

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

**The Westin Crystal City
Arlington, Virginia
August 7, 2019**

Approved October 29, 2019

TABLE OF CONTENTS

Call to Order 1

Approval of Agenda 1

Approval of Proceedings, October 2018 1

Public Comment 1

Consider Draft Addendum VI for Public Comment 1

Adjournment 15

INDEX OF MOTIONS

1. **Approval of agenda** by consent (Page 1).
2. **Approval of proceedings of October 2018 by consent** (Page 1).
3. **Move provisional approval of Draft Addendum VI for public comment subject to inclusion of the overage forgiveness option and to scope on the concept of eliminating the federal commercial trip limit to be replaced by the state trip limits (NC-NY) and northern region trip limit** (Page 9). Motion by David Borden; second by Emerson Hasbrouck. Motion amended.
4. **Move to amend to strike quota forgiveness from this motion** (Page 14). Motion by Megan Ware; second by Bryan Plumlee. Motion carried (Page 14).

Main Motion as Amended

Move provisional approval of Draft Addendum VI for public comment subject to the addition of scoping on the concept of eliminating the federal commercial trip limit to be replaced by the state trip limits (NC-NY) and northern region trip. Motion carried (Page 15).

5. **Motion to adjourn** by consent (Page 15).

ATTENDANCE

Board Members

Sen. David Miramant, ME (LA)	Emerson Hasbrouck, NY (GA)
Megan Ware, ME, proxy for P. Keliher (AA)	Joe Cimino, NJ (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Russ Allen, NJ, proxy for T. Fote (GA)
Kevin Sullivan, NH, proxy for D. Grout (AA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
G. Ritchie White, NH (GA)	Stewart Michels, DE, proxy for D. Saveikis (AA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Roy Miller, DE (GA)
Dan McKiernan, MA, proxy for D. Pierce (AA)	Phil Langley, MD, proxy for Del. Stein (LA)
Raymond Kane, MA (GA)	Mike Luisi, MD, Administrative proxy
Eric Reid, RI, proxy for S. Sosnowski (LA)	Robert Brown, MD, proxy for R. Dize (GA)
Jason McNamee, RI (AA)	Sen. Monty Mason, VA (LA)
David Borden, RI (GA)	Rob O'Reilly, VA, proxy for S. Bowman (AA), Chair
Sen. Craig Miner, CT (LA)	Bryan Plumlee, VA (GA)
Justin Davis, CT (AA)	Michael Blanton, NC, proxy for Rep. Steinburg (LA)
Bill Hyatt, CT (GA)	Chris Batsavage, NC, proxy for S. Murphey (AA)
Adam Nowalsky, NJ, proxy for Sen. Andrzejczak (LA)	Mike Ruccio, NMFS
Maureen Davidson, NY, proxy for J. Gilmore (AA)	

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

Ex-Officio Members

Staff

Robert Beal	Max Appelman
Toni Kerns	Dustin Colson Leaning
Kirby Rootes-Murdy	

Guests

Heather Corbett, NJ DFW	Brad Stevens, Univ. of MD
Arnold Leo, E. Hampton, