar day.

The National Marine Fisheries Service liked “A” because it was the most consistent with their existing regulations. The technical committee also liked “A” because it was consistent and allows take for smooth dogfish. The advisory panel was split. There were members who liked “A”, the most consistent. There were members who wanted just a possession limit of one, which is “C”, do not allow greater harvest for shore anglers.

There concern was fishermen go these islands and fish for sharks off the coast during the day and then they get back in their boat; and if they have more fish – if they are allowed a greater allowance on land than they’re allowed on sea, there could be confusion there. The law enforcement committee felt the same way, because there is a potential problem with a greater shore angler limit. They cautioned to be very careful with the wording. If the possession limit could potentially be more, you need to put a limit on the boat or you need to write that if you go to an island by boat, you’re bound by the vessel limits rather than the shore limits.

The vessel fishing possession limits is basically the same thing except from a boat. Option A is one large coastal, small coastal or pelagic plus a bonnethead plus a sharpnose plus a smooth dogfish. Option B removes the large coastal, small coastal or pelagic; add just bonnethead, sharpnose and smooth dogfish. Option C is one non-prohibited per calendar day.

The National Marine Fisheries Service liked “A” as consistent with their regulations. The

technical committee liked “A” because it’s consistent with their regulations. It still allowed smooth dogfish. They liked the original language that is put in there. I say that because their meeting came after the law enforcement committee’s meeting, so they were able to comment on specific opinions from the law enforcement committee.

The advisory panel likes “A”. It’s consistent and easy for anglers. The law enforcement committee wanted to use the Coast Guard definition of vessel, and they think the language in “A” is overly complicated. There is more information on that in the actual LEC report.

Moving on to commercial measures, and this is how commercial fishermen would be defined in order to bound them by the bycatch reduction measures, which are found later in the plan. There are two criteria; that they have sold a shark on state waters during a given year or if they have a shark on board their vessel which they plan on selling.

NMFS supports the definition of commercial. The technical committee would like to remove the commercial definition and address it specifically under the bycatch reduction measures. The advisory panel did not comment on this. The law enforcement committee would like to remove the commercial definition and address under the bycatch reduction measures. We will get into that, but basically they would like to use the incidental permit holder threshold of three sharks for directed or incidental, to be bound by that allowance.

Regions, the options are “A”, two regions, South and North Atlantic. This is identical to federal regulations before Amendment 2. Option B would be one region that’s just the boundary from Maine to Florida. “C” would be two or more regions with a different split. “D” is regions that are identical to federal waters by default. Smooth dogfish would just have one region if included.

The National Marine Fisheries Service liked “B”, one region is consistent. The technical committee liked “C”, which are two regions with different splits than before. What they said is Amendment 2 got rid of the regions, but we could possibly set the same quotas as the National Marine Fisheries Service and then allocate that quota to the different regions

through landings regulations, which is similar to what we do with spiny dogfish.

They felt that the breakdown at Cape Hatteras was the most appropriate. Basically, there is a different fishery north of Cape Hatteras than there is south of Cape Hatteras, so this might be the best. Then the AP would like at least two regions to distribute the quota. They didn't really come up with specific regions. The law enforcement committee felt that two regions are manageable. The more regions you include the more complicated enforcement becomes.

Seasons, basically the italicized part of this slide, the quota is proposed to be set by species group, which will then be split annually by season potentially, so the board has the flexibility to do this by board action based on temporal differences in fishing practices, fish availability, pupping activity. Then they can restrict as necessary. The way it's written in there, you're not bound to do it. The board can use seasons if there is a need, but they don't need to initially if they don't want.

The National Marine Fisheries Service felt that different seasons can be very problematic if overages in the past because states landed after the federal season had closed. The technical committee endorses allowing the flexibility for the board as long as there is an overall annual quota that they don't differ from. The advisory panel likes the flexibility and the potential to have this as an allocation tool. The LEC did not comment specifically on this measure.

Quota specifications, the options are an annual quota; a quota up to five years; an assessment-driven schedule. Option D is identical to federal waters. Option E is open and close for a species when federal waters are closed. Then Option F is no quota, and the board may or may not set quotas for smooth dogfish as they find appropriate. This is if we include them or not.

The National Marine Fisheries Service liked setting identical quotas to the federal regulations. The technical committee liked setting the identical quota to federal regulations. They also wanted to include open and close with the National Marine Fisheries Service for a species as kind of a safeguard, so if there is an overage somehow, you close when the federal waters are closed.

They want to allocate quotas to regions with landings regulations, like I said before; and a smooth dogfish quota after an assessment has been run. Right now there is no smooth dogfish assessment, so there is no way to set that. The advisory panel did not have a consensus. One member wanted "F", which is no quotas. It would save the ASMFC from setting bad quotas. Two members wanted open and close with the federal because it's simple and consistent. The law enforcement committee did not comment.

Payback of quota overages, it says that overages will be repaid in full. For example, 300 percent overage would close a fishery for three years, and it would be based on the region and season that caused the overage. The National Marine Fisheries Service wanted to point out that the federal quota already adjusts for overages and paybacks up to 50 percent if there is an underage. They would like us to set identical quotas.

The technical committee said the federal quota adjusts for overages and only use this as a tool to allocate if one region overharvests causing another region to not be able to harvest their full amount rather than using an annual quota payback. The advisory panel supports if it's region and season specific. The law enforcement committee did not comment.

Quota rollovers; once the stock is fully rebuilt, if there is an overharvest, you can roll up to 5 percent of the quota the following year. And just to reiterate what I said before, the federal quota specifications allow up to 50 percent rollover when there is an underharvest, so it's a lot more significant than 5 percent.

The National Marine Fisheries Service pointed out that the federal quota adjusts for underages. The technical committee would like to remove this provision completely because they'd like us to set federal identical quotas. The advisory panel supports this measure, and the law enforcement committee did not comment.

Possession limits; Option A is no possession limit. Option B is set annually by species group. Option C is annually for each individual species. The National Marine Fisheries Service didn't comment on a specific option, but they would like us to set consistent possession limits. The technical committee likes annual possession

limits. They would like us to set by species group.

They suggest 33-fish large coastal shark quota initially, no trip limit for small coastal sharks initially; pelagic, no trip limits; porbeagle, no quotas. If we include catch rate, they would like to analyze – or if we include smooth dogfish, they would like to analyze the landings and give a recommendation on what the appropriate trip limit will be for consideration at the next meeting.

The advisory panel liked the annual setting and species-specific setting. What they said is it could be a stepping stone for species-specific management if we decided to set individual possession limits by species. The law enforcement committee feels that fewer groups are the easiest to enforce. They would like to set by number and not weight. This took a good portion of the call.

Basically, with large trip limits, with a species like sharks, an officer has to individually weigh every single shark, so it's a lot easier to set it by number so it can say there are 33 sharks here that are of the allowable size limit, and it simplifies things. There have been cases in Virginia where the law enforcement members have actually had to go out and get weight certification training. They have to certify the scales and weigh the fish in order for it to be legal in a court of law. It's a considerable amount of more work for poundage rather than number. And, again, small trip limits are the easiest to enforce.

Permit requirements; fishermen must hold a state commercial permit; Option B, state permit, federal permit or an individual on the boat must have a state permit; Option C, no permit is required to commercially harvest sharks. The National Marine Fisheries Service would like Option B, state or federal. They would prefer federal only, but that was not an option in the draft.

The technical committee said only require a state permit. The permit is useful to collect data; however, they felt that it's kind of a moot point because most states are going to require a state commercial permit on top of any federal permit, so it's moot. The advisory panel liked "B", state or federal, because it's closest to status quo. They would also like to require HMS ID workshops to be able to harvest sharks in state

waters. The law enforcement committee felt that all options are enforceable.

Display and research permits – this is and/or and not one or the other – Option A is federal permits are required, and that's either a display if you're in the aquarium or EFP scientific research permit or letter of acknowledgement. Option B is that states can have an exemption from anything in the plan for research or display.

The National Marine Fisheries Service felt that "A" or "B" would work fine. They would like to work with us towards a joint permit. The technical committee would like "A" only, which is – no, I'm sorry, the technical committee would like "B" only. That is important to note that that's state-only permits. The reason for that is that they think that the data is very necessary.

However, in these state surveys that collect sharks, this is going to be another requirement or they have to go out and get a federal shark permit to continue with these surveys that they have been doing for 20 years, so potentially requiring a federal permit would be problematic. I'm not sure if it says "A" on your matrix, but please note that it should be "B" there.

The advisory panel would like "A" and five of the six members said "A" or "B" would be fine. You need the data in the compliance reports. They would like aquariums to report annually. The reason for this is that they were worried about creating exports unintentionally where an aquarium collects a fish and they go and they report the first year and then they export the shark to foreign markets or wherever, so they would like annual reports on every fish caught until its death.

The law enforcement committee wanted to make sure that this doesn't lead to unintentional exports. They felt that exempted fishing permits were easy to get, and they suggested that this must be worded very carefully in order to track the sharks.

Commercial size limits. The options here are no commercial size limits or a 4.5 foot commercial size limit for large coastal sharks. Just as a refresher, this was put in here as the "protecting pups measure", which was originally supposed to be a seasonal closure, which would have been overly burdensome and would have covered most of the coast for most of the year. The

technical committee said a size limit would do the same thing. The National Marine Fisheries Service supported this measure.

They would like us to monitor any new discards that may come about as a result of the size limit. The technical committee supports. They feel that this is necessary to protect the pups. They feel that it will shift effort to areas without pups rather than creating a huge amount of dead discards. The advisory panel, five of the six members opposed this. They felt that it's going to cause significant discards.

The blacktip sharks, which is the main profitable shark left if we remove sandbars, they don't school by size, and there is a significant amount of incidentally caught sharks in the black drum fishery, and most of those are less than 4.5 feet. The law enforcement committee feels that one size limit is enforceable; many size limits are not.

Authorized commercial gear – there is a list here; rod and reel, small mesh, large mesh, trawl nets, longlines, shortlines, pound nets and weirs. Basically, this would be should we eliminate one or keep them all? The National Marine Fisheries Service didn't comment specifically on any of these alternatives, but they just wanted to point out that trawl nets and fish traps are not authorized in federal waters.

The technical committee liked all of the options except for longlines. They felt that longlines were overcapacity for this fishery with the small quota and the small trip limits. The advisory panel wanted to include all gear types, and they also wanted to throw gaff and tailrope in there, which are devices used to bring the shark into the boat after you've caught it, just to make sure that they don't get prosecuted for using illegal gear types. The law enforcement committee didn't have a comment.

Bycatch reduction – the wording on this is long. I tried to shorten it a little bit but basically bottom longline and shortline vessels must use corrodible circle hooks and practice the protocols for the safe handling, release and disentanglement of sea turtles and other non-target species. These are the safe workshops that HMS puts on. Option B is that gill nets need to be checked once every two hours.

This is what I mentioned before about who is bound by the bycatch reduction measures

because the intention of this was not to have the incidental shark fishermen bound by it, but to have the directed fishermen. The National Marine Fisheries Service said to include both of these as options; coordinate the money if there are a lot of state fishermen that are now going to these safe handling and release workshops.

The technical committee liked both "A" and "B". They wanted to use incidental permit as a threshold so if you have more than three sharks, you are bound by the following two measures rather than saying if you sold a shark or if you have a shark on your boat. The advisory panel wanted "A" only, which is the circle hook, shortline and longline regulations. They think it's a good thing that protects sea turtles. They feel that the net check is unenforceable.

There are other marine mammal acts which already cover this. Then there is one person who liked "B" and that's because it protects threatened and endangered. They'd also like to require HMS ID workshops for all the fishermen. The law enforcement committee wanted to define "for directed" the three-shark incidental threshold. They feel that "B" is unenforceable, the net checks every two hours. That would cause an officer to have to sit there for two hours and watch the fisherman and the fisherman is probably going to see him.

Finning and ID – remember this is for the commercial fishery, which is something new to the federal shark fishermen, and that is they must have heads, tails and fins attached naturally to the carcass through landing. You can still gut and bleed the carcass. I would just like to point out that the federal regulations do not require the head.

The technical committee is recommending a size limit, which would require the head to remain attached in order to do it, so just keep that in mind. NMFS supports as consistent, but they just wanted to point out that they don't require the head. The technical committee supports it. It's critical to identification and identification is critical to quota management. It aids enforcement. The head is necessary for size limit.

There was talk about a smooth dogfish exemption. I say there was talk about it because it wasn't actually discussed at the meeting, but it came about through an e-mail thread that one technical committee member initiated



afterwards. They said, “Well, hey, should we have an exemption for smooth dogfish just by the nature of the high-volume fishery and they’re smaller?” Initially the technical committee said, yes, that probably makes sense.

Then there was an e-mail that was sent, and it said, “Well, juvenile sandbars can be confused with smooth dogfish.” After that e-mail was sent out, members seemed to say, “No, we shouldn’t allow an exemption for smooth dogfish.” It wasn’t discussed in a meeting forum, so that’s for information there.

The advisory panel had very strong opinions; however, there was no consensus. Those who support think it prevents finning. It helps with identification and has worked in Australia and other countries that require commercial fishermen to keep the fins attached. Those oppose it don’t like that you will have to handle the shark two times potentially, which means you land it on your boat and then you ice it down and you cut the fins part way and you bleed it and you gut it.

Then when you get back to the dock you have to deice it, put it on the dock, finish cutting the fins off. That’s twice the work. While doing that, you’re going to increase the core temperature twice. They were worried that some of the smaller boats in state waters will not be able to fit the large sharks on board and ice them down, so you need to cut them up to actually be able to ice them and have high-quality meat. They were also concerned about mixed-use marinas if you’re discarding the head, and it’s extremely stinkier and foul-smelling. The law enforcement committee feels that it’s a good regulation. It helps them with the identification of sharks, which is something that they’d like to improve.

Season closure – this is commercial and recreational take of large coastal sharks is prohibited; Virginia through New Jersey from May 15<sup>th</sup> through July 15<sup>th</sup>. The National Marine Fisheries Service supports this measure. The technical committee supports this measure as well. They feel that it’s necessary for rebuilding. The advisory panel supports this measure. They feel that protecting females is important in general.

However, they felt that – or not all members agreed that it should be all large coastal sharks. Some of them felt that it should be sandbar only,

which is really driving this closure; however, it was designed to include all large coastals so that there would not be sandbar bycatch. Some members wanted to include North Carolina through Maine with a different starting season; April 15<sup>th</sup> for the southern states. Other members of the AP felt that it was fine as it was written, and they support it that way. There was no comment by the LEC.

The alternative management suites – and if you remember this was added in the last iteration of the plan kind of as a strategy to how we might want to manage when we get the final place in place. This was brought out to public comment; and given the different groups it’s kind of a thought exercise on how would they like this sort management.

What it proposes is to prohibit sandbar without a research permit; keep the small coastal shark the same as the National Marine Fisheries Service, so this is quota and trip limits – they don’t have a trip limit – ten-fish bycatch allowance; possession limit for all non-sandbar large coastal sharks; and there would be no quota for large coastal. The idea behind this is that the large coastal shark fishery, the species can’t handle the kind of fishing pressure that it has had.

It’s just the life cycle of sharks, and there are a lot of them that are bycatch in the small coastal fishery, particularly blacktips. And, don’t close the fishery; keep it open because those fish are just going to be discards, so that’s why it’s not tied into a quota. The National Marine Fisheries Service said they support the consistent aspects of this proposal. That’s the sandbar research only.

Small coastal sharks consistent; and the ten fish per trip large coastal shark trip limit, they support that. It’s actually 23 fish less than their final rule, but they felt that you need a large coastal shark quota to tie it in in case something happens in the fishery. The technical committee felt that this is essentially Amendment 2 Final Environmental Impact Statement, but you need an LCS quota.

The advisory panel is opposed. They felt that this was kind of biased towards states that have small coastal sharks, which isn’t the case for all of them, and the large coastal shark overages would go against the federal quota, so the federal permit holders could be penalized if there is an

overage, and also it's bad for the stock to have overages. The law enforcement committee did not have a comment.

Dealer requirements; federal dealer permits. And just to refresh everyone's memory, federal dealers are required to go to identification workshops. Their landings have to be received by the 1<sup>st</sup> and 15<sup>th</sup> of each month, so every two weeks. Option B, state dealer permits would be required, so that would be tacked on to existing commercial permit systems. Option C would be either state or federal dealer permit. Option D is that there is no permit requirement.

The National Marine Fisheries Service wants federal dealer permits required. They feel that it aids enforcement; aids quota monitoring; aids assessment data. They were also wondering about the ID workshop money or the increased costs of these workshops if we have a lot of state dealers coming to them.

The technical committee talked about this and their guess was that it's not going to be a significant amount of dealers, and there are federal dealers in each state, so the odds are that the ASMFC wouldn't have to pay much money for that or any. The technical committee felt that federal dealer permits are paramount to the plan. It causes fast quota monitoring, which reduces the chance of an overage, and the ID workshops are required for the dealers or dealer proxies. The advisory panel feels that dealer identification is paramount. Four of the members liked the state permit only requirement with the ID requirement – or liked the state or federal requirement with identification workshop requirements for any state dealer that wants to sell sharks. One member liked federal only because of the benefits of the federal permit. The law enforcement committee did not comment specifically on this provision.

The dealer reporting schedule – Option A is weekly. Option B is the 1<sup>st</sup> and 15<sup>th</sup> of every month, and that's postmarked, the same schedule as federal shark reporting prior to Amendment 2. Option C is monthly. The National Marine Fisheries Service likes the 1<sup>st</sup> or 15<sup>th</sup> with the word "received" rather than "postmarked" added in there.

The technical committee likes Option B. It's consistent, but they wanted to point out that they don't want to allow state shark dealer permits.

They think that only a federal permit should be allowed. The advisory panel wants real-time quota monitoring. Option A, weekly, is the closest to that. The law enforcement committee did not comment.

Dealer requirements – this is basically put in there because two-thirds of sharks have been unclassifieds in the NMFS data base, so we're trying to get a picture of what the landings actually are. The quantity of sharks purchased has to be separated by species and dealers have to identify 95 percent of their carcasses correctly by weight.

The National Marine Fisheries Service supports this provision. The technical committee supports, and they feel that species-specific data is essential to monitoring and the assessments, and that's something that we just haven't had in state waters. However, they would like to remove the 95 percent allowance, which I'll get into under the LEC's comment. Like I said before, the technical committee did have the luxury of commenting after the LEC.

The advisory panel supports the monitoring requirement. They think that management and the science need the species-specific data; and that if you're a professional dealer, you should be able to identify what you're selling is one of their big points. The law enforcement committee pointed out that putting the 95 percent in there makes this regulation unenforceable. Either you're in violation or you're not.

By putting in the 95 percent, it would require a time period so 95 percent per hour or something along those lines. They equated it as setting a speed limit that 95 percent of the time you have to go 55 miles per hour, so how would you prove that in a court of law. They felt that this is just completely unenforceable if you put that allowance in there. I think that's it.

CHAIRMAN SMITH: Okay, somebody can give Chris oxygen now while we all reflect a bit on that. That was a great summary and a lot of meat to it, so I appreciate that very much. I have just a small dilemma here. Let me just, as the chairman's prerogative, ask a question. How many people in the audience came here prepared to make a statement about the overall amendment as opposed to commenting on any particular provision, just a show of hands.

I did state the rules before and I have the sign-up list here and a couple of people didn't, I guess, fully appreciate that the public comment was for things not on the agenda. There was one person that raised their hand, for those who didn't see it. Is the board amendable to – it will give us a little bit of a break time, hear the public comment on the – because it is a major amendment. I mean, it's not an annual adjustment or anything.

(Comment from the audience not using the microphone.)

CHAIRMAN SMITH: All right, faithfully answering the chairman's question, I like that, thank you. Okay, are there questions? I mean, they'll come and go as we get into motions.

### **SELECTION OF MANAGEMENT OPTIONS FOR FMP**

We're at Item 6 on the agenda, and I would draw your attention to what you should be dealing with now is the two pager which is titled "Decision-Making Hierarchy".

You'll note that these items are out of order. They don't follow sequentially through the two pages, and there's a reason for that because Chris organized this to make the decisions in a logical fashion. They refer to section numbers and then page numbers, and the page numbers refer to – it's about a 21-page document that's titled "Chapter 4 of Draft for Public Comment".

So as we start to get into decision-making – I'll take them sequentially from the decision-making hierarchy – I'm going to ask are there any motions on Item 1, which is Section 4.1.1. So we're working from two documents, "Decision-Making Hierarchy" – and as I just said a moment ago these are not in numerical order; they're in logical order, and I'll point that out to you as we go.

This document refers to the section number and the page number of the document that starts out at the title line saying "Chapter 4 of the Draft for Public Comment". We're going to bounce back and forth between those. Chris reminds me that as you go through the discussions you're going to try and remind yourself what the FEIS for Amendment 2 says, so go back to that handout that has the powerpoint slides, and that will

summarize what the Final EIS contains for federal Amendment 2.

Having said that, Item 1 is Section 4.1.1, which is Page 100. It's commercial species groupings. Are there motions on this section? There are no alternatives in 4.1.1; so when I asked for a motion on that, without a motion I'm going to presume the board agrees with it as it's written. Okay, is there objection to 4.1.1 as it exists in the document? Seeing none, we'll move on.

MR. VONDERWEIDT: Can I get clarification on that actually? My question is what is written in the document is identical with federal groupings, which have since changed, so I'm wondering if the agreement here is for the groupings as they're written in the plan or if it's for groupings that are identical to federal regulations?

CHAIRMAN SMITH: Thank you. That means when we hit one of these subjects, I'm going to ask for a motion for people to state exactly what they want, and Chris is going to have to stay on point like he just did to make that observation so that we get a clear record. Louis Daniel.

DR. DANIEL: I would make a motion to accept the currently proposed NMFS species groupings, the modified groupings, the current groupings from NMFS.

CHAIRMAN SMITH: The motion is for the groupings as they exist in Amendment 2 FEIS. Is there a second? Doug Grout. Discussion on that motion? Roy Miller.

MR. ROY MILLER: Thank you, Mr. Chairman. Quickly, does this have any bearing on our subsequent recommendations regarding sandbar sharks; the fact that sandbar is included in the large coastal? Does this preclude us from taking action to have a research-only fishery for sandbar sharks?

MR. VONDERWEIDT: No, with a state permit for research or display you could land sandbars. The technical committee discussed this at their meeting, and they felt that the level of take that would happen as a result of that would not significantly impact the stock in a negative way of sandbar sharks.

CHAIRMAN SMITH: And that's also consistent with the federal FEIS. Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. Excellent presentation, Chris. So that means that having made that decision, the general management provisions under 4.1 will be changed to reflect that, because you went on here and described if we did or if we didn't do – if we did something similar in paragraph 3, the possibility that the board could select species groups that are different from Table 1, so you'll take all that out and that will all now disappear?

CHAIRMAN SMITH: Well, he will revise it in our final amendment to reflect what the FEIS says.

MR. AUGUSTINE: Thank you for that clarification.

CHAIRMAN SMITH: Okay, other comments on the motion? Seeing none, is there objection to the motion? That motion passes. Okay, Item 2 is Section 4.1.2, which is Page 102 of the document. This deals with smooth dogfish. There are three alternative options here, so I'll ask for a motion on smooth dogfish. Pat Augustine.

MR. AUGUSTINE: I move that we leave 4.1.2, smooth dogfish, in the document as presented.

CHAIRMAN SMITH: There are three options so we have to pick one.

MR. AUGUSTINE: We have to pick one?

CHAIRMAN SMITH: Yes.

MR. AUGUSTINE: I thought we were going to take all three of them. Option B.

CHAIRMAN SMITH: Chris, what was the recommended option in the FEIS, if there was one?

MR. VONDERWEIDT: The recommendation – and this is from all the different groups. Toni, if you can bring that presentation up again, so the different groups' preferences are put after each option. If the LEC is up there, they're just saying that it's enforceable or not enforceable. Including smooth dogfish as its own species group allows us to set trip limits or a separate quota if the board wishes, so that's why that was recommended.

MR. AUGUSTINE: Option A.

CHAIRMAN SMITH: Option A, so the motion is for Option A. Is there a second? Peter Himchak. Discussion on the motion? This motion is on Section 4.1.2, to adopt Option A, to include smooth dogfish as a separate species group. Okay, without objection the motion passes. The next item is Number 3, Section 4.3.1; this is on Page 106 of the larger document.

MR. VONDERWEIDT: Can I just give a reminder on this one? Just to point out, Option C is two or more regions with different geographical splits. The technical committee wanted to use Cape Hatteras rather than the pre-existing boundaries. That was their recommendation.

CHAIRMAN SMITH: And the FEIS came out with one Atlantic Coast Region and one Gulf Region. Is there a motion on Section 4.3.1, regions?

MR. AUGUSTINE: Just a clarification, Mr. Chairman, is it going to be difficult for NMFS to handle the reporting if we go with two? I was part of the advisory panel when we came up with the one region as opposed to going with the two, and I'm just wondering if it's going to create a major problem in reporting at all or will it have no effect if we go with the Option B, July 16<sup>th</sup>, July 15<sup>th</sup>?

CHAIRMAN SMITH: If you recall, deep in the bowels of that long presentation there was a way to talk about quota reporting that might handle that, but I guess while we're mulling over that question and hopefully then we'll get some clarification on it, Margo, what kind of pain would that cause you?

MS. SCHULZE-HAUGEN: Well, it does add a layer of complexity to situations that split the state, and so how you would differentiate dealers in one time maybe offloading from vessels that aren't actually located there – it's closely what we're living with now, which is one of the reasons we're opting to do it differently. I thought this was regions?

CHAIRMAN SMITH: Yes, this is regions and the landing and the reporting is basically a way to get past the complexity of splitting a state. Could I ask, Dr. Daniel, you're the state with the split; what kind of heartburn does that cause you?

DR. DANIEL: A lot. I mean, I would rather have it be a Mid-Atlantic and a South Atlantic split versus splitting it off at Hatteras. I'm just curious and concerned about I guess it's going to open with a one season; and then once the quota is caught, it will close; correct, Margo, so there is not going to be anymore trimesters and splitting it up.

So the more you split it up, I don't know how you're going to determine what region is going to get what amount of quota, and that's a whole new ballgame that we haven't even started to talk about yet. I would suggest, just because of the way it's set up, that we just stay with one region. I make that as a motion, that we approve Option B.

CHAIRMAN SMITH: We have a motion on the floor, didn't we, for – I jumped past. Okay, so that was the last issue. So 4.3.1, so the motion is Option B, one region, Maine through Florida. Seconded by Dennis Damon. Is there discussion on the motion? Louis.

DR. DANIEL: I just wanted to ask – I mean, I think it was the technical committee that suggested the split and just would like to hear from them their justification for asking for the split. Recognizing the difficulties with this 33-fish limit, if that's what we decide to go with, you know, having to divvy that quota up amongst those regions, I'm not sure how we're going to do that, but there may be some justification that Jack can provide.

DR. MUSICK: The only justification, Louis, was that in the future these quotas may change, and this just provides the flexibility for the commission to be able to set regional quotas if they want to do it. They don't have to. The one region doesn't give me any heartburn if that's your question.

MR. JACK TRAVELSTEAD: I just wonder if we go with the motion, which was for one region, is it likely that the fish might be caught up in one area before they have a chance to get further north, and does that result in a reallocation of the quota?

CHAIRMAN SMITH: My understanding was that from the FEIS point of view the 33-fish limit resolved a lot of that concern. I don't know whether that does, but that was the logic that once there was a 33-fish limit, then the region

became less necessary and it could be Maine through Florida. Now, I offer that because that's kind of debate we've been having as we tried to form how we would present all of this to the board. If states have a problem with that, then it's a debatable point.

MR. TRAVELSTEAD: Just to follow up, I wonder if we could hear from the advisory panel on that. I note from the sheet that they supported all of the options but Option B, so they must have some concern.

MR. RUSSELL HUDSON: We did have a concern because of the closure that's offshore of North Carolina that kind of prohibits those people from fishing in the federal waters during January 1<sup>st</sup> to July 31<sup>st</sup> and the people that were in Virginia that normally don't see the animals showing up until about May through September, and we wanted them to have the ability to have access.

I was assured by NMFS that this way of allocating to the directed permit holders would pretty much spread it out through most of the year. That's their anticipation. The only other fly in the ointment on this two region versus one region was the jurisdictional line down in Florida. Under the FEIS I believe that there is a potential to still draw the lines, say, like the Spanish mackerel FMP right at the Dade/Monroe County line, making all of the keys part of the Gulf of Mexico quota so it would reduce the confusion that has gone on for several years down there.

But the other part is only dealing with migrations of generally the sandbars and/or blacktips and stuff like that that would not show up in the mid-Atlantic Bight Region and further north until the water got warm enough, so that was our reasoning there, trying to help out those fishermen have access in case they were able to fish like in Louis' state with shortlines for large coastals and stuff. Does that answer your question?

CHAIRMAN SMITH: Okay, the motion is for Option B, one region covering the entire ASMFC jurisdiction. Other comments on the motion? Louis.

DR. DANIEL: I think Jack's point is a good one and just for the record would indicate that I don't think there's anything that would prohibit us to

come back and set up regions if we needed to in the future, but right now I think what we're looking at is a five-year quota that's going to remain the same. So at least for the first iteration of the plan I think this is probably the best way to go. I appreciate the concerns about the area off of North Carolina, and that's why I would like to discuss some of that with the seasons' issue.

CHAIRMAN SMITH: Okay, any other comments on the motion. Is there any objection to the motion? Without objection the motion passes, and it's Option B. The next item on the list is Issue 5, Section 4.3.3.4, possession limits, and you'll find that on Page 108.

MR. VONDERWEIDT: Quota specifications.

CHAIRMAN SMITH: I beg your pardon, Section 4.3.3.1, quota specifications, Page 107. You'll note here Chris, as he has gone through this, just makes the observation that depending on how we choose some of these issues it precludes needing to act on other issues, so he has flagged those as he has gone through. Okay, quota specifications, there are five potential options. Is there a motion? Louis Daniel.

DR. DANIEL: Before I make my motion, I would like to look at the – I'll move Option E, which was really one of the main intents of this plan was to make certain that we had coast-wide consistency in open and closed seasons, and I think that Option E captures that, so that would be my motion.

CHAIRMAN SMITH: The motion is for Option E; you can read that on the very top of Page 108; close the fishery for any group or species when NOAA Fisheries closes the fishery in response to quotas being harvested or being projected to be harvested. Seconded by Pat Augustine. Is there discussion on the motion? Margo.

MS. SCHULZE-HAUGEN: Does that mean that the commission wouldn't set quotas, then? They would just follow openings and closings. Would board action be necessary or would it be just by default?

CHAIRMAN SMITH: It sounds to me like it's automatic. When you send the announcement, we would close for that species group. That's the intent of Option E; does everybody understand that? Okay, any discussion on the

motion? Seeing none, without objection the motion passes, Option E. The next section now is Item 5, Section 4.3.3.4, possession limits, on Page 108. There are three options. Is there a motion on this section?

MR. VONDERWEIDT: As part of this the motion maker could also suggest initial possession limits for each species group if they wished.

CHAIRMAN SMITH: You're certainly welcome to, but I think that would bog us down very quickly, depending on the number of species and views on numbers and so forth. That's what is going to be laborious about this plan.

MR. VONDERWEIDT: We will come back.

CHAIRMAN SMITH: We may have to; it may even be a different meeting, frankly. It may be a specification type-setting meeting, depending on how complicated it was. Yes, just a motion on the options in the document. Louis.

DR. DANIEL: I move Option B, which I think is consistent with the federal plan. And not to get bogged down, but the only one that would have a possession limit right now are the large coastals at 33 would be consistent with the federal plan. But if we found that we had to do something for pelagics or small coastals or smooth dogfish, we could come back in and do those possession limits when we needed to.

CHAIRMAN SMITH: Pat Augustine seconds. Okay, the motion is Option B, which is possession limits set annually by species group. Comment on the motion? Seeing none, is there objection to the motion? Okay, without objection the motion passes. The next item is Number 6, Section 4.3.4.3, commercial size limits, Page 109. It spills over on to Page 110 and there are two options. Is there a motion on commercial size limits?

DR. MALCOLM RHODES: I would like to propose that we use Option B, which is commercial fork length of 4.5 feet for sandbar, silky, tiger, blacktip, spinner, bull, all the large coastal species.

CHAIRMAN SMITH: Okay, the motion has been made for Option B of Section 4.3.4.3. Is

there a second? Dennis Damon. Comment on the motion? Margo.

MS. SCHULZE-HAUGEN: Would the change be reflected here to pull out sandbar except for research?

CHAIRMAN SMITH: Yes, right. Is that understood, sandbar would be pulled out so it's research only? Is that your intent of the motion?

DR. RHODES: Yes, it is.

CHAIRMAN SMITH: Okay, so it's Option B minus sandbar. Yes, sir.

MR. ERNEST L. BOWDEN, JR.: I think most of the advisory panel was definitely against this because it's wasteful. NMFS tried it before one time and they abandoned it. A lot of sharks, for example, blacktips – and Virginia is mostly a male fishery and it's incidental to the croaker fishery. I think the 4.5 foot length is going to be causing a lot of discard problems. That's one thing I think we really need to avoid. We're going to make it worse.

We're letting the tail wag the dog on this one. The sandbar is the major concern. Blacktips are fully recovered. A lot of blacktips in our area school; and when they're in schools, they're not by size and age groups. They're a school species and we're going to have a terrible amount of discard mortality. And 4.5 foot; it's appropriate or even larger than that for sandbars.

We had 58 inches in the state of Virginia for years, and that's probably appropriate for sandbars but it's not appropriate for all species. That's basically what we're doing in this case here is judging all species by one species. I'm definitely opposed to it.

CHAIRMAN SMITH: Let me ask a question because I appreciate your opposition, but it leaves us still looking at the two options. For the group, when you take sandbar out of Option B, how necessary then is it to also have the 4.5 foot size limit for all the other species? I'm asking out of innocence to those of you who know more about the subject. While you're mulling that over, remind me what the FEIS says on this subject.

MS. SCHULZE-HAUGEN: We do not have commercial minimum sizes. That's not in place.

They were concerned about discards. One note of clarification, in the Atlantic blacktips are considered unknown and not fully rebuilt. That's the Gulf.

DR. MUSICK: Yes, there is a difference between federal waters and state waters in terms of distribution of the life history stages. The reason that the technical committee suggested a size limit was because most of the nursery grounds for these species, the large coastal species, are in state waters and not in federal waters, so a size limit really isn't needed outside for many of these species.

When we were asked to define nursery areas for the whole coast, then different state biologists had to send in reports for their own state. We considered closing nursery areas because that was one of the options that we were charged with. The way to avoid closing virtually all state waters, because that's where the nurseries are, was to adopt this size limit in order to protect the younger fish.

Now, it's true that the limit was based primarily on sandbar sharks; and now that sandbar sharks are protected, that size limit could probably be reduced somewhat for some of the other species like blacktip. One of the options that you might have would be to ask for another motion or change this one and change that to 4 feet if that would help the blacktip fishermen.

MR. BOWDEN: Quite a number of years ago the state of Virginia, under Jack Musick's guidance, set aside all the nursery and pupping areas of the Chesapeake Bay, all the coastal bays, sounds and creeks in the state of Virginia, so we already have set aside all the nursing and pupping areas.

Now the only thing left is a corridor where the fish would migrate is what basically you're asking us to give up. I don't believe they pup in the ocean. I believe they pup inside, is my understanding. Maybe I've got that wrong, but I did get it from you, Mr. Musick. I might have misunderstood.

I've also got the fact that Virginia is, in the blacktip fishery, predominantly a male fishery because they extend further north, and that information came from you at a public hearing, too, the Marine Resources Commission. So I think in the case of Virginia – and I can't speak

for other states, but I think Virginia has been very proactive in setting aside all these areas.

So now we're down to a very small area, and we're going to cause discard mortality that doesn't need to happen. And if we abided by this rule, what we could do legally in the state of Virginia and still be in the mandate is open up all the estuary areas with a 4.5 foot size limit, and it would be very counterproductive. I really think sandbars have declined significantly; I don't know. There is probably disagreement among many of us to what extent, but I do know there are quite a few left.

Blacktips were fully recovered until the last stock assessment, and now they're unknown. I don't know what happened because the quota has been ratcheted down every year, and all of a sudden they went from recovered to unknown and the Gulf of Mexico is considered recovered. I just can't abide by the 4.5 foot size limit because I think one option for us would be to open up our closed areas with the 4.5 foot minimum.

We all know that the Chesapeake Bay and the coastal bays in Virginia are very important to sandbars' reproduction. I think that's a known fact, isn't it, Mr. Musick, that we are a very important nursery ground for them?

DR. MUSICK: The Chesapeake Bay and Delaware Bay are the two primary nursery and pupping areas.

MR. BOWDEN: We do have them completely closed in Virginia. I'm not sure on the Delaware Bay. Mr. Miller could probably comment on that. I can't see causing a discard problem and that's what we're going to do in the blacktip fishery. I would much rather see sandbars go into the prohibited list personally, because we don't work on them anymore. We haven't in years.

They never were real abundant in the Chincoteague area. Mostly it's the lower part of the eastern shore. With the cownose ray situation the way it is, you can't even get into shallow water to fish for them. We have blacktips that are traveling with schools of croakers. They destroy our nets because they do travel in schools. My only option is going to be discard them dead because I certainly don't want to discard them live and let them eat my nets up.

DR. MUSICK: The size limit was based on sandbar sharks, but the objective was not only to protect the sandbar shark pupping and nursery areas. But coastwide, this was the strategy that we chose to try to protect nursery areas up and down the coast. If we were to just close those areas, the whole coast would be closed. This primarily affects the states to the south of us where the blacktips and spinners and all the other large coastal sharks have their pups. Virtually north of Hatteras you're talking about dusky sharks and sandbar sharks having their pupping and nursery areas.

CHAIRMAN SMITH: This has been a very useful discussion; and just sitting from a position of ignorance, I'm trying to see if because sandbars are protected, is another size appropriate for this group? I'm trying to plant that seed and then those of you who know something actually about the subject, I had Louis and then Roy.

DR. DANIEL: Well, first, I can't go by this one without saying I wish we had come up with this type of an alternative in federal waters to have avoided some of the issues in the closed area off of North Carolina, which still fires me up that we can come up with these alternatives to make sure we don't impact anybody else but when it's off North Carolina, it's cool, and that I don't like at all.

But the problem that I see – and I understand exactly what Dr. Musick is saying about the need and the issue here. I'd certainly rather see it go to four if we went with a size limit, but I'm real concerned about the enforcement of this. If we've got the federal waters with no size limit and then they're size limits in state waters, you're going to have a mess there. I mean, I don't know what we're going to do if we're inconsistent with NMFS on this issue. I just wish we could have come up with another alternative to affect the North Carolina issue. But, just from the enforcement side of the equation, I'm going to have to vote against the motion.

CHAIRMAN SMITH: Well, the theoretical way of dealing with this, the state can always establish a landing limit that is required to comply with the commission plan. If we voted for four feet, for example, it's always easier to control it that way than the other way around. A federal permit holder, if he wanted to land in



North Carolina, would have to obey your limit or our limit.

DR. DANIEL: But the problem I think you're going to have with that is in the drift net fishery, the gill net fishery or the longline fishery. A lot of those sharks are going to be dead when they come up. It's not like a hook-and-line fishery where you can measure him and release him, or a real active fishery. You know, you're going to have a lot of mortalities out there in federal waters of these undersized sharks. They're just going to have to go overboard – and inside, as well. I mean, I understand what the intent is from the technical committee, and I agree with the theory. I just don't know if you're not going to have a tremendous amount discards in both areas.

CHAIRMAN SMITH: Chris is reminding me to look at the screen. The law enforcement committee said either one is enforceable, whether you have size limits or you don't have them. Take that for what that's worth. Okay, we have a motion on the floor and a healthy debate. Roy.

MR. MILLER: Just quickly, I was going to say if it's of any utility in this discussion, that Delaware Bay is presently open to the commercial harvesting of sandbar sharks, and there is no size limit that applies to the commercial harvest of sandbar sharks in Delaware Bay. Obviously, that may change today, but just to set the record straight.

MR. THOMAS O'CONNELL: I'm still kind of learning a lot about this, but is it my understanding that there is no size limit in federal waters? So this motion would establish a minimum size limit in state waters, and I was just curious if that's an enforcement issue having federal waters with no minimum size limit and state waters with a minimum size limit.

CAPTAIN JOHN TULIK: I understand you need a federal permit to take sharks.

MS. SCHULZE-HAUGEN: Yes, and actually in addition to the permit condition – as a condition of getting a federal permit, you agree to abide by federal regulations no matter where you're fishing. There is also a clause that says unless a state has more restrictive regulations, so how that would play in terms of this specific measure, we might need to think about.

CHAIRMAN SMITH: I mean, functionally as I described it a moment ago, you're quite right. If a state has a more restrictive rule and you have to pass through the state's waters, you have to obey those rules regardless of whether you have a federal permit or not. Peter.

MR. HIMCHAK: Mr. Chairman, what makes this even more troubling is the allowance of removing the head in federal waters. We have regulations that allow this in the recreational fishery where you can remove the head and the tail of the shark for purposes of icing it down. We had to come up with an alternative minimum size limit from the middle of the first dorsal to the base. If the shark is in federal waters, if the head can be removed and they can be cleaned, I mean this 4.5 is going to get very restrictive for them to land it in the states.

MR. VONDERWEIDT: Just to comment on, Mr. Himchak, the proposed regulation in the state fisheries management plan includes head as well as the tails and the fins. That was specifically written to include the head to take into account the size restriction. What you said is true if we allowed the head to be removed in state waters, you have to come up with another size limit.

MR. HIMCHAK: Mr. Chairman, I'm not supporting – you know, we had no opposition at our public hearings or anything to maintain these regulations for the sport fishermen. The commercial fishermen, on the other hand, are very vocal about the ability of cleaning the fish at sea so that they don't have the problems in the marinas.

And, again, it would require some kind of an alternative minimum size for the dressed carcass. I realize the difficulties in the unclassified and identification purposes and everything, but I'll tell you I went to one of those shark carcass identification workshops, and it was not that hard to do to identify the species given by Mr. Sander. It was given for all the federally permitted dealers.

I mean, after his presentation and his course and everything in the library in Elizabeth, of all places, he just threw out 20 carcasses in a parking lot, and it really was not that hard to identify all these different carcasses to the specie level. I know our commercial fishermen are going to be looking for some kind of

compatibility with cleaning the fish before bringing it in and then having to deal with the marina problems and disposal.

MR. HUDSON: I'd like to make three points. One is brought up about Delaware Bay, the same with Chesapeake. Most of the sandbar sharks are going to be well under the 4.5 foot measurement head on to the fork length. The problem, which is point two, is that when you wind up removing the head and then you try to figure a proxy measurement, there is an orientation difference on the sandbar's dorsal versus some of the other species like silky, tigers, et cetera, so that it can actually have a variance of almost a half a foot to a foot.

That's one of the reasons that I counseled NMFS not to embrace that particular strategy. In the sense of a business, our normal procedure was to leave the head out at sea instead of in a big Dempsey dumpster around the marina along with the other parts that we're going to have to leave there now when fundamentally they were left at sea when we removed the fins and whatever, visceral and et cetera.

The final point about the blacktip being removed, keep in mind that I have a disagreement with the NMFS science because we landed millions of pounds of blacktips from the early eighties to the early nineties. The NMFS data base, if you go take a look in the science, shows zero pounds in 1990, '89, right on back to the early eighties, and yet we have provided NMFS, both in 1992 and a couple of years ago, documentation from boats and dealers showing species-specific of blacktips being landed by the commercial entity.

We know that we built a fishery off of blacktips first and phased in the sandbars. There are still some areas that need fixing by NMFS on the science. But agree with Ernest that when you're changing our business practices after three decades of conducting it a certain way, I have a problem with leaving the head on, especially if it's somebody that's going to be able to bring in the 33 sharks, for instance. Blacktip tend to aggregate in various sizes together and sexes together unlike sandbar, which tend to aggregate by size and sex. So, this is something of concern for us that you're changing the business face and we may never recover.

CHAIRMAN SMITH: Okay, we have a motion the floor, and we've had good debate. There are two alternatives here. John.

CAPTAIN TULIK: I just want to go back to the federal versus state. This has to be a strict possession clause. In other words, if it's taken in federal waters, it has to meet the requirement. That's only way it can be enforceable.

CHAIRMAN SMITH: Do you want to explain that again?

CAPTIAN TULIK: If you're in possession of sharks in state waters, it would have to meet the requirements of what is proposed, that 4.5. In other words, if they're taken in federal waters and you're coming in to land them, it's the only it could be enforceable.

MR. AUGUSTINE: Mr. Chairman, I'd like a substitute motion. I'd like to substitute and go Option A. If I can get a second to that, I'll give you my rationale as to why or I'll talk against this option, whichever you prefer, Mr. Chairman.

MR. WILLIAM A. ADLER: I'll second.

CHAIRMAN SMITH: Bill Adler seconded for Option A.

MR. AUGUSTINE: May I give you my rationale, Mr. Chairman? Well, if you look at what the quota has been reduced to relative to what it has been in the last five, ten or fifteen years, we literally have reduced the commercial fleet and the commercial quota – Rusty, you can probably give me a number on this – probably by 65 percent or 70 percent?

MR. HUDSON: If you wind up wanting to rationalize it, just since management started in '93, we've gone from 6 million pounds overall for the large coastals, now we're down to probably what's going to look like a million pounds.

MR. AUGUSTINE: Thank you for that clarification. It just seems to me although the 4.5 foot minimum logically makes sense, what Mr. Bowden said and what Rusty has said, it just seems to me at this point in time to go to 4.5 minimum we are going to increase the discard rate, and the idea was to actually take this fishery and turn it into an experimental fishery with ten

or fifteen vessels as opposed to having several hundred.

Although I would think that a later date the 4.5 foot minimum might be the way to go, I just don't think it's appropriate now. This is not only a double whammy, but in the gains that we're making by reducing the fleet and reducing the quota, it's overkill. I would definitely prefer to go with Option A.

CHAIRMAN SMITH: There is a substitute motion on the floor made and seconded. Is there discussion on the motion? Seeing none, is there objection to the motion. Okay, the substitute motion becomes the main motion and now we'll vote on the main motion. Is there objection to this as the main motion, Option A? No objection so Option A passes, no commercial size limits.

The next item is Item 7, Section 4.3.5, which are seasonal closures. Okay, this is at the top of Page 112. Now there no choices to be made here. Chris, would you summarize this issue again. There are three or four paragraphs here.

MR. VONDERWEIDT: This is basically to protect pregnant females, and it would prohibit any landing of large coastal sharks from Virginia through New Jersey, May 15<sup>th</sup> through July 15<sup>th</sup>, which is the primary pupping season when the females come in and drop their babies.

CHAIRMAN SMITH: So this seasonal closure would be from May 15<sup>th</sup> through July 15<sup>th</sup> waters from Virginia through New Jersey would be closed?

MR. VONDERWEIDT: Exactly, recreational and commercial.

CHAIRMAN SMITH: Okay, recreational and commercial. Does everybody understand that issue? Without alternatives we'll simply take it as a consensus item unless there is debate or alternative on it. Bill Adler.

MR. ADLER: This is for all sharks and not just sandbar?

CHAIRMAN SMITH: It's the list of large coastal sharks, the 11 species – well, minus sandbar, so there are ten species.

MR. ADLER: Okay, could I ask the advisory panel is that a problem with the commercial fleet or is that sort of acceptable there?

MR. HUDSON: For the entire life of the federal plan we have always supported a pupping season closure and leaving a little seed for the future, so to speak. At that point in time they're in the last trimester of their pregnancy normally. We have always been supportive of having a closure during that particular time of the year in federal waters, but it's up to the states to decide. In the state of Florida we're limited to one shark, anyway. The whole idea is you're protecting the female so she can dump her six to twelve pups and then go on back offshore because the salinity is such she won't stay in there. She'll just dump the pups and leave.

DR. DANIEL: I'd just ask Jack would not passing the size limit, would there be a better seasonal closure we could add to? I mean, what is the pupping season and what would you expand it to as the TC chair if you had a recommendation?

DR. MUSICK: As I said before, that size limit, with the other recommendations we made, primarily would affect the states to the south of us. This regulation is aimed not protecting the pups, per se, but the pregnant females, of which there are precious few left, which come into the inlets on the eastern shore and the mouth of Chesapeake Bay and into the lower Delaware Bay to drop their pups during this time period. The reason why we've asked for all LCS is that if there is a bycatch of sandbar sharks, no matter what, that's the most abundant shark in there during that time period. This regulation is to protect pregnant females.

CHAIRMAN SMITH: I think Louis' question is since the size limit didn't pass, is there an additional different season from North Carolina south that the technical committee has ever discussed that would be recommended for the same purpose?

DR. MUSICK: Yes. Primarily if you look at the suite of species in LCS and you look at where they pup, if we were to have the same kind of a closure as we do in Chesapeake Bay now at the state closure for the sandbar nursery areas, we'd probably close all the federal waters during the warmer months of the year just to protect the

smaller and younger age classes. That was one thing we considered.

This size limit was a way out of doing that, but there is no reason why that can't be revisited. I mean, there are different ways of doing that. You could close inshore waters, meaning waters in the estuaries for many of these species. They wouldn't become vulnerable until they came out of there in the fall of the year.

MR. MILLER: Mr. Chairman, if we were to approve this particular provision – help me keep it straight here – do these closures apply to federal waters as well or would the state waters be closed during this period and at the same time federal waters would be open, which would make enforcement nearly impossible? In other words, if a person wanted to land these sharks and federal waters were open, then the state would have to prove where they were caught.

CHAIRMAN SMITH: Actually, no, the state would simply prohibit the landing regardless of where they're taken. That's the law enforcement point a moment ago. You could do that by a landing limit if the commission plan required it. You can take them in China, but you couldn't land them in Delaware. We don't have a motion on the floor.

There is the discussion point that we've had. I guess, Louis, the answer that I thought you were looking for would be was there an earlier season or a later season from North Carolina south, but I didn't get that sense. We've closed the books on the size limit unless somebody reconsiders, so if there is no other season I guess I'll ask Rusty to comment.

MR. HUDSON: The AP did suggest an earlier start date particularly for the areas to the south because we know that there is a tendency the water temperature would be a little warmer there and those animals to aggregate in that area. Again, let me remind you when the sandbar female dumps her pups, then she takes off because the salinity is not right.

Now we have always wanted NMFS to have us close April, May and June. They extended that into July 31<sup>st</sup> off of North Carolina when we felt like that should have been extended a little bit further for the habitat area of particular concern. But that was the idea that these animals are at the last of their pregnancy; and with the sandbar

there are only a few that even have their pups in July. Most of that activity is taking place in April and May and June and sometimes further south and then all the way up into the normal regions, Chesapeake Bay and Delaware Bay. That's why we had suggested at our AP April 15<sup>th</sup>.

DR. DANIEL: You keep saying the areas further south. The issue here only pertains to Virginia, Maryland, Delaware and New Jersey from May 15 through July 15. With the closure off of North Carolina from January through July, I certainly wouldn't support anything more for us. But if there is a reason to do April 15<sup>th</sup> to extend that seasonal closure for the additional month that make up for partly not having the size limit, then I think that would be a good move. Then it would dovetail in with the North Carolina closure, that I don't like, by the way.

MR. BOWDEN: I think the problem we have with this is I don't think a lot things have been taken into consideration. One thing is the bottlenose dolphin take reduction plan takes effect June 1st and takes effect even earlier in North Carolina, but it does take effect June 1<sup>st</sup>. You can't have any large-mesh net five inches or greater overboard unless you stay within one-half mile of them at all times. In the likelihood that you would catch a sandbar, it could be released alive.

The problem I can see is what we got to earlier is the blacktip situation. We're going to have blacktips home in June and July. Last year I caught seven large sandbars in my drum nets. Years ago they were a problem. They're not a problem anymore. I mean, when I first started shark fishing 30 years or more ago, we threw the fins overboard and kept the meat. Then it got so in the eighties they were doing just the opposite.

Really, I have problems with this because it's mainly to protect sandbars and duskies. Virginia has done quite a bit. I wish Delaware and New Jersey had followed suit and closed the Delaware Bay. I think it's probably a good idea to ask the states all along the coast to close their inside waters because that is a very important area for a nursery and pupping areas.

Basically, what you're going to do in this case is every species pup somewhere, like Mr. Musick said earlier. Should we close I guess maybe Florida through Georgia for blacktip; I really

don't know because I've never seen a pregnant blacktip, which we see very few. Most of the large fish we see are males.

You know, we've already done something very proactive in the state of Virginia. To come back and hit us again on top of what we've already done without being asked – and this has been in effect. And maybe if we hadn't done it, things might be worse than they are now because the Chesapeake Bay has been closed for a number of years.

I'm sure there have been some violations, but that would be a law enforcement issue. It certainly wouldn't be something we could do. When we closed these areas, I was definitely in the minority of the watermen involved. Mr. Musick and I had a very lengthy debate in front of the commission that day when we did do this because we had some kind of a bycatch allowance on the 58 inches.

So, really, I just can't see hitting us twice because, as I said earlier, I'd much rather see sandbars go into a prohibited species than I would it affect every other species. Now our fishery is mainly blacktip. I wish I had brought my catch reports because I do know the difference in species and I can accurately report them.

Earlier, when a comment was made about a silky and a sandbar looking alike, they really don't; a silky and dusky do. You know, I just can't see hitting us again; there are so few of us left. In the state of Virginia several years ago we adopted a terminal date that we can enact at any time to reduce our fishery, so I think that should be an alternative left up to the state to do something in that way. Generally, I do support this for sandbars and there should be no sandbars landed in that time. If you want to outlaw sandbar landings, I have no problem with that. I do have a problem with the research aspect. I am going to be opposed to this for those reasons.

CHAIRMAN SMITH: Just as a reminder, because I had to get it myself, we have already taken the action with one of our previous votes to make sandbar research only, so it's already prohibited in the commercial and recreational fisheries. That point has come up a few times, and that's an action that we've already taken. I wanted to make sure we were all clear on that.

Okay, we have Section 4.3.5; there are no options to vote on, but there is the issue to approve or to not approve, depending on the points you've heard. Because there are differences of opinion, is there a motion on Section 4.3.5? Okay, what we had said earlier was if there was no motion on something that didn't have alternatives we would retain it as written in the document.

Is there any objection to retaining Section 4.3.5 as written in the document, and that includes that seasonal closure. Would you like a vote on this, then, or note the one objection or would you like to comment further?

MR. BOWDEN: I would like to make a motion to take it out; I don't want it to stay in.

CHAIRMAN SMITH: The motion is to remove Section 4.3.5 from the document?

MR. BOWDEN: Yes, sir.

CHAIRMAN SMITH: Okay, is there a second to the motion?

MR. VITO CALOMO: I'll second the motion, Mr. Chairman.

CHAIRMAN SMITH: Okay, Vito Calomo seconds the motion. The motion is to remove Section 4.3.5 from the document. Is there further discussion on the motion? Bill Adler.

MR. ADLER: If this is eliminated, doesn't it still allow the states to implement closures as they see fit? Can't they still do this as it works rather than be in the cement mixer here?

CHAIRMAN SMITH: States can always adopt something more restrictive than the plan. The question is whether any particular species or the group of species benefits by four states having to do the same thing at the same time? I think that's why this issue got into the document the way it did. You're correct, an individual state could do something if they wanted, but the regional approach begs for either an up or a down from the commission. Other questions or comments? Louis.

DR. DANIEL: I look at what we've done to try to rebuild this fishery, and we're looking at some rebuilding times of 400 years, I think, on dusky sharks. This is an area that we know is a critical

area for a lot of these prohibited species and as species of concern. I think with the efforts that North Carolina has made, that the fishery has made to reduce these landings and reduce these harvests, I think this is a critical part of this plan that needs to stay in it.

CHAIRMAN SMITH: Other comments on the motion? Margo.

MS. SCHULZE-HAUGEN: I just had a question. Without a minimum size and now potentially without a seasonal closure, what sort of protections would there be for pupping and nursery grounds in state waters?

CHAIRMAN SMITH: As I understand it, it would be what the states have on the books now or might adopt in the future on their own.

DR. MUSICK: People don't seem to understand what dire shape the sandbar shark population is in. We just finished some genetic studies to try to estimate the effect of population size of sandbar sharks in Delaware Bay and behind the barrier islands of Virginia, and the mature population is in the hundreds, not thousands or tens of thousands that you're used to dealing with in fisheries. You know, if you catch six or seven or one fisherman catches six or seven, that's a chunk of the total population of mature adults. I mean, it's not good.

CHAIRMAN SMITH: Thank you. Board, other comments on the motion? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. It's obvious we have to have one or the other, either minimum sizes or the ability to have a seasonal closure. Having listened to Mr. Hudson and his comments, they had asked for a longer closure period, and I think you got that in the July 15<sup>th</sup> date, that set aside you need for protection?

MR. HUDSON: April 15<sup>th</sup> through July 15<sup>th</sup>, but the April 15<sup>th</sup> was for further south.

MR. AUGUSTINE: Okay. Well, Mr. Chairman, I would like to amend that motion; or, if I have to create a new motion, it would actually change the seasonal closure date to April 15<sup>th</sup> as opposed to May 15<sup>th</sup> to July 15<sup>th</sup>. So, if you need it as a separate motion, please tell me how you want to handle this, Mr. Chairman.

CHAIRMAN SMITH: Well, let me ask you this; would you like to leave the season dates for Virginia through New Jersey as they are now and simply say for the states south of Virginia it would be, what, April through June? I mean, does that make sense.

MR. AUGUSTINE: If that adequately covers the states that are willing to accept that, and the ones that are concerned are Virginia and North Carolina. The way that the chairman has painted that picture, would that be acceptable – so May 15<sup>th</sup> through July 15<sup>th</sup>, except south, did you –

CHAIRMAN SMITH: Well, I was following the words – trying to understand the words you were offering. If you wanted to add April 15<sup>th</sup>, you either want to add a month to that period for everyone or you want to have it start a month earlier in the southern states and end a month earlier in the southern states so that they each have a two-month closure. Louis.

DR. DANIEL: Why weren't the southern states included in the first place? I mean, right now what you're doing is adding a whole new group of states into a pupping season closure.

CHAIRMAN SMITH: Well, the answer is because they thought the size limit would be the protection that was needed.

DR. DANIEL: In the southern area?

CHAIRMAN SMITH: Well, in all of the areas, really.

DR. MUSICK: That was for pups. Again, the principal pupping and nursery grounds for sandbar sharks in the Western North Atlantic Ocean is Chesapeake Bay to Delaware Bay. There is some pupping that goes on south of there, but it's negligible compared to the pupping that goes on in those areas. The dates were chosen from hard data sets. These animals don't show up until the water temperature is 18 degrees centigrade in our area. May 15<sup>th</sup> is about the earliest you normally see them.

MR. HUDSON: I concur with what Dr. Musick said. The date was chosen because of temperature relations for those areas for the sandbar. I would say that you would modify your specie content here to just say sandbar and prohibited species, which takes in your dusky, eliminates the blacktips so that Ernest and others

don't have a conflict there; the same thing with your people in North Carolina.

CHAIRMAN SMITH: That sounds like a very complicated amendment on the fly. What is your pleasure? Pat.

MR. AUGUSTINE: Well, Mr. Chairman, we're trying to accommodate the size limit and we've gotten rid of that. The technical committee specifically says one or the other won't do it. And, again, if April 15<sup>th</sup> will do the job, maybe we just change the date to April 15<sup>th</sup> and include the statement as it goes for the plan purposes of the harvest.

We dropped out sandbar, silky, tiger, blacktip, spinner, bull, lemon and so on. Smooth hammerhead will be prohibited in the state waters of Virginia, Maryland, Delaware and New Jersey and if you want to include North Carolina from April 15<sup>th</sup> to July 15<sup>th</sup>. I'm trying to look for a compromise, as you are, Mr. Chairman, and we're getting nowhere.

CHAIRMAN SMITH: Let me suggest this. I think what I heard Dr. Musick and Rusty say was that May 15<sup>th</sup> through July 15<sup>th</sup> for the Chesapeake to Delaware area covers 95 percent of what you need to cover at this time.

DR. MUSICK: For sandbar sharks.

CHAIRMAN SMITH: Okay.

MR. HUDSON: The dusky is prohibited so that would be protected by proxy, but the sandbar is the only one that you really need to focus on for the area that Jack is concerned about, because the dusky is prohibited so it won't be allowed. The other ones, the blacktip like Ernest needs, mostly males, is not an issue. Like he said, he doesn't see the pregnant females up there because they're in a different location further to the south.

CHAIRMAN SMITH: As I said before, we have already voted to prohibit the harvest, commercial or recreational, of sandbars unless it's for research. The question is if this seasonal closure is a benefit for the other species to have a closure from Virginia through New Jersey, May 15<sup>th</sup> through July 15<sup>th</sup>, that's the point we need clarification on. If it's not important then we don't need to measure.

DR. MUSICK: That's so.

CHAIRMAN SMITH: Okay, that's what I want clarification on.

DR. MUSICK: The reason that this was put in by the technical committee was our concern about bycatch of female sandbar sharks in this area and not just targeted catch, but bycatch. You know, if you set a large-mesh gill net out or shortline gear, as we call it, you're going to catch this species as well as the other species, and there aren't that many left.

CHAIRMAN SMITH: Okay, so the seasonal closure is necessary on all large coastal sharks to avoid the bycatch of sandbar.

DR. MUSICK: Correct.

CHAIRMAN SMITH: Okay, so we're back to we either need the season or we don't need the season, and I do think that we need to conclude. We've got a number of other issues to go, so two more comments; Roy and then John.

MR. MILLER: Thank you, Mr. Chairman. I would be concerned if this doesn't pass from the simple standpoint that the only shark fishery in Delaware Bay that I'm aware of – and perhaps Dr. Musick knows of some that I'm not aware of – is for sandbar sharks. No one, to my knowledge, is targeting the other LCS species in Delaware Bay.

However, there is a small fishery using 12-inch mesh gill nets for black drum. If someone were to set nets for one of these other species, they may inadvertently catch some of these scarce large sandbar sharks and that would concern me. I guess I would support the substitute motion to protect any bycatch losses of these large sandbar sharks, and no one will be setting large-mesh gear specifically for sharks. That's the only reason because, frankly, hammerheads and bull shark and the others are just not an issue. There is no fishery for them in Delaware Bay.

CHAIRMAN SMITH: Okay, we have a motion but no second, so we don't have a motion yet. The motion that Pat talked about was change the seasonal closure date, add the month effectively of mid-April to mid-May to make the closure period April 15<sup>th</sup> through July 15<sup>th</sup> for North Carolina through New Jersey, adding also the

state of North Carolina. Is there a second to that motion?

Seeing none, the motion is to take this section entirely out. There was a second to that. That was Mr. Bowden and Vito Calomo. The motion is to remove Section 4.3.5. Other comments on that motion, and then we need to conclude it? Louis.

DR. DANIEL: I would like to make a substitute motion that we accept Section 4.3.5 as written in the plan that includes a May 15 through July 15 closure from Virginia to New Jersey.

CHAIRMAN SMITH: Okay, so that motion is to accept 4.3.5 as written, as a substitute. And the second is Erling Berg. Okay, the motion is made and seconded. This is a substitute motion. Is there comment on the motion? Seeing none, is there objection to the motion to substitute? Seeing none, it's now the main motion, which is to remove Section 4.3.5. Is there objection to the main motion? I beg your pardon, you're quite right, to accept 4.3.5 as written in the document. Okay, without objection 4.3.5 stays—

MR. BOWDEN: I'd like to have a vote on that.

CHAIRMAN SMITH: Okay, a call for a vote has been made. Take ten seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN SMITH: Okay, caucus time is over. All those in favor of the motion to retain Section 4.3.5 in the document as written, show of hands; those opposed; abstentions; null votes. Okay, the motion passes. I had it 14 to 1 to 0 to 0.

Chris has asked me for clarification because it's not clear in the document or it's not pointed out in the document. Do you intend this to be a landing prohibition or a possession prohibition in the state's waters? If it's a possession prohibition you can't have them, but if it's a landings' prohibition you could have them and you'd have to enforce it at dockside where it was coming ashore, which is somewhat harder. Prohibition on possession?

MR. AUGUSTINE: If you can't have them in federal waters, why would we allow them to have them in their possession in state waters and

then at the dock it's discarded? The feds say that you cannot be in possession of them.

CHAIRMAN SMITH: Okay, the suggestion has been made that we make this a prohibition on possession regardless of where taken. Is there any disagreement with that? Okay, seeing none, that's how it will be defined in the document.

All right, Number 8, Section 4.3.8.1, dealer permits; it's on Page 12 at the bottom and spilling over. There are four options. Okay, the four options are up there as you see them. Is there a motion on dealer permits? Bill Adler.

MR. ADLER: I will make a motion for Option C.

CHAIRMAN SMITH: Okay, the motion has been made for Option C, either a state or a federal permit.

DR. DANIEL: Second.

CHAIRMAN SMITH: Rusty has pointed out in the larger document, at the top of Page 113 – hang on, let me ask Chris this. Just a minor point of clarification by our eagle-eyed advisory panel chairman – Option C actually should read “either a state or federal dealer permit is required to buy and sell sharks,” like the other two options read. It should say “to buy and sell sharks”. Okay, the motion is for Option C. Is there any comment on the motion? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I thought NMFS – well, through our advisory panel meeting, the suggestion was to try to have one data source, meaning everyone would be federally licensed. My understanding is there has been a disconnect between state licensed dealers and federal licensed dealers in the tracking of what sharks are landed where, which ones are reported, and then a follow-on system has had to be developed by NMFS. My understanding is it's been difficult to get accurate data.

I'm not sure whether the feds want to push that and make an issue of it, but I see it as a primary issue similar to the shark identification. If any of you are familiar with the reports that have come out on harvest and landings of sharks, you will find that roughly 35 percent of them go as unidentified. I see this as an issue where I'd



almost go for a substitute on this whenever you think so, Mr. Chairman.

CHAIRMAN SMITH: Bear in mind we are beginning to run out of time. That last issue took a lot of time, so if you really feel a strong need, offer it right now and we'll dispense with it quickly. I'm going to have to push us a little harder because we've got 29 issues and we've done seven. We have an hour and a quarter, and we need to talk about dogfish.

MR. AUGUSTINE: Okay, move a substitute motion to submit Option A.

CHAIRMAN SMITH: Is there a second to the motion for Option A, which is federal permits only. In other words, even a state-only dealer who bought from state license holders would have to get a federal shark dealer permit. Louis.

DR. DANIEL: Are they available?

MR. SCHULZE-HAUGEN: They're open access. We would want to talk about cost of the requirement that would then be triggered about the workshops.

CHAIRMAN SMITH: Right, they'd have to each attend the workshop as an obligation of getting that federal permit. Is that the intent of the board? Chris.

MR. VONDERWEIDT: Margo, this was discussed. Carol from your office specifically brought this question to the technical committee, asking how many new dealers she thought would spring up if we required Option A. It sounded like maybe three or four along the coast, so it didn't seem like a significant amount of landings. What I took from that meeting was that it might not be an issue.

MS. SCHULZE-HAUGEN: Yes, three or four would not.

CHAIRMAN SMITH: Comments on the motion? Robert Boyles seconded the motion. Okay, a motion made and seconded to accept Option A as a substitute motion. Dennis.

SENATOR DENNIS S. DAMON: Thank you, Mr. Chairman. Could you explain to me again why it's necessary to only have the federal permit instead of federal or state? Could the maker help me with that?

MR. AUGUSTINE: It's been my understanding that there has been a reporting collection of information of shark dealers and delaying getting that information into the system. At least that was what was presented to us by the HMS Committee in addition to the misidentification or unidentification, which was a very, very large number. I felt by attending the shark identification workshop, whether it's three, four, five, ten or twenty, they'd end up with a book, they'd probably have a half a day of identification of carcasses, and we'd close the loop.

CHAIRMAN SMITH: Okay, the substitute motion is to accept Option A. Any comment on the motion? Any disagreement with the motion? Seeing none, the motion carried. The next issue is Number 9, 4.1.3, fishing season. It's on Page 102, so we're backtracking now into the document.

I beg your pardon that was a substitute motion. The substitute motion as the main motion; is there any objection to the substitute motion as the main motion, Option A. Seeing none, the motion carries. Fishing season, Page 102; the three options, the calendar year or July 16<sup>th</sup> for a year or other. The FEIS did it calendar year. Is there a motion on fishing season, one of the three options? Bill Adler.

MR. ADLER: I'll make a motion for Option A.

CHAIRMAN SMITH: Okay the motion is made for Option A, which is calendar year. Is there a second? Dennis Damon, thank you. Any discussion on the motion? Any objection to the motion? Rusty.

MR. HUDSON: One of the things that NMFS mentioned is that by going with the directed shark permits for the fishermen, at the 33 sharks they felt like they could fish throughout the year; and if we have even that pupping season closure, that will actually give a little more surplus for the other time of the year, so there's probably not going to be a hit on anybody in the north based on the NMFS calculations. Am I right on that, Margo?

MS. SCHULZE-HAUGEN: That's the intent.

CHAIRMAN SMITH: Thank you. Any disagreement with the motion? The motion carries for Option A. Now we're into

recreational fishery issues; Item 10, Section 4.2.1 on Page 103.

MR. VONDERWEIDT: And now everything is going to be in order.

CHAIRMAN SMITH: From now on everything is in order sequentially through the document. Okay, there are three options. Is there a motion on 4.2.1? Louis Daniel.

DR. DANIEL: I'm still confused about what is included here. At first I was under the impression that finetooths and blacknose were included and that made our life a lot easier. The footnote, however, doesn't include finetooths and blacknose.

MR. VONDERWEIDT: The document was drafted and sent out for public comment before the Final EIS, so the EIS now includes blacknose and finetooth. There is no size limit so that wouldn't prohibit the landings of the small coastals. Oh, actually, we're talking about recreational so I take that back. So, basically the same as federal waters, it would be all species except for the silky because sandbar is already pulled out as a prohibited species by previous board action.

DR. DANIEL: I move Option C.

CHAIRMAN SMITH: Okay, the motion is made to be Option C. Is there a second? Pat White. Discussion on the motion? Peter.

MR. HIMCHAK: I had a quick question for Chris. Did you not say earlier that Amendment 2 did now include the spinner, the bull and the blacktip?

MR. VONDERWEIDT: That is correct.

MR. HIMCHAK: Okay, because they're not in the footnote.

MR. VONDERWEIDT: The only species that is not included is the silky because it has a ridge like a sandbar.

CHAIRMAN SMITH: Okay, so you're clear, Chris is going to read Option C and then he's going to tell you what words are included or excluded, what species, so that we're clear.

MR. VONDERWEIDT: Thank you, Mr. Chairman. Recreationally permitted species for large coastals: blacktip, spinner, bull, nurse, lemon, tiger, smooth hammerhead, scalloped hammerhead, great hammerhead. It includes all the small coastal species: the Atlantic sharpnose, finetooth, bonnethead, blacknose. It includes for pelagic: porbeagle, common thresher, shortfin mako, oceanic whitetip and blue. It excludes sandbar, which was voted research only, and silky and all of the previously prohibited species like whale sharks and duskies.

CHAIRMAN SMITH: Is everybody clear on that now? Okay, the motion is for Option C. Is there any disagreement with the motion?

MR. VONDERWEIDT: Can I make a point on that? The law enforcement committee, we talked about this before, but they would like to remove "targeting" and put in "catch" for the language here, and there is more information. Mr. Tulik might have more information on that, but targeting is very hard to prove in a court of low-intent.

CHAIRMAN SMITH: Is it okay with the mover and seconder? All right, any disagreement with the motion? Without objection the motion passes for Option C. The next item is 11, Section 4.2.2, landings requirements. There are no options. It just said you have to have heads, tail and fins attached to the carcass. You can bleed them and you can't filet them at sea. Moved by Dennis Damon; seconded by David Pierce. Any disagreement? David.

DR. DAVID PIERCE: Not so much a disagreement, but just seek clarification. I apologize for not being here earlier so I missed the technical committee report and they may have addressed this. With regard to smooth dogfish, I know that I've heard from fishermen in my state certainly who have taken smooth dogfish, although in very minor amounts, that they prefer to head them in order to bleed them quickly, and therefore the quality of the meat is much better than it otherwise would be.

Would someone be in a position to explain why for all these species, including smooth dogfish, it would be necessary to keep the head on? Is there an identification problem with smooth dogfish that might be driving this decision?

DR. MUSICK: Yes, that's right.

DR. PIERCE: Is this an identification problem that's up and down the coast; is it specific to other coastal sharks that would be causing a significant problem for law enforcement?

DR. MUSICK: Not only law enforcement people but the dealers – everybody. It's a lot easier to identify a shark with the head on.

CHAIRMAN SMITH: Okay, but this is the recreational fishery section so the dealers are out of play here and there is no size limit.

DR. MUSICK: For the recreational people, of course, it's even more of a problem because they're not going through the same training sessions. They may have a book in front of them. The way this has been set up, we've tried to use species that are easy to tell from the ridgeback species, but even so it's much easier with the heads on.

DR. PIERCE: All right, thank you, and it's just been pointed out to me that this is a recreational fishery and not commercial. My concerns related to commercial. Thank you.

CHAIRMAN SMITH: Okay, the motion has been made to accept 4.2.2 as written. Any objection? Okay, without objection the motion carries. The next one is 4.2.3, recreational minimum sizes, at the top of Page 104. Louis.

DR. DANIEL: I'm going to make a motion and if I get a second, I'd like to have the mike back to explain it. I move a modified Option A to say that sharks caught in the recreational fishery must have a fork length of at least 4 feet, no size limit for small coastal sharks or smooth dogfish.

CHAIRMAN SMITH: That motion is sharks caught in the recreational fishery must have a fork length of at least 4 feet, and there is no size limit for small coastal sharks or smooth dogfish. Is there a second. Roy Miller.

DR. DANIEL: Well, because we've prohibited sandbars and because of the different sizes of some of these fishes, I think we can provide an opportunity for the recreational angler to retain their one shark. On some species it's very difficult to do with a 4.5 foot size limit. I think four accomplishes our objective.

The no size limit for small coastals, that's consistent with the commercial fishery, but the

problem that we run into is with finetooths and blacknose. It's an unusual animal that's greater than 4.5 feet long. So to provide the opportunity to take advantage of a fishery where the stock status is reasonably good, the quotas haven't even been close to being met, it provides the recreational sector with an opportunity that right now they really never have. We very rarely see any small coastals come in because they're all smaller than the 4.5 foot size limit. That's the justification, right or wrong.

CHAIRMAN SMITH: Okay, thank you. Any objection to the motion? Margo.

MS. SCHULZE-HAUGEN: I just point out this would be pretty different from the federal, and so I think it would complicate enforcement. I would also like to note blacknose is overfished with overfishing occurring, so we're actually starting a rebuilding plan process. The kickoff for that is tomorrow. This would cause some difficulties, I think, from the enforcement perspective.

CHAIRMAN SMITH: Other comments on the motion?

CAPTAIN TULIK: I just agree that any deviation would cause a nightmare.

CHAIRMAN SMITH: Other comments on the motion? Okay, seeing no further questions or comments, is there objection to the motion? Would you like a vote or just your objection noted?

MR. AUGUSTINE: I'm just objecting because we're getting out of sync with where we were going. If we're going to be consistent with the federal, be consistent with them. I would be more inclined to ask the maker of the motion to name those species of fish that would require no size limit, those species of shark that would require no size limit. If it turns out to be the whole small coastal shark complex and it doesn't include blacktip because it's going to be rebuilding plan, if we're going to name them, let's name them. But to vary from the 4.5 feet I think we're opening a can of worms. My personal opinion.

DR. DANIEL: No, I just think it's the right thing to do for the fishery, but the ones that don't have a size limit are the bonnetheads and the sharpnose and the smooth dogs, which are

already there. What I'm adding is the finetooths and the blacknose, which are the other two members of the four-species complex of small coastal sharks. That's the intent of the motion.

CHAIRMAN SMITH: New lesson for the chairman; I'll just call for a vote the next time because we're just about concluded and I think I know how we're going to vote on this. Roy and then we're going to call for a vote.

MR. MILLER: Mr. Chairman, I'm going to withdraw my second because of the 4 feet as opposed to 4.5. Thank you.

CHAIRMAN SMITH: Okay, the motion needs a seconder or it dies for lack of a second. Is there a second to the motion? Okay, seeing none, we have no motion on this subject. Is there a motion on Section 4.2.3? Louis.

DR. DANIEL: I'll remake my motion with 4.5 if I can get my second back.

CHAIRMAN SMITH: 15AOkay, the motion is now 4.5 foot length and no size limit for small coastal sharks or smooth dogfish. Comment on that motion? Robert Boyles.

MR. ROBERT H. BOYLES, JR.: I'll just second it.

CHAIRMAN SMITH: Okay, further discussion on the motion? Tom.

MR. O'CONNELL: I just want to clarify that still doesn't address the enforcement issue; is that correct?

CHAIRMAN SMITH: Only if there are some small coastals where there is a federal size limit and then there would be no size limit. Pat.

MR. AUGUSTINE: Yes, I'd almost want to amend that motion. I would support it if we got rid of small coastal sharks and just added finetooth and I'm not sure about the blackfin. The blackfin was the one that was a major concern – blacknose.

DR. DANIEL: Well, the last time it was finetooths were the concern. I mean, you know, it's pretty schizophrenic, the status of these shark populations, so I'd like to keep small coastal sharks in that motion.

CHAIRMAN SMITH: The time commitments being what they are, I'm going to call for a vote. The motion is Option A as amended as follows: Sharks caught in the recreational fishery must have a fork length of at least 4.5 feet. There would be no size limit for small coastal sharks or smooth dogfish. All those in favor, raise your hand, 11; all those opposed, 1; abstentions, 2; null votes. The motion carries.

Section 4.2.4, authorized recreational gear, the bottom of that page, three options; handline rod and reel or handline rod and reel and circle hooks or no gear restrictions. Is there a motion? Pat.

MR. AUGUSTINE: Move Option A at 4.2.4, authorized recreational gear.

CHAIRMAN SMITH: Second by Spud Woodward. Comment on the motion? David.

DR. PIERCE: This is not the same option recommended by the technical committee, correct? I'm just wondering if the technical committee has anything they would like to say regarding this particular motion since it's not the same, I don't think.

CHAIRMAN SMITH: If the technical committee chairman wants to raise his hand, he will.

DR. MUSICK: What is your question, David?

DR. PIERCE: I have no question, Jack.

CHAIRMAN SMITH: Okay, the motion on the floor is for Option A. Any comment? Any disagreement with the motion? Seeing none, the motion carries for Option A. The next item is 4.2.6, recreational shore angler possession limits. Now read these in context, that whole page, because there is a shore angler possession limit, and then there is the vessel fishing possession limits. You need to appreciate the distinctions in there. We will take them in order, so this is 4.2.6, shore angler possession limits. Is there a motion? Louis Daniel.

DR. DANIEL: Option A, to be consistent with the federal regulations.

CHAIRMAN SMITH: The motion is for Option A; is there a second. Pat Augustine. Discussion on the motion? Seeing none, is there objection to the motion? Seeing none, the motion carries.

Section 4.2.7; is there a motion on the vessel fishing possession limits?

DR. DANIEL: Move Option A.

CHAIRMAN SMITH: Option A is moved by Louis Daniel; second, Pat Augustine. Discussion on the motion? John.

CAPTAIN TULIK: The issue of the island fishing where a boatload of fishers go out to an island, catch them from land, comes back in on a boat and claims them, and there are four sharks on it. I'd just like to say that if the shark touches the boat, they're bound by the one fish.

CHAIRMAN SMITH: That would be how I would think that this plan would address it. You are boat-assisted so you're a boat-permitted fisherman. Otherwise, you've got a loophole a mile wide. Is there any disagreement with that interpretation? Okay, Roy.

MR. MILLER: Thank you, Mr. Chairman. I object to this motion because as I read this a party boat, for instance, or a charterboat could only keep one smooth dogfish per day, as I read this; or, am I reading it wrong?

CHAIRMAN SMITH: Chris, do you want to clarify that?

MR. VONDERWEIDT: This one is a little bit tricky because the way it's allocated, the large coastals, small coastals and the pelagics are allocated to a vessel so there is basically a maximum of one of those per vessel. Now on top of that each angler can keep a sharpnose plus a bonnethead plus a smooth dogfish, and so it's tricky when you're trying to do that for shore fishermen versus the boat fishermen. Each angler could potentially keep four sharks if they got the large coastals that the boat was allocated, so, no, it's more than just one.

CHAIRMAN SMITH: It sounds like ten people on a boat get 31 fish.

MR. VONDERWEIDT: Yes.

CHAIRMAN SMITH: Questions or disagreement on the motion? Seeing none, is there objection to the motion? Seeing none, the 18B-motion carries for Option A. We're on Page 2; we're halfway home. We're starting with commercial fishery measures now on Page

106, Section 4.3. The first issue is commercial fisheries management measures.

There are no options here, so the question is do you like the language as written or would you like to do something different? Is there a motion? Dennis Damon moves to go as is; Pat Augustine seconds. Is there discussion or disagreement on the motion? Okay, seeing none, without objection the motion carries.

Item 17 is Section 4.3.2. Because we dealt with regions earlier, and this where we're bouncing back and forth with sequences, so at the bottom of Page 106, seasons, there are no alternatives. It's to provide flexibility. Is there disagreement with what is written? Okay, without disagreement or objection we'll simply retain the language or 4.3.2. The next item is Item 18, Section 4.3.3.2.

MR. VONDERWEIDT: Can I clarify this one?

CHAIRMAN SMITH: You sure can; Chris is going to clarify something.

MR. VONDERWEIDT: Just to clear this up, the board voted to open and close with the federal quotas, which means we would remove any payback of quota overages because we're not setting an actual quota to be distributed.

CHAIRMAN SMITH: Okay, so Items 18 and 19 we do not need to deal with.

MR. VONDERWEIDT: We're going to do regions.

CHAIRMAN SMITH: Right, thanks. Okay, we're on Item 20, Section 4.3.4.1, permit requirements, at the top of Page 109. There are three options. Is there a motion? Louis Daniel.

DR. DANIEL: Option C.

CHAIRMAN SMITH: The motion is for Option C, no permit is required to commercially harvest sharks from a vessel in state waters. That's the motion; is there a second? Robert Boyles, okay.

DR. DANIEL: Mr. Chairman, for clarification, we've got licenses. Is this suggesting that we have to go back home and set up a permit system in state waters? I mean, because if permit means state commercial fishing license, I'm absolutely

for that, but I'm concerned about having to go back and set up a permit.

CHAIRMAN SMITH: Right, Chris has got a clarification on that.

MR. VONDERWEIDT: Thank you, Mr. Chairman. This is for all fishermen and not just vessel fishermen I think was the intent. I apologize for that. Basically, I think the intent of this is North Carolina would just have to tack on sharks to existing commercial permits. If it's by gear type or by species group, you would do it that way, so you would need a gill net permit if you intend to use a gill net or however is convenient for states –

CHAIRMAN SMITH: I take this to mean a license and a permit in this context is synonymous. You have to have whatever it is your state issues to allow the harvest of those species.

DR. DANIEL: I withdraw my motion.

CHAIRMAN SMITH: Thank you. There is no motion then, but we do have three choices. Is there a motion? Pat Augustine.

MR. AUGUSTINE: I would move for Option A, a commercial shark fisherman must hold a state commercial – could we say “permit” or “license”? That would accommodate the North Carolina situation in order to commercially harvest sharks in state waters.

CHAIRMAN SMITH: Option A as amended would be a commercial shark fisherman must hold a state permit or license in order to commercially harvest sharks in state waters?

MR. AUGUSTINE: Yes.

CHAIRMAN SMITH: Pat White seconds. Okay, that's the motion. Is there comment? Peter.

MR. HIMCHAK: I was going to support Option B, actually. We have no state permit – I mean, we license the gear but we would have no accountability for the shark harvest taken in state waters, so it would be our preference to have the sharks caught in state waters, have those fishermen have a federal permit.

CHAIRMAN SMITH: But you just said you have a gear permit that allows the taking of sharks?

MR. HIMCHAK: Yes, but I mean we have a gear permit for gill netting, but there is no mandatory reporting. We had an incident where they were catching a lot of thresher sharks a year ago in gill nets nearshore and nobody knew if they needed a permit or not or had to account for the landings. So since we don't have a state permit, we would require that in order for them to land the shark that they would have a federal permit, and then it would be reported through the federal dealers through SAFIS.

CHAIRMAN SMITH: A gear permit that would allow the taking of shark species would count. You'd get at the reporting of landings through the dealer reports. Does that satisfy your concern or do you think it still – if you want Option B, you have to offer a motion to substitute because we've got a motion on the floor.

MR. HIMCHAK: Well, I would offer a motion to substitute for Option B.

CHAIRMAN SMITH: Hang on one second and see if we can clear it up.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: After consulting with Chris, Mr. Chairman, your statement was that it was your belief that New Jersey's concern would be addressed and considered within Option A; is that what you said?

CHAIRMAN SMITH: Pete, before we go to the effort of the substitute motion, do you understand that Option A, your gear license that allows the harvesting of sharks would count, would qualify under Option A, and the landings reporting that you're worried about where you know somebody is taking them but you're not getting reports, that would be picked up by the dealers?

MR. HIMCHAK: Yes, as long as they were required to sell to federally permitted dealers.

CHAIRMAN SMITH: We already did that, so we're covered. The motion is Option A. Is there objection to Option A with the words “permit or license” in there? Okay, without objection

Option A carries. We are at 4.3.4.2, display and research permits. John.

CAPTAIN TULIK: I'm kind of new at this and don't know the proper procedure here. I hate to do this but going back to 4.3, not from a law enforcement perspective, but from a fisher perspective, I get this question all the time up north and I don't know if this would be a concern down south for the shark fishery, but under 4.3.1 they have sold a shark caught in state waters during a given fishing year. The question I always get up north is can I take my family out fishing on a Sunday recreationally fishing? I think this is in direct conflict with that, and I know I can't go back.

CHAIRMAN SMITH: This is commercial only.

CAPTAIN TULIK: I understand. That definition just worries me on that. The second one is fine. I don't know if that's a problem or not, but I get that question all the time up north.

CHAIRMAN SMITH: All right, I'll ask it for the board this way. Now that you've heard that concern, does anyone want to reconsider 4.3? If not, we'll just move on. Okay, we'll move on. Thank you, though, for giving us the second bite. We are at 4.3.4.2, display and research permits, two options. Is there a motion? David Pierce.

DR. PIERCE: I move Option B.

CHAIRMAN SMITH: The motion is Option B, states may grant permits. I noticed there was – yes, that's consistent with one of the written comments from I think it was a fellow involved in the aquarium or science end of things that was appealing for the states to be able to do that, so there is not an inconsistency there. Okay, the motion is for Option B; is there a second. Dennis Damon. Is there discussion on the motion? Objection to the motion? Seeing none, the motion carries for Option B under display and research permits.

The next item, but we are racing along, Item 22, Section 4.3.4.4, authorized commercial gear on Page 110 and 111. Okay, there are eight options, and they are up there with how the various groups looked at them. Is there a motion on commercial gear to be authorized? Peter Himchak.

MR. HIMCHAK: It's my understanding that the advisory panel is strongly recommending the addition of gaffs and tailropes so that they would not encounter any enforcement problem.

CHAIRMAN SMITH: Yes, I wanted to ask Margo that. Is that a problem because it's not a harvesting gear, it's simply how you get the fish that you caught on to the boat. Do the federal rules prohibit the use of a gaff and a tailrope?

MS. SCHULZE-HAUGEN: No, we classify them as secondary gears and only list authorized gears that are considered primary where you're catching them. Anything that's used to assist in subduing the animal or bringing it on board is not in that authorization list.

MR. G. RITCHIE WHITE: Would that mean harpoons then would be eliminated?

CHAIRMAN SMITH: That would be a primary gear.

MR. R. WHITE: A tuna fish fisherman has a harpoon; they can harpoon sharks.

CHAIRMAN SMITH: Yes, but I understood Margo to say a harpoon would be a primary gear.

MS. SCHULZE-HAUGEN: Correct and a harpoon as authorized for tuna is not for sharks.

CHAIRMAN SMITH: We do not have a motion; is there a motion? Louis.

DR. DANIEL: If we can go back to the list, I'm going to make a motion that we accept all those except longlines. I just feel that in the restricted areas of state waters, a true longline could cause some real problems in state waters.

CHAIRMAN SMITH: Okay, a motion has been made; is there a second? Robert Boyles. The motion is for all gear that was on the list and in your document, all eight, I think, items, except for longlines. Discussion on the motion? David Pierce.

DR. PIERCE: In going over some of the public comment that we received and in talking to some fishermen in my state who tub trawl for spiny dogfish and who would like to tub trawl for smooth dogfish potentially in the future, by not having longlines as an option we potentially foreclose that possibility. Right now in our state

we don't have a directed fishery for smooth dogfish, and we have a 100-pound possession limit.

We stopped the fishery from even beginning. However, we are going to have on July 1 an experimental fishery through a letter of authorization to allow a small number of fishermen, with observers on board, division observers on board, to fish tub trawls. I understand the concern about longlines. In other words, longlines that might be typical of those fish in federal waters, longlines are going for miles and miles.

In our particular case we're looking at something entirely different. I can't say whether we would not, but potentially, depending upon the results of this experimental fishery we might want to allow a very small-scale directed fishery on smooth dogfish. We don't have a fishery now, but there are fisheries in other states. We would be affording our fishermen that opportunity, but with this particular prohibition; that is, no longlines used, then that option would be foreclosed. I'd like to make a –

CHAIRMAN SMITH: Before you do, let me ask a question. Is the definition of shortlines; does that solve your problem, at the top of Page 111?

DR. PIERCE: No, because it is too short. It's 50 or fewer hooks measuring less than 50 yards in length, so that would be too short.

CHAIRMAN SMITH: 500 yards.

DR. PIERCE: 500 yards; well, I'm responding to, again, the concern that was expressed by commercial fishermen who have noted that this would not be consistent with the type of gear that they would want to fish. Actually it's not the type of gear that we were considering for this experimental fishery inside our waters. Therefore, I would make a motion to amend, and it would be – all right, move to include in the list gear that is allowed for the taking of – legal gear for commercial shark fishermen to include non-automated, hand-baited benthic tub trawls – in parentheses, “benthic longlines”.

CHAIRMAN SMITH: Could it be a simpler solution if you tell us how long these longlines are intended to be and we simply said in Option

E, leave it in and say “longlines not exceed some length”?

DR. PIERCE: The problem is we haven't yet done the experimental fishery. We haven't got to the point where we would know what length of line would be appropriate, so that's what puts me in a bit of fix. Again, this particular option would be extremely restrictive in that it would definitely indicate to those who would want to longline, in particular smooth dogfish, that they would be obliged to use non-automated and hand-baited tub trawls.

CHAIRMAN SMITH: Okay, so the motion has been made to include – the main motion excludes longlines. The amendment would be to include as a revised Option E non-automated, hand-baited tub trawls, which there will be a footnote to describe all of that. Is there a second to the motion? Lance Stewart seconds. Okay, so the motion is on the floor to amend to add “non-automated, hand-baited tub trawls”. Disagreement or comments? Louis.

DR. DANIEL: Well, both. I guess I would just ask that if this is something that Massachusetts wants to pursue, that they come back with a specific definition once they get their stuff figured out. I think this leaves a loophole for all the other areas. I mean, I don't know what a benthic tub trawl is. I have never heard of one, so I have no idea what I'm voting to include, number one. Number 2, if the shortline definitions don't cover it, then that concerns me about how that may be used elsewhere. I speak in opposition to the motion.

MR. PATTEN D. WHITE: Yes, for somewhat the same reasons, I would object to it. I think the people that you're going to get interested in doing this kind of fishery initially are the people that are set up for it. I think to exclude the automated guys that are set up for whether it be short of longlining I think is unfortunate.

MR. R. WHITE: Question; non-automated, this is totally a hand-gear operation?

CHAIRMAN SMITH: Okay, other comments on the motion? Since this is an amendment to a motion and I see a hand in the audience, I'm going to go back to my rule and say it's a new issue beyond the hearings. Sir, do you want to come up and comment?



MR. ERIC BRAZER: Thank you very much, Mr. Chairman. My name is Eric Brazer. I work for the Cape Cod Commercial Hook Fisherman's Association. We represent traditional small day boat fleets on Cape Cod. I wanted to offer some clarification about the definition that Dr. Pierce has presented.

Benthic tub trawls are an incredibly artesional fishery that still exists in Cape Cod. We're talking about benthic tub trawl longline gear. The main line is braided parachute cord. The gangions are shrimp twine. This gear is coiled into bundles and loaded on board the vessel and actually sets from the vessel in fish totes. It's non-automated. It's hand baited on shore. It's a very small-scale, very traditional fishery.

The phrase "tub trawl" isn't often used, to my knowledge, outside of New England. It more fits the gear type than referring to it as a benthic longline. In fact, it is a benthic longline, but it's a tub trawl because it is set from tubs on board the vessel. We fully support the use of this and we hope that you approve this. I'm willing to answer any questions anybody has regarding a more detailed definition of the gear type. Thank you.

CHAIRMAN SMITH: David Pierce, for the rest of us not from Cape Cod, would it be clearer to say "non-automated, hand-baited benthic longline"? Then everybody is going to under the gear.

DR. PIERCE: Yes, sure.

CHAIRMAN SMITH: Okay, does that solve a little bit of the concern.

MR. STEVEN G. BOWMAN: There is still the question from the witness if he can tell me how long this specific piece of apparatus is. I haven't heard that yet.

MR. BRAZER: No problem. Each fish tote is referred to as a bundle and each bundle contains roughly 300 hooks spread between four and six feet apart.

CHAIRMAN SMITH: How long is one bundle?

MR. BRAZER: I guess roughly whatever the mass would be, 1,500 to 1,800 feet, 300 hooks, three to six feet between each hook.

CHAIRMAN SMITH: 1,500 feet is 500 yards. It takes me a while and it's late in the day, but that's why I asked about the shortline definition before. Is it 500 yards about?

MR. BRAZER: Roughly, yes. However, these bundles are set strung together based on the area fished, based on the congregation of fish, so a fishermen may be setting two or three or four more bundles, depending on the area.

CHAIRMAN SMITH: Tied together?

MR. BRAZER: Correct.

CHAIRMAN SMITH: Yes, okay. What is your pleasure? Dennis.

SENATOR DAMON: Thank you, Mr. Chairman. Just to further complicate this, each one of these tubs is about 1,500 feet, and it's fine gear if the gangions are about three feet apart, and it's not that if they're longer apart than that which you'd typically use for halibut. But it is also true that you can attach these end to end and so with tub of 1,500 feet you could get it to 3,000 feet, 4,500 exact. So, if you wanted to put some kind of a limit – if the issue is how long one of these things can be in total, you could limit the number of tubs; or if that doesn't make a difference, then I think the motion that's there now would be fine.

CHAIRMAN SMITH: Other comments on the motion? Pat.

MR. AUGUSTINE: So, if it gets beyond 500 yards and 50 or fewer hooks, it becomes a longline, so then does it qualify as a longline and does that meet the standard as described by the National Marine Fisheries Service? If you were to hook two of them together, you would have a longline because it's more than 500

I guess we need to know from NMFS would this be qualified as a longline, a full longline; and if so, then we should describe that it they were hooked or they could be hooked not in tandem but connected two or three tubs together. Just clarification; if we're going to have it in here, the public doesn't know what a hand-baited benthic longline is.

CHAIRMAN SMITH: The chairman reads this amendment as crashing and burning unless we fix it in about 30 seconds. Can we limit it to be

not more than 500 yards in length, and that means they may have to adjust how they fish a little so that they don't tie them together; or, you can simply say that you're basically going to allow tying them together and making effectively a longline, benthic longline. Lance.

DR. LANCE STEWART: I think this affects a very traditional fishery in the northeast. Essentially cod longlines are fished benthically for 200 years. I think the big difference in the longline definition is when I look at longlines I think of pelagic drifting longlines or the ones that float off the bottom. Those are the ones that I think are of concern here so these benthic longlines are not, in my definition, the same thing.

CHAIRMAN SMITH: If it's on the bottom, does it qualify as a longline for purposes of shark management?

MS. SCHULZE-HAUGEN: Yes, in our definition.

CHAIRMAN SMITH: Is there any further comment on the motion to amend?

DR. DANIEL: I mean, if you go Option F and look at the shortlines, it allows you two per vessel at 500 yards. I mean, that was the way we had intended to control it.

MR. TERRY STOCKWELL: Thank you, Mr. Chair. I like the intent of the motion here, but a question I have and clarification I guess for David is non-automated; are you referring to no hydraulic hauling because the haulers that are using tub trawls are prevalent?

DR. PIERCE: If I may, Mr. Chairman, could I ask Eric to elaborate since, again, I'm responding to comments that have been provided to me regarding the nature of this fishery in our waters.

MR. BRAZER: Thank you very much. Non-automated would refer to essentially the baiting and the setting. The hauling would still be done with a traditional hydraulic, essentially a lobster trap pot hauler.

CHAIRMAN SMITH: Okay, if this amendment fails, I understand that under an experimental fishing permit probably you'd get some relief to run your experiment independent of the plan provisions, as least from the federal rules. We

might have to make that same consideration for the commission plan for an experiment.

As Lou Daniel pointed out, then you could come back in the future and request that a certain gear type, once you figure out how you want to configure it, how long and so forth, the parameters, then you could add that back in as a gear. So there are a couple of ways to go here, but right there is a motion to amend on the floor, and it's been seconded.

Without further comment, I think we need to dispense with it. We're running out of time fast. I'm going to take a vote on this one. Okay, caucus for moment and then we'll take a vote on the amendment. I'll read the motion to amend: Include in the list of authorized commercial gear is a motion to amend to include non-automated, hand-baited benthic longlines. Pat and Ritchie.

MR. P. WHITE: Just a point of clarification, Mr. Chairman. Based on the testimony, are we going to just change that wording to "non-automated, baited benthic" so they can still be hauled hydraulically?

CHAIRMAN SMITH: I'll suggest this for clarification and see if it solves the problem, "non-automated, baited, hydraulically hauled benthic longlines. Is that your intent, David and Eric?

MR. BRAZER: Thank you again, Mr. Chairman. I'll make this brief. I believe we want to make the distinction between "hand-baited" and "baited" because there are essentially automatic baiters out there, snag baiters, that would facilitate the baiting and essentially allow you to rebait gear on the vessel. That's not what we're looking at.

CHAIRMAN SMITH: You want "hand-baited"?

MR. BRAZER: Hand-baited, yes.

CHAIRMAN SMITH: Okay, add "hand" dash before "baited" and then "hydraulically hauled". All right, that's the motion to amend. All those in favor, raise your hand; all those opposed; abstentions; null votes. Okay, the motion fails 5 to 8 to 2. That was the amendment. We're still on the motion which is the list of eight gears minus longlines. Any further discussion on the motion? Margo.

MS. SCHULZE-HAUGEN: Can I get a point of clarification that this applies to gear set in state waters as opposed to fish caught on this gear, so that fish caught on gears authorized in federal waters could still be transported through.

CHAIRMAN SMITH: Gears used is usually in the waters; possession of a species or not – if you want it to be enforceable, it's regardless of where or how taken, so it would be gear use in the waters is the way I would think. Is that the intent of the motion?

MS. SCHULZE-HAUGEN: I guess the current motion with exempted and not including longlines; that is authorized in federal waters and is used significantly. I am wondering by not being authorized in state waters, does that preclude the ability in federal waters to use longlines for sharks or is it a setting requirement and an on-board possession requirement?

CHAIRMAN SMITH: Well, I am looking to Louis because it's his motion, but it would seem to me if you legally caught fish with longline in the EEZ and simply wanted to bring it home, the way this is worded this would not prohibit you from bringing those legally caught fish home unless a state prohibited it, which they could always choose to do as a landing restriction.

DR. DANIEL: The intent was not to prohibit the use of legal gear in the EEZ to catch a shark. It's to avoid setting that gear in state waters.

CHAIRMAN SMITH: Okay, we're on the main motion to take longlines out of this. All those in favor; raise your hand; all those opposed; abstentions; null. The motion carries 11, 3 to 1. Item 23, Section 4.3.4.5, is bycatch reduction measures, Page 111. There are two options. You could do them both. They're not mutually exclusive.

One of them is regarding circle hooks and so forth, and the other one is about gill nets. On this one you're going to have a motion that could be to accept A or B or both or do nothing. These options would apply to the directed commercial shark vessel. Louis.

DR. DANIEL: One way around the enforcement concern on Option B, which is checking every two hours, might be to tend those nets, which is a little different than checking them every two hours, but at least attendance keeps them from

just sitting out there for long periods of time without being manned. That number, that 2.5 kilometers seems like an awful long piece of net for what we're trying to do.

Then I would also say if we do Option A we're going to have to take all the longline references out. But, to move it along, I'll move Option A, including Option A with bottom longline and pelagic longline references removed; and Option B with the modification that nets must be attended instead of checked every two hours.

CHAIRMAN SMITH: Option A was referenced the longlines removed and Option B is the requirement that such nets must be tended. Second to the motion? Peter Himchak. Discussion on the motion? Roy.

MR. MILLER: Mr. Chairman, I think I have an objection to Option B. This precludes anchored gill nets, but to my mind my question is what constitutes a directed commercial shark vessel? Can you define what a directed vessel is?

MR. VONDERWEIDT: This would go back to the definition of a commercial fisherman, which was one of the two criteria that you've sold a shark during a given fishing year or you have a shark on the boat that you plan on selling. As you'll see down at the bottom, it says "add threshold for incidental fishermen", so there are fishermen that you are going to – black drum fishermen, for example, might set their nets overnight and they might catch a few sharks.

They're going to have to throw these away under Option B. What was suggested by the technical committee is to add a threshold for the incidental fisherman. Now under the new Amendment 2 Final Environmental Impact Statement, they have a three-fish limit for incidental fishermen, so one suggestion would be that if you catch more than three sharks you have to follow the bycatch reduction measures because that would make you directed. If you have less than three, you're considered incidental. That's kind of the threshold that the National Marine Fisheries Service came up with. Hopefully, that answers your question.

MR. MILLER: Well, thank you, Chris, that was a long answer to a short question. Let me make sure I understood your answer. Are you saying that somewhere in this document it says that if you catch three or fewer sharks in gill nets set

for, say, black drum, then you don't have to abide by this restriction to tend your net every two hours; that you can use overnight set gear?

MR. VONDERWEIDT: I'm saying that was a suggestion from the technical committee, which would take care of your previous concern potentially about the black drum fishery or other gill nets, if I see where you're going.

MR. MILLER: Well, I still don't know. I still don't know exactly if our fishermen who fish for black drum, if this passes, would be required to check the nets every two hours?

CHAIRMAN SMITH: They would have to tend the nets. They would have to stay on them.

MR. MILLER: In which case I object to the motion.

MR. P. WHITE: I guess I may have two questions, but my first question is what does "attend" or "tend" mean? With what you just said, it doesn't mean there are any specific requirements as to hauling. They just have to sit on it. If that's case, I have an objection to that, too.

CHAIRMAN SMITH: Louis, what's your intention with the motion?

DR. DANIEL: The attendance requirements we have in North Carolina say that you have to be within a hundred yards of either end of your net, and we require that in many of our fisheries inside.

MR. P. WHITE: But there is no requirement if it has to be hauled?

DR. DANIEL: That's right. What it does is it takes gear out of the water.

MR. TERRY STOCKWELL: Pat just asked my question.

CHAIRMAN SMITH: Okay, that clarified that one point. Margo and then Pat.

MS. SCHULZE-HAUGEN: Just a couple of things. The net checks every two hours is derived from the Atlantic Large Whale Take Reduction Plan regulations for shark fishermen, so that's the basis in the federal regulations for folks to know. I'm wondering about the same

issue with the shortline-only attendance at the bycatch reduction workshops, wondering if we have an estimate of the number of shortline fishermen that may need to be incorporated for budgetary purposes.

CHAIRMAN SMITH: It sounds like it's two.

MS. SCHULZE-HAUGEN: Two, okay.

CHAIRMAN SMITH: It's a very small number. The first point you made, though, could you remind me of that?

MS. SCHULZE-HAUGEN: Our regulations include the net checks every two hours based on the Atlantic Large Whale Take Reduction Plan regulations. Just a point of clarification on its origin, and I believe the 2.5 kilometers is implementing the drift net moratorium. It is a big net.

CHAIRMAN SMITH: But for the EEZ there is nothing wrong with that and with this measure in state waters? I mean, they won't conflict with one another. Pat, did you have a point?

MR. AUGUSTINE: My point was I wanted to amend the motion. I wanted to go back to Option A as described in the piece. If you want rationale, I'll go for it.

CHAIRMAN SMITH: Well, what is the motion to amend first?

MR. AUGUSTINE: For a change, we needed to go ahead and not do Part A, Part A where we removed longlines, and Option B the requirement that such has to be tended. I go back with if you're a commercial fisherman full-time and directed, that you would be required to have the necessary release equipment that is required for disentanglement and so on. That's what Option A is without taking out longline, shortline – I'm sorry, Louis said he wanted to take out all longline references, moved with reference to longline removed.

CHAIRMAN SMITH: Because we took that out of the authorized commercial gears.

MR. AUGUSTINE: Oh, I'm sorry, I'm getting old. Thank you for that.

CHAIRMAN SMITH: Did you have a change to B also?

MR. AUGUSTINE: Yes.

CHAIRMAN SMITH: What was that one?

MR. AUGUSTINE: Well, now I'm not going to even say it because you'll embarrass me again.

CHAIRMAN SMITH: You said you were old; we all agreed.

MR. AUGUSTINE: I had a senior moment, what can I tell you.

CHAIRMAN SMITH: Okay, no motion to amend.

MR. STOCKWELL: I'll make the motion to amend and move to accept Option B as written in the draft. I think it's important to have the state waters consistent with the take reduction team plan.

CHAIRMAN SMITH: Okay, so the motion to amend is to leave Option B as written in the document, which means you check them every two hours but you don't have to sit on them. Okay, second to that motion to amend? Pat Augustine. Any discussion on the motion to amend? John.

CAPTAIN TULIK: It comes back to enforceability. We're not going to sit there for two hours and watch a net.

MR. R. WHITE: How does the enforcement change with the "tend"?

CAPTIAN TULIK: It's much easier. We come up on the net or we come up on the fisher. If they're not within – and you have to come up with a definition of "tend". He said it was a hundred yards in North Carolina. We find a lot of nets without the proper buoy markings and things like that. If we come up and someone is hauling back or just out there waiting, sitting on the net, it's easier, If we come across a gill net area and we see nets, we just don't have the time to wait and see if it's going to be checked within two hours.

MR. JOHN DUREN: I think Dr. Daniel was partly right in his first motion. I move to amend the amendment and include that the gill nets will be tended and hauled every two hours.

CHAIRMAN SMITH: Okay, so we don't need to play parliamentary procedure and not allow an amendment of an amendment, the mover of the amendment has accepted that as friendly improvement to the language. They have to be tended; and if we don't hear anything else, I guess the hundred yard definition is what nobody disagreed with. To make it clear, the motion to amend is the nets have to be tended and they have to be hauled every two hours. That is the motion to amend, and the seconder agrees. That's the motion on the floor. Comments on that motion to amend? Ernest.

MR. BOWDEN: Physically impossible. I mean, it's just as simple as that. Evidently people making these motions have never gill netted. Two and a half kilometers, a net couldn't be pulled in two hours if you had anything in it at all. We don't allow over 1,200 foot in the state of Virginia. I could do that. What do you do in a case where you have multiple nets? You have to haul both of them in two hours. You can't do both at one time.

The federal rules said starting June 1<sup>st</sup> the Bottlenose Dolphin Reduction Plan, which is pertinent – the large whale is not pertinent whatsoever because the only shark would be a white that would be in that colder water when you had large whales. We're talking a summertime fishery. I'm 54 years old; I've been on the water almost every day of my life. I've never seen a whale in June and July except in Sea World one time. I went to Sea World in Florida and I did see one in July, so I did lie. That's the clarification.

The rule – and I'm part of that take reduction team – you had to stay within one-half a mile. And as Louis mentioned earlier, basically what it does is a deterrent to fish. Most people don't want to do it. I have done it numerous times. It's very interesting off Chincoteague because we're a navy seal training area, and they're running around at night, all around you with no running lights.

That does raise your heartbeat and keep you awake. But, it's just physically impossible, and they're not going to be able to enforce it. It's hard enough for them to do it in the daytime, but they come out in the middle of the night and find a net at two o'clock in the morning, you can't stay within a hundred yards of anything if the wind is blowing. You have to just about keep

your boat in gear because you're going to drift a hundred yards in a matter of moments.

The Bottlenose Dolphin Plan is the whole mid-Atlantic, and it goes through the New York Bight, so it already takes all that into consideration. This is a needless thing to add, Option B, because we already have the Bottlenose Dolphin Plan. I just wish that these different agencies would share information so everybody could be on the same page. Chris ought to know this; I shouldn't be bringing it to the committee. This is something that Chris should have brought to the commission. Thank you.

CHAIRMAN SMITH: Okay, we'll forget for a moment about the bashing of staff, which the chairman doesn't allow. I would offer, from the uninformed chairman's point of view, that Ernest's comment reminds me that we should be very careful about late-in-the-day amendments that work in one area and don't work in another. If we want this whole process to work right, we all need to step back sometime, take a deep breath and remember that things are different in different places. Having said that, do we get to pretty much the protections intended with Option B by the bottlenose dolphin rules?

MS. SCHULZE-HAUGEN: Well, the Large Whale Take Reduction Plan applies. You know, bottlenose I'm not as familiar with. I think that's a different area. The primary place where it links the Large Whale Plan and affects shark fishing is in Florida with the drift net boats or drift gill net boats that are down there, so it may not be applicable up and down the coast but it certainly is applicable in Florida.

CHAIRMAN SMITH: We have a motion to amend on the floor, and I'm kind of hoping that somebody is going to have a way out of this morass for us because it clearly isn't going to work in some places and in others it might. John.

MR. DUREN: I think Ernest has made a good point about having all the rules be linked or at least not in conflict with one another. I thought I heard Margo say earlier that in federal waters there was a requirement to check or haul nets every two hours. So if that's a requirement in the federal waters, I guess it's equally silly in the federal waters as it is in the state waters, but it's already a requirement.

Then I don't know what the bottlenose dolphin rules are and I would really like to know what they are. But I made the amendment to the amendment recommendation because of what I heard Margo say about the rules in the federal waters. There is a related point, too, which Dr. Musick made much earlier, which is about the bycatch being such a serious issue on the very threatened species like – maybe I shouldn't use that adjective, but species like the sandbar sharks. I don't know how you're going to keep the sandbar sharks out of the net; so unless you do check them frequently and release them, there is no chance that they're going to survive.

CHAIRMAN SMITH: Okay, hearing all of this, is the mover of the amendment persuaded to do one or the other rather than both? Do you like the amendment as it is?

MR. STOCKWELL: Having suffered through multiple take reduction team meetings, I'm pretty keenly aware that the federal rules go clear to the beach, so I'm not quite sure how we can – you know, Ernest's points were well made. I'm at the mercy of the other commissioners here to help tease this apart. I don't want to overkill it, but what is the simplest solution, Mr. Chairman?

CHAIRMAN SMITH: The simplest solution would go for the consistency of checking them every two hours. I don't that doesn't solve all of his problems, but it solves half of it. Now, I said half, one of two, but it may be that he still has 90 percent of the problem because of following the two hours, but I'll let him speak for himself.

MR. STOCKWELL: I could be unfriendly and haul the "tend" out of there.

CHAIRMAN SMITH: Okay, it's your motion so you can make it anything you want.

MR. STOCKWELL: I'll go for the consistency and withdraw the –

CHAIRMAN SMITH: And just leave the two hours, so in effect your motion is back where it was as written?

MR. STOCKWELL: Correct.

CHAIRMAN SMITH: Okay, does everybody understand, and the seconder agrees, the motion to amend is to leave Option B as written. That still is a two-hour haul cycle. Margo.

MS. SCHULZE-HAUGEN: Just to clarify, the regulations talk about conducting net checks, and I'm not sure that's very well defined.

CHAIRMAN SMITH: It doesn't mean haul them; it means go out and see what is in them?

MS. SCHULZE-HAUGEN: Yes, and I believe – and, Rusty, if you want to help me here – I believe these nets are largely at the surface. They're not that far down and can be lifted without actually the entire thing hauled so you can get a sense of what's in the net without actually removing all of it.

CHAIRMAN SMITH: Okay, the motion to amend is leave the language as it is. It would require people to have nets that are 2.5 kilometers or less, shorter than 2.5 kilometers, and they've got to check them every two hours, consistent with the EEZ rule. Okay, if everybody understands that motion, is there objection to the motion? Bill Adler.

MR. ADLER: I object to the motion.

CHAIRMAN SMITH: Okay, without other objection, we'll call – would you like a vote or we'll just say it's got one objection noted, and the motion carries. I will call for the vote if you wish. I see no hands. Okay, so the motion carries. Now, the main motion is accept Option A with reference to longline removed and Option B as written. That's the main motion. Is there disagreement with the main motion? Bill Adler.

MR. ADLER: I object to the motion.

CHAIRMAN SMITH: Okay, one objection to the main motion noted.

REPRESENTATIVE DENNIS ABBOTT: Just a procedural question; Commissioner Adler objects, but is he objecting as an individual or is he objecting as the Commonwealth of Massachusetts.

MR. ADLER: I am objecting as the Commonwealth of Massachusetts. It was sort of like a vote. We would have objected and that's why I –

CHAIRMAN SMITH: Yes, I'm preoccupied with time, and that's a good point, though. If the other two members of the delegation don't strangle him and tie him down, I'd call it

Massachusetts. Pierce and Calomo are on their own trying to tackle Adler to the ground, by the way. Okay, so that main motion, then, passes.

Now, we are at finning and identification, Item 24, Section 4.3.4.6, the bottom of Page 111. No options; the real issue is defined in the italicized language, if I understand it correctly. All sharks harvested by commercial fishermen within state boundaries must have heads, tails and fins attached naturally to the carcass – I never quite understood that – through landing. Peter Himchak.

MR. HIMCHAK: Mr. Chairman, we discussed this earlier on the ability to remove the head in federal waters. Essentially the language in this ASMFC plan would preclude the ability of fishermen in the EEZ waters to remove the heads of the sharks. They would have to land them whole. Is that not correct?

CHAIRMAN SMITH: The head was there for the size limit, and we didn't pass size limits. No size limit in the commercial fisheries for possession. This was commercial. I'm sorry, yes, this is commercial. Okay, do you like the language under 4.3.4.6 or would you like to change it?

MR. BOWDEN: I'm becoming a pain; I've been here for years and –

CHAIRMAN SMITH: No, you aren't because you're educating us; don't be bashful.

MR. BOWDEN: On the finning issue, the problem you have with it is if you have to leave the petrels on, that means you have to leave the belly on because they're not actually attached to the carcass, per se. They're lower. So we get back to the mixed-use marina business where you come in and you're going to have to cut the bellies and stuff off and discard them somewhere.

You can't discard them overboard so you're going to have to put them upland. You're not going to be in that marine very long probably. Inshore boats like myself are small vessels. Mine is 35 foot. A lot of times I'm going to have to cut a fish in half to ice it or come in with something that's so poor quality I have to throw it away. We depend on low catches but high quality.

I seldom get under 90 cents or a dollar for my meat. If I have to leave fins on, it's definitely going to make it very bad. I could leave the dorsal fin on but if you have to leave the petrels and you have to clean, we call it the bloodline – I don't know the real name – in the body cavity, if you leave that in there, the urine goes through the meat and it's ruined. Basically, we're going to have to remove the petrels. We can get away with leaving the dorsal.

CHAIRMAN SMITH: Is there a problem created with the federal – I recognize this issue is just a cocked weapon pointing at whoever has the temerity to suggest otherwise, but what kind of conflict would we have with federal rules, whether executive orders or fishery management plan rules, if this plan said we accommodate that point, leave pelvic fins on – or you can take those off but you can leave – I'm sorry, can leave those on and all the other ones can't be finned – what kind of problem do we create trying to accommodate his need as he has expressed it with a national sentiment, if you will, that we can't allow finning?

MS. SCHULZE-HAUGEN: Well, from a straight-out enforcement of the regulations, the federal permit condition would apply to those that have federal permits regardless of where they're fishing. In this case the state regulations I believe would be interpreted to be less restrictive, so the federal rules would apply to federal permit holders.

You know, the reason that we have moved forward with all fins on is due to the continuing enforcement cases and prevalence of finning that's occurring and the ID problems that are complicating stock assessments and quota monitoring. We've heard this comment a lot. It's something that we weighed very heavily; and as the EIS attributes, we are at this point preferring to move forward with all fins attached for some of those very serious concerns.

You know, this isn't going to be 4,000 pounds of shark coming back anymore. It's 33 individuals for the directed permit holders, and the inconvenience and the docktime and processing time was deemed to be worth the ID and enforcement benefits. That's about what I can say at this point.

MR. AUGUSTINE: Thank you, Mr. Chairman. The enforcement people, as we understand it

through the advisory panel process we went through back a couple of months ago, would think that if you have a 5 percent rule and that the fins can only weight approximately – and there are some allowances – 5 percent of the total carcass weight. Part of the problem was if you bring in a mismatch; in other words, you could bring in a pair of fins, but if they're disconnected they could be off another shark.

Therefore, you not only lose the identification – and that was enforcement's biggest concern, but more importantly to make sure that we are getting true identification of sharks, it was mentioned by the advisory panel and agreed to by the whole HMS Advisory Panel that it would be very, very difficult to go for a hundred percent identification.

Rusty presented his case and the North Carolina fishermen presented their case where larger sharks often have fins that weigh more than 5 percent, and those folks have been ticketed for it; whereas, had they just had to supply a pair of fins with a carcass there wouldn't have been a problem. I like to see this stay in there that the sharks have their fins attached. I know it does create problems.

It was discussed by all commercial fishermen around the table, but if we're going to do this, let's do it right and let's not try to skirt at this point in time the issue that we're trying address, shark identification, have attached heads as difficult as it is. We've shark fished a lot of years and find it's a problem along with the fins. So, I would support that we have the whole shark come in gutted and if possible get the bloodline out, which I know is very difficult, Ernie. That's my comment on it.

DR. PIERCE: Species identification obviously is quite critical. In looking at 4.3.4.6, it seems that Option B does the trick. It says very specifically that NMFS had developed a guide that can positively identify any Atlantic coast shark species, retaining the second dorsal fin and anal fin, so I would move adoption of Option B.

CHAIRMAN SMITH: There are no options under 4.3.4.6. We're into finning and identification. Do you have a different document?

DR. PIERCE: Mine is in a different document. My 4.3.4.6 says shark identification.



CHAIRMAN SMITH: We're working from the handout that has the header "Chapter 4 of Draft for Public Comment". That must have been amended between the public hearing draft and where we are today. I mentioned that earlier, but you came in later. Jack.

DR. MUSICK: We, at the technical committee, discussed this at length. And to clarify some things that maybe Ernie doesn't know or maybe he does, by the fins attached we mean that there is still some attachment; that the fins can be cut so that they can be bent over so the carcasses will pack a little bit more efficiently. There is nothing to preclude gutting and bleeding these fish at sea. That can still be done.

CHAIRMAN SMITH: Let me shortstop the debate. His concern is the waste removal problem of the issue with fins attached. That's what I heard you saying. We can't prolong this; we're out of time.

MR. BOWDEN: Basically, we're going to have a lot of waste. And take an example of a big thresher, the fins probably are three foot long on each side. You're going to fold them up, you're going to have to put him in big box, and often I cut them in pieces, sometimes as much as three pieces. If they can't identify them with the dorsal fins, we're going to have to send law enforcement to a school, anyway.

CHAIRMAN SMITH: One more comment and we need to resolve this issue or I'm going to be creating scheduling problems for everybody else. Peter.

MR. HIMCHAK: I'd like to pick up on the theme that Dr. Pierce was talking about, and we're requiring every shark to be sold to a federally permitted dealer that attends the workshops on identifying with the carcasses, and, again, the guide has been developed for identification – we keep worrying about that we're not going to be able to identify the fish, but I think the mechanism exists.

MR. R. WHITE: Motion to approve 4.3.4.6 as written.

CHAIRMAN SMITH: Second by Pat Augustine. Okay, the motion is to approve 4.3.4.6 as written in the document, Chapter 4 of Draft for Public Comment. Chris.

MR. VONDERWEIDT: I know that we're short on time, but just to clarify, this is written through landing, which means – I would like to know if the board means any fish caught in state waters or if they mean in federal waters off of a state they also have to keep the head attached because the head is more restrictive.

Keeping the head on is more restrictive so right now federal commercial fishermen do not have to keep the head on. They can remove it. Once they get into state waters, they would have to; so, if you can't land a shark in state waters without the head being on, this is more restrictive in the EEZ. I just want to make sure that is the intent of the motion and everything, so possibly change landing or specify for state waters.

CHAIRMAN SMITH: So this would mean that a person fishing for sharks in the EEZ that's allowed to take the heads off at sea would have to keep them on in order to come through state waters to land, as written?

MR. VONDERWEIDT: As written.

CHAIRMAN SMITH: I think we'd better rethink that one. That's because of the identification problem?

MR. VONDERWEIDT: The head was kept on because the size limit.

CHAIRMAN SMITH: And we don't have size limits?

MR. VONDERWEIDT: We don't have size limits so it's not –

CHAIRMAN SMITH: So it doesn't need to be there; the head doesn't need to be removed at sea anymore because it was needed for the size limit and there is no size limit requirement. This one should be, at a minimum, with the word "heads" taken out of there. Can we also remove tails?

MR. VONDERWEIDT: Fins and tails have to remain intact.

CHAIRMAN SMITH: Fins and tails attached; take out the word "heads". It helps a little.

MR. VONDERWEIDT: That makes it identical in federal and state.

CHAIRMAN SMITH: Okay, that makes it identical with the federal rule?

MR. VONDERWEIDT: Yes.

CHAIRMAN SMITH: Okay, who else would like to comment on this? Well, it's in the form of a motion. Do you agree with that change?

MR. R. WHITE: I agree with that change to the motion.

CHAIRMAN SMITH: Okay, the motion is to take the word "heads" out of that text. The seconder agrees. Okay, comment on the motion to adopt 4.3.4.6, leaving the word "heads" out? David Pierce.

DR. PIERCE: I know we're moving rapidly and I'm trying to catch up or keep up. Certainly, taking heads out seems to make sense, but the tails and the fins I'm still a bit uncertain about that, especially in light of what I said before, and that is NMFS has this guide to positively identify any Atlantic coastal species, retaining the dorsal fin and the anal fin.

So, why can't we just say "must have the second dorsal fin and anal fin" and leave it at that? Why go through all the rest? They don't need the tails; they don't need the heads and fins. We can be very specific; just say "the second dorsal fin and the anal fin". That would be my suggestion, Mr. Chairman, for a modification to the motion.

CHAIRMAN SMITH: Okay, before I take Margo, do you want to accept that as a friendly amendment or do you want to hear her first?

MR. R. WHITE: I want to hear from Margo.

MS. SCHULZE-HAUGEN: Well, in addition to the ID issues, I referenced the continuing finning that is occurring. We have had a finning ban for 15 years and cases continue to happen. There is mix and match. It's continuing to be a major drain actually on fisheries enforcement. Lots of finning cases are being made. It's a prevalent issue. We moved in this direction largely in part due to repeated requests from enforcement to resolve the issue.

MR. R. WHITE: The motion stands.

CHAIRMAN SMITH: The motion stands as is. The word "head" is removed; tails and fins

remain. Other comments on the motion? Seeing none, is there disagreement with the motion or objection to the motion? David Pierce.

DR. PIERCE: I would move to amend – all right, so I would move to substitute, I guess, to substitute with – to accept as written with the modification in the last line of Page 111, which would read, "Must have carcasses with the second dorsal and anal fin through landing". Therefore, the words "heads, tails and fins attached naturally to the carcass through landing" would be deleted.

CHAIRMAN SMITH: So, you're moving to amend to strike "heads, tails and fins" –

DR. PIERCE: Well, I'm moving to substitute the language that's in 4.3.4.6 right now except to strike the –

CHAIRMAN SMITH: The last line.

DR. PIERCE: -- the italicized last line and substitute for that "carcasses with the second dorsal fin and anal fin through landing".

CHAIRMAN SMITH: Retained through landing?

DR. PIERCE: Yes.

CHAIRMAN SMITH: Okay, that's a motion to substitute. Is there a second? Peter Himchak seconds. Comment on the motion to substitute? Seeing none, all those in favor of the motion to substitute, raise your hand; all those opposed; abstentions; null. Okay, the motion fails 4 to 8; 0 to 0.

That was the substitute; we're back on the main motion as written minus the word "heads". All those in favor, raise your hand; those opposed; abstentions; null. The motion carries 10 to 3 to 0 to 0.

MR. VONDERWEIDT: 25 and 26 are out; 27 is in.

CHAIRMAN SMITH: Okay, 25 and 26 are out, so we're at Item 27, Section 4.4.3, De minimis Fishery Guidelines, Page 114. Is there any objection to the language of how de minimis was carried forward in this document? Okay, seeing no objection we keep that language as is. Item

28, Section 4.5.2, which are measures subject to change. There is a list of 35. David Pierce.

DR. PIERCE: Mr. Chairman, I'd like to add another item to the list. It's a comprehensive list, certainly. In light of the comments I made earlier on about the experimental fishery we'll be having in our waters this year and about my failed attempt to try to have the tub trawls exempted from the prohibition, I would like to add to the list authorized commercial gear; the reason being that I appreciate the problem of the board in that many board members don't know what a tub trawl is and I really couldn't give you the specifics you required to make an informed decision as to whether or not it was a sensible motion to make.

So, we'll be having this experimental fishery this year. We'll be able to take video and pictures and document what goes on and then provide the board, if we choose to do so, because we may not – after we do this experimental fishery, we may decide it's not appropriate. I would like to move to add authorized commercial gear to the list.

CHAIRMAN SMITH: Okay, why don't we just, in Item 20, add the words "including authorization of commercial gears"?

DR. PIERCE: I have no objection to that.

CHAIRMAN SMITH: Any objection to that? Okay, seeing none, we've added that to Item 20. Okay, that concludes this; do we need a motion to accept or are we going to hold off until August to see if there are any changes from the federal – yes, Bob.

MR. ROBERT E. BEAL: I don't think we do need a motion to accept. I think the idea is that based on all the motions that have been made so far the PDT will go back and rework the document. We'll also know where the federal government stands in August. I think the appropriate time to make – the board will have another shot at the document in August and then if they are ready to move forward, they can approve it at that time.

CHAIRMAN SMITH: We will have a brief review in August to be sure that the things we've adopted – we really did talk about this and we intended it to be brief, only addressing issues that might change if the federal rules changes

after their cooling-off period; otherwise, what we voted for today and then we would simply endorse it. Dennis.

REPRESENTATIVE ABBOTT: You said "we"; are you planning on coming back special for that?

CHAIRMAN SMITH: No, no, no, you will have Louis Daniel in this chair in August. That does not conclude our agenda; that concludes the shark issues, I think, coastal sharks. And by the way, right at this point I'm going to say how much I appreciate Chris' efforts in this thing. How he ever – I was quizzing him before, kind of a chairman's briefing type of thing, and I kept hitting him with questions and he had all the answers. He never looked anything up so having a staff member that has this grasp of the subject matter makes my job easy, so I do appreciate that.

### **SPINY DOGFISH QUOTA MANAGEMENT**

We are now on spiny dogfish quota management, Item 7. Chris is going to summarize the issue, but then I'm going to ask Louis or Red to go into a little bit more detail.

MR. VONDERWEIDT: Basically, I'm just going to go through the landings by weight and then by percentage and then look at the regional allocation. There is really no analysis done here. It's just the basic data from the National Marine Fisheries Service Statistics Website. The graph that's up here is just landings by weight from 1981 to 2006 by state.

If you see the gray box, that's when the Spiny Dogfish FMP was implemented. You can see that back in about 1988 Maryland was one of the leading harvesters, and in '89, '90 and '91 was the top harvester. Then around '94 Massachusetts had a large spike as did North Carolina. New Jersey and Maryland were significant in there as well – this is just broken down in half so it's a little bit more readable – Virginia, early on, Massachusetts around '87 and '88 and then Maine, New Jersey, Maryland and Rhode Island to a lesser extent, around 1992.

This is 1981 to 1992 by percentage. Basically, it's the same stuff. Virginia, Massachusetts, Maine, New Jersey, Maryland, Rhode Island were all players in the fishery. 1993 to 2006,

this is by weight, Massachusetts, North Carolina, Maryland, New Jersey and Virginia were all players. It dropped down around 2000 and 2001 from 25 million pounds.

If you look at the actual percentage landings here – and Dr. Daniel prepared a report or the state of North Carolina prepared a report, and this graph is very similar to that. It includes a few more years, but it just kind of shows who took what percentage once the FMP was implemented. I'll just leave that up there for a second.

If you look at the regional agreement in the last couple of years – and I'd be happy to go back to these slides if anybody wants – so the way that this is broken down is 2006 and the 2007 fishing season and 2007 and 2008 fishing season were really the only two years with a regional agreement where trip limits allowed states to harvest the entire quota of dogfish.

I believe there was in '05-'06, but you had 600 Period 1 and 300 Period 2 trip limits, and so it didn't allow fishermen to catch the entire quota. In '06-'07 the south was allocated a quota of 2,520,000 metric tons, and that's up there on the left. They were allowed to harvest 414,543 pounds less than that because the quota was filled before.

There is a north allocation and the south allocation – you can kind of think of this as the biomass reference points, kind of the same principle. Then you'll notice in '07-'08 the northern states' allocation was down to 3,249,364. This was due to overages in the previous fishing season. As a result they had less than their allocation during that fishing season, 392,161 pounds over their allocation, which caused the south to have 332,228 less landings, so this is just kind of what happened with the landings last year, what the allocation was, who landed what. It was closed at 6 million pounds both years when the total quota was landed.

CHAIRMAN SMITH: Do you have a question on the presentation?

DR. PIERCE: Yes. Chris, it's the first time I've seen this, so I'm trying to fathom it and I can't. The overlap of the seasonal splits on top of the geographic splits creates all sorts of confusion. It has for the last few years. My question is the percent set aside for the north – seasons aside –

the percent set aside for the north versus the south; did the north exceed the specific allocation for its region?

MR. VONDERWEIDT: Yes, in the '06-'07 fishing season it's around 650,000 pounds, and then in the '07-'08 it's around 400,000 pounds. It's the number at the top of the blue bar graphs. That would be the overages. It's tricky not having the region or the seasons locked into each other, and so it allows for late reporting, things like that to allow the northern states to overharvest.

Then once those come in, the southern states, the dogfish aren't available so they haven't had a full chance to harvest, so the overall quota gets landed. The Period 1 landings, it could be closed, and then there is late reporting there, so that's going to go against the southern allocation. You know, I think that's just a symptom of the regions and the seasons not being locked in. Like you said it's very confusing and complicated.

DR. PIERCE: I'll have to take a look at the data myself because this surprises me since I know in Massachusetts we closed early in order to ensure, as best anyone can ensure, that the northern allocation was not exceeded. I'll take a look at it, but, again, that was our intent, to close early and not exceed that regional allocation.

CHAIRMAN SMITH: Thank you. Okay, now either Red or Dr. Daniel, do you want to – you had sent out to the board a presentation and a suggestion that we look at a different approach because of the problems you foresaw or perceived in how we've been doing this the last couple of years. I wanted to give you the opportunity to expound on that a little bit. I am sure everybody has read it because dogfish we love.

DR. DANIEL: Thank you, Mr. Chairman, and I appreciate the opportunity to present this information. It's been a big issue in North Carolina, and it got real heated this year when the fishery started and we had to close the fishery down early. At about 100,000 pounds I guess was where we were.

I asked my staff to go back and just kind of look at what the impacts of the plan have been to North Carolina. If you'll look at the letter from me, attached is a review of the coast-wide

landings that were done. If you'll look at Table 1, which was the reference period of 1990 to 1997, you can see what the reference period landings – the percentages allocated to each state were during that reference period.

It's been our assumption that the intent of the plan was to maintain that historical distribution of landings. It was done in kind of a different way with this regional allocation, but the intent was to try to maintain that historical distribution of the catches. Well, if you turn a couple of pages and you go over to Table 2, you'll see that it hasn't worked very well when you look at the Period 1 and the Period 2 landings.

In 2003-2004 Period 1 landed 83 percent as opposed to 58 percent; in '04'05, 83 percent; '05'06, 94 percent. And in 2006-07 it got a little closer at 66.5 percent. So if you look at Table 3 it shows the redistribution of the allocation as a result of the current management strategy. Where Massachusetts has gone from 50 percent to 62 percent, 61.6 percent, North Carolina has dropped from the strong number two player down to about a weak number four or five player in the fishery.

So if you look at Table 4 it kind of shows how the rankings have changed pretty dramatically based on the reference period. We've struggled in North Carolina trying to figure out what is the best way to try to handle this. In talking to various folks around the table, I think the first issue is to make the 58 percent and the 42 percent a hard quota with paybacks from anybody that goes over.

If the northern group goes over their 58 percent, they pay it back; if the southern group goes their 42 percent, they pay it back, but the southern fishery doesn't become disadvantage by an overage in the northern group. That I think is an agreement that we can make, that that is the way we're going to manage this thing from here on out as far as the distributions.

But I think in order to really fix this problem and in order to resolve what I think is a real issue in the long term is going to be going with state-by-state quota shares. If that means we need to look at different reference periods or whatever the case may be to make sure that it's fair across the board, then I would be all for that.

But, for North Carolina to have gone from a strong number two player to a weak number four

or five player and be cut out just basically because of geography raises some real concerns for us. Now, in the near term it appears – because of current regulations in New Jersey being with the federal 600-pound trip limit and they really don't have a dog in the fight right now, so I think for the next year or two we can work with Virginia to make sure that there is some reasonable allocation of that 42 percent.

You know, I understand that Virginia has had the opportunity to increase their harvest and they did, and I don't blame them, but the system is not set up to do what the plan intended, which is to maintain those historical distributions. What I would like to see us to be able to come to an agreement today, if possible, is to move forward with modifying our agreement on how we manage this quota in the regions in the interim while we develop an addendum to this plan to look at state-by-state quota allocations. In fact, I'll make that as a motion, Mr. Chairman, with quota transferability amongst the states so that we can do like we do with bluefish.

CHAIRMAN SMITH: It sounds like you have two parts there. Let me try and tease it apart. The first part of it is we've adopted a regional quota-share system. The first motion is something like we ought to regulate that regional share as hard quotas with paybacks. That's kind of an interim approach.

Then the second motion is over the longer term you're requesting that the board embark on an addendum – well, it's probably an amendment process for something that weighty to change the whole management strategy of the Dogfish Plan into a state-share allocation system. I would take those as separate motions if I were you.

DR. DANIEL: I'd be glad to. I haven't gotten a second yet.

CHAIRMAN SMITH: Well, I want to make sure that we have the language.

EXECUTIVE DIRECTOR O'SHEA: We don't have any language yet.

CHAIRMAN SMITH: Yes, see, they don't really have the language yet. We've got to form that out a little better. I mean, the first motion sounded to me like establish the 58/42 regional split as a hard allocation for all of the states with regional paybacks for quota overages.

DR. DANIEL: What you said; I move that.

CHAIRMAN SMITH: Okay, Joe has it, but we've got to make sure Brad does. Okay, that's by Dr. Daniel; is there a second? Dennis Abbott. Okay, there is a motion on the floor as you can read it up there. Discussion on the motion?

MR. VONDERWEIDT: Do you want to put initiate an addendum; is that what he's saying?

CHAIRMAN SMITH: Chris is right; I mean, we've adopted the 58/42. The new part of this is making it a hard quota; that's at least an addendum, so it's initiate an addendum. Bob.

MR. BEAL: I think what this does is it modifies the 58/42 agreement that the board previously has made. The way I see this working is that regardless of what the northern states harvest, since they go first in the system that is set up now, the southern states would have 42 percent of the quota available for harvest.

The way it is now if the northern states go over we're still obligated to close the fishery at 6 or 8 million pounds, whatever it is, which results in the southern states having less fish available if the northern states are to go over in any given year. The way I understand this is it's just setting up a system where the southern states have 42 percent of the quota available for harvest regardless of what happens in the north; and if there are any overages from either region, those regional overages would be paid back the following year.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chair. I seconded this motion because I was reminded, as I read the letter from Mac Currin, who is chairman of the North Carolina Marine Fisheries Commission, we met with them, a group of us, at the annual meeting in North Carolina and told them that we were sympathetic to whatever issues they have regarding equity and other things. I think us as commissioners owe them a good look at ensuring that the state of North Carolina is fairly treated and hence my reason for seconding the motion.

MR. HIMCHAK: Mr. Chairman, I was of the opinion that we had taken a vote after the first year of this 6 million pound quota when there was an overage in the northern group that it was not to be subtracted at the expense of the southern 42 percent of the coastal quota.

Doesn't this mechanism already exist as far as the region pays back its own overage?

MR. VONDERWEIDT: Let me explain that. The way that it works is if there is an overage by the northern states, it shuts the fishery down at 6 million pounds; end of story. That payback has to come during the same season, so that's locked into the plan. The way that it has worked – and there was a memo that was sent out as a draft and everyone agreed on the specifications – was that basically the northern states will pay for any overage over 6 million pounds, which was about 60,000 pounds.

If you look at the chart there is only an actual overall overage here of about 60,000 pounds. The first year it's around 180,000 maybe. What happens is the south never gets that back, but they don't have to account for the overage of 6 million pounds, so it's not like they're getting 645,000 pounds here back. They don't get any overages deducted so they're back to 2.52 million every year, so it just resets to the original 42 percent and not to whatever percent they were denied because of overages.

MR. TRAVELSTEAD: Thank you, Mr. Chairman. I just want to make sure I understand the effects of the motion. There is within the current management plan that establishes two different fishing time periods. The first time period, May 1 through October, is assigned 58 percent of the harvest. The second time period is assigned 42 percent. In addition to that, there is apparently this gentleman's agreement that assigns the northern region 58 percent and the southern region 42 percent.

I think the fact that we have both of those working together is where the problem starts because the northern sector can be fishing throughout the entire year. It's not just fishing during Period 1. The same is true for the southern area. I mean, they can be fishing throughout the year, so we end up exceeding the 42/58.

I guess my question is, is the intent of the motion to eliminate all references to the time periods and the percentage of quota that is allocated to them and to strictly enforce as a hard quota to what are now two regional quotas, 58 percent to the north, 42 percent to the south, and any state can fish throughout the year as long as their quota is open?

CHAIRMAN SMITH: I think the board even had this discussion once in the past, and I think the intent is to go with a regional split instead of a seasonal split, and it would require an addendum. Is there any disagreement? That's how I remembered the whole issue. Jack is quite right, the complicating factor is trying to do a seasonal split and a regional split and then which gets paid back.

As Chris point out, it never actually happens, but a lot of that is because of the complication of the season and the regions. So, implicit in this is you're going to do an addendum; you're going to analyze it all, tease it out and decide at a later date whether you want to go with a regional quota system or leave it as a seasonal one or something different to preserve this geographic split. Pat White.

MR. P. WHITE: Just a quick question; in many of these instances where we've done this, we've had it listed as overages and underages in case for some instance they didn't catch their quota; is the intention for that also to be carried over?

CHAIRMAN SMITH: Than could be in the addendum. That's a good thing about an addendum. The staff is going to hear all these comments and then go back and figure out how to put it in a discussion document. David Pierce.

DR. PIERCE: I think you've described the situation quite well, Mr. Chairman. Our problem is with the season. The season forces North Carolina and the southern states to shut down when the dogfish are very abundant off their shores, so they're shut down and we're still working on dogs up north, and that's caused them grief.

In addition, of course, is the Virginia and North Carolina situation where two states legitimately are competing for whatever dogfish is available off their shores. I would move, Mr. Chairman, that we begin an addendum to –

CHAIRMAN SMITH: We've got a motion on the board.

DR. PIERCE: All right, move to substitute to begin an addendum to remove the spiny dogfish quota seasonal split and rely on the 42/58 south/north regional split.

CHAIRMAN SMITH: Including as the main motion – although this is a substitute, the main motion was to make that a hard quota with regional paybacks, so if the region goes over then the region pays back.

DR. PIERCE: I would have no objection to that if we get rid of the seasonal aspect of the quota because that's what causing the grief. Without that seasonal aspect, I think it will be much easier for the regions to handle this quota.

CHAIRMAN SMITH: So this is really what you're intention was; wasn't it, Louis?

DR. DANIEL: No.

CHAIRMAN SMITH: You wanted to go with a regional approach, hard quota, leave the seasons out?

DR. DANIEL: Well, let me back up for a minute. My understanding was that we had an agreement on the 58/42 split and that we could change it without having to go through all of this; that we would do that now, starting today, and then move forward with an amendment to look at state-by-state quota shares. So what this does is this puts us down the road to an amendment to maintain the 42/58 split, but we lose the opportunity to move forward with state-by-state quota allocations, as I understand it.

CHAIRMAN SMITH: Yes, I hear you on that, but look at it this way. You're right that the 58/42 regional split was an agreement that we could amend whenever we wanted to, but we can't make it hard quota system with quota paybacks without going through an addendum. That's the part of this that rises to the level of develop an addendum, review it, get public comment. I think that's stretching the gentleman's agreement to go from – well, I'll take the board's comment on that. Jack.

MR. TRAVELSTEAD: I think you're right, Mr. Chairman. I think the motion is exactly what is needed to sort of solve the problem as quickly as we can while we take time to look at Louis' other ideas of state-by-state quotas. You don't solve the problem if you don't establish hard quotas with paybacks the following year. We're right back where we started if you don't do that. If it takes an addendum to get that, then that's what we have to do.

DR. DANIEL: I'm fine with that.

CHAIRMAN SMITH: Okay, the substitute motion is as you read it. Is there comment on the substitute motion? Brian Culhane seconds. Pat White.

MR. P. WHITE: Why can't we do and address Dr. Daniel's concerns, have the intent of this to continue or even as part of this addendum to continue it on into a final division of state-by-state quotas? Why are we going two steps?

CHAIRMAN SMITH: Because this one is the far easier of the two. He wants some immediate action as quickly as possible, which is an addendum on this issue which you can see there's pretty good consensus that will be brought on the floor when we start to talk about another state-by-state allocation system.

So, just the reality, that's why I suggested we better separate these because that one is going to take a lot more time. We may not even get a clear agreement today or in the next 15 minutes on whether this group wants to start an addendum, but that's going to be the next issue once we resolve this motion. Okay, the question is moved. Roy, on this motion alone.

MR. MILLER: I was just going to say that I'm going to support this motion because Delaware tried to reopen the spiny dogfish fishery in '07, and we have been unable to have access to any quota because of the seasonal closures. The other option proposed by Dr. Daniel wouldn't work for us because we've have had no quota, and therefore would receive no allocation. I like this motion. At least it gives us an opportunity to reopen a very small and limited spiny dogfish commercial fishery. Thank you.

CHAIRMAN SMITH: Harry Mears.

MR. HARRY MEARS: Thank you, Mr. Chairman. The Service would strongly oppose this motion. The resource is still in rebuilding mode, and what this essentially works us toward is a directed fishery. It's much too early from the Service perspective to talk about a hard quota, especially when the whole premise of the FMP that we've been acting under is that it's not a directed fishery. It's a bycatch fishery only.

At the time the resource is rebuilt would be the time to bring this up, but now we're becoming –

we're confusing allocation issues with a resource that is not yet ready biologically to consider a directed fishery, especially on a state-by-state basis. Thank you.

CHAIRMAN SMITH: Thanks, Harry. Of course, this doesn't increase the quota at all; so if we live by the 6 million one way or another – well, okay, thank you for the comment. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. Anticipating that there might be a time urgency issue with North Carolina and realizing it will take time to go through the addendum process, I'm wondering what's to stop the northern states from agreeing – that it's the sense of the board or whatever that the northern states, for the next year, would not exceed their 58 percent share?

In the past we've heard that they carefully watch their quota, they can monitor their quota. That was the argument of why we even had this fishery in the first place. I'm just wondering if the northern states were to agree to do that why that action couldn't be taken. Second, as I read this, I'm still wondering how this helps North Carolina at the end of the day.

If the northern states take 60 or 65 percent in any given year, they're going to be penalized the following year, but in that same fishing year it seems to me North Carolina is then going to be potentially, if they get fishing later, they're going to get – they're going to be constricted on what they can harvest.

CHAIRMAN SMITH: The answer to the second part of that is at least in the second year they get relief; whereas, right now they get no relief. The payback never happens. I had Red and then we need to close this out or we'll never get to talk about Louis' second issue.

MR. RED MUNDEN: Thank you, Mr. Chairman, to the motion. I had the pleasure or it might not have been a pleasure of serving both on the mid-Atlantic Plan Development Team for the federal plan and the ASMFC Plan Development Team. When we selected the two harvest periods, Harvest Period 1 May through October and Harvest Period 2 November through April, that was a pretty arbitrary decision.

We just looked at landings and said, well, this seems like a natural break, and it has totally



worked against the southern states because a lot of people have criticized Massachusetts, but Massachusetts did not do anything illegal. They were allowed to harvest during Harvest Period 1; and if fish were still around, they could harvest during Harvest Period 2. I feel like this is a move in the right direction to eliminate those harvest periods that are specified in the plan now and go with a hard allocation of 42/58. Thank you, Mr. Chairman.

CHAIRMAN SMITH: And on that note I'm to ask us to caucus quickly on this motion and then try and conclude the business so we can take up the last issue. There is one other business issue. I'll read the motion for you while you caucus: Move to substitute to initiate an addendum to remove the spiny dogfish quota seasonal split and rely on the 42 percent/52 percent south/north regional split as a hard quota with regional payback of overages. Move made by Dr. Pierce; second by Mr. Culhane.

Okay, all those in favor, raise your hand; all those opposed; abstentions; null. Okay, the motion carries 14 to 1 to 0 to 0. That was a substitute and now it's the main motion. All those in favor say aye; all those opposed. One no. The motion carries. The second motion, Dr. Daniel.

DR. DANIEL: This one might be a little tougher. I appreciate this and feel that it could – you know, it is a quick fix, hopefully, to a real problem. I think the ultimate fix is to establish an amendment to look at state-by-state allocations. I am sensitive to the issues that Roy raises. There are issues in New Jersey where if they can get legislation to increase their trip limit from 600 pounds up, that there may be more interest in New Jersey to fish for dogfish. There may be an increasing interest in Maryland that had about a 7.5 percent share.

I'm not necessarily wed to the '90 to '97 reference period because, clearly, based on the history of the fishery there is a lot of ups and downs in various state's participation, but I think there is a better way. I'd much rather be in charge of managing an individual quota than relying on geography to either help me out or make things difficult for me.

I would like to move that we initiate an amendment to develop – an addendum to

develop state-by-state quota allocations in the spiny dogfish fishery.

CHAIRMAN SMITH: This is a motion; is there a second? Tom O'Connell. That's the motion on the floor, to develop an addendum to establish a state share quota system for spiny dogfish. Jack Travelstead, Red Munden, David Pierce.

MR. TRAVELSTEAD: Just one question to start. Can we do this by addendum?

CHAIRMAN SMITH: That's what they said.

MR. TRAVELSTEAD: That's what staff said? It's obviously going to be quite a contentious process; and while certainly appreciate the situation in North Carolina finds itself in, I think it's going to be a very drawn-out process as states start looking back at where they've been in this fishery and where they want to go. I suppose I don't have any objection to taking a look at it. I don't want to oppose the motion, but there certainly will be some allocation schemes that are better than others. I guess that's what the addendum is about.

CHAIRMAN SMITH: Just to follow that point for a moment, what happens in the context of the mid-Atlantic Plan? I haven't thought that part through. Bob.

MR. BEAL: Well, I think we'll need to make the federal government and the two councils aware of the changes that we're considering. This isn't a joint plan. It's a complimentary plan so they can decide if they would like to make any changes. As we're developing the addendum for the commission, I think one of the things that's in the background is probably the two six-month periods that the federal government currently has. They're probably going to remain in place and that would likely have an effect on some of the allocations and how the states are able to fish and achieve their state quotas.

MR. MUNDEN: Thank you, Mr. Chairman. I would ask the maker of the motion to include state-by-state transfers of quota allocations.

DR. DANIEL: That was the intent.

CHAIRMAN SMITH: That's implied.

MR. MUNDEN: And, Mr. Chairman, if I may, when the ASMFC FMP was developed back in 2002 state-by-state options were one of the things that we considered, and it was in the draft public hearing document. A lot of that work has been done. It looked at different state shares based on a number of different time periods. So even though we'll have to work out a lot of the differences between the states, some of that work has already been done.

DR. PIERCE: The National Marine Fisheries Service will go somewhat berserk on this, but that's all right. I assume right now just about every fisherman has given up their federal permit for dogfish because, clearly, we have different quotas, federal and state, for spiny dogfish, and we may end up going in different directions, depending upon what happens with this most recent bottom trawl survey, which will, I'm sure, have some impact on this board relative to the amount of dogfish we want harvested in our states in the next fishing year, but that's for the next meeting or so.

I have no objections to this. Certainly, it's not a new concept. Let's not forget, we've been there before on this, and Chris has to go into the data files and look and discover all the discussions we've already had about state-by-state quotas. I think the data base has already been massaged, looked at in previous years. Red certainly is well aware of that; he was involved in those discussions. I have no problem. I just wanted to point out that the Service will continue to, through Harry Mears, express its great consternation.

CHAIRMAN SMITH: The other things that staff worked hard on this evening needs to get their credit, too, so unless anybody has a burning need to say something different, the motion is on the floor. I going to take Pat Augustine briefly and Harry briefly and then we're going to call the question.

MR. AUGUSTINE: Thank you, Mr. Chairman, it's burning. If we're going to have state-by-state, then I think we'd better put the other tools in the box. We'd better have mandatory regional and coastal as tools.

CHAIRMAN SMITH: Any disagreement to looking at alternatives to state-by-state systems? The mover doesn't mind so we'll just add those

two points for things to be evaluated – mandatory regional and coastwide –

MR. AUGUSTINE: And coast-wide options.

CHAIRMAN SMITH: Coast-wide quota would be all states be outlived by one quota and you close the fishery or –

MR. AUGUSTINE: Well, it could be. When you say coast, we could decide we want within that a sub of some sort, but just putting coastal, which we – you know, one season, it could be whatever.

CHAIRMAN SMITH: If you think that through for a minute, that's a big step in a direction that's going to cause you huge problems.

DR. DANIEL: Yes, I'm beginning to not like that idea. I'm not going to be too happy with that.

MR. AUGUSTINE: Well, the only difference is it's a tool in the box. You don't ever have to use it. It's that simple. Let's not go down the same road we did with summer flounder, scup and black sea bass.

CHAIRMAN SMITH: What was the other one that there was more agreement on?

MR. AUGUSTINE: Regional management would be –

CHAIRMAN SMITH: But that's what we're going to cover in this addendum we're talking about.

MR. AUGUSTINE: Yes, but one is to a mandatory regional, if the board elects mandatory regional. If we had that in summer flounder right now, summer flounder would –

CHAIRMAN SMITH: Okay, do you agree with that, Louis?

DR. DANIEL: Sure.

CHAIRMAN SMITH: Okay, so regional will be there, coast-wide won't. Harry Mears, last word.

MR. MEARS: Thank you, Mr. Chairman. Again, to voice my opposition; this, again, is clearly going to polarize state and federal permit holders. It was the original premise we were trying to prevent back in the early 2000's. I just

find it ironic that we had an overfished resource before we came together. We came together. We're in rebuilding modes. Yes, there have been bumps; there continue to be bumps. But now we're sensing moving in opposite directions at the expense of the resource. Thank you.

CHAIRMAN SMITH: Okay, caucus for ten seconds. Seeing no need to further caucus, I'll read the motion: Move to initiate an addendum to establish state-by-state quota allocations for spiny dogfish, including quota transfers between states. Motion by Dr. Daniel; second by Mr. O'Connell. All those in favor, raise your hand; all those opposed; abstentions; null. Okay, the motion carries 10 to 4 to 1 to 0. There's two more items of dogfish. Jack Travelstead.

MR. TRAVELSTEAD: Real quickly, what opportunity will the states have to offer suggested allocation schemes for this addendum?

CHAIRMAN SMITH: A lot.

MR. TRAVELSTEAD: Are we just going wait – I mean, is the staff going to bring this –

CHAIRMAN SMITH: That's going to be debate of the next several months, but you all will have to –

MR. TRAVELSTEAD: That's what I want to hear, more like 36 months, 48 months.

CHAIRMAN SMITH: Frankly, it would help the staff if any state has an idea on how this ought to be done, send them to Chris. Nobody should think for a minute that this vote means we're actually going to get there. It just means we're going to start the discussion to look for an alternative, and that will be a lively discussion, I guarantee it, and you all enjoy yourself. Pete Himchak.

MR. HIMCHAK: Yes, Mr. Chairman, under other business, this actually leads into the issue of developing this addendum and by all means historical allocation, you know, we've done from 2.5 million pounds eight years in landings to practically zero. Chris and I have tried with limited success over the last year or year and a half to gather some state data from fishery-independent fishery-dependent data, specifically sex ratio by season and distance from shore.

I think these are integral data sets to this addendum. We're trying to develop a nearshore gill net fishery, which we will want sufficient allocation, and, boy, we can't catch anything but female spiny dogfish nearshore throughout the entire year.

CHAIRMAN SMITH: What would you like us to do?

MR. HIMCHAK: I'd like the technical committee to take this up as a charge to start gathering the data on the fishery-dependent and fishery-independent data, the sex ratio, seasonality –

### OTHER BUSINESS

CHAIRMAN SMITH: Could you write a letter to Chris that explains clearly what you'd like us to do and then we'll just do it as a charge of the chairman to direct the technical committee to look into this. All right, other issues of other business? Ritchie White.

MR. R. WHITE: I want to thank the chairman for getting us through an extremely difficult day and you did a great job. (Applause)

### ADJOURN

CHAIRMAN SMITH: I said it before and I'll say it again. This snake pit that could have been the shark plan – because dogfish is a snake pit, we all know that – is because of how Chris handled this. I mean, it's just amazing how all the moving parts fit together. He deserves the applause, but thanks. (Applause) We are adjourned.

(Whereupon, the meeting was adjourned at 6:30 o'clock p.m., May 6, 2008.)

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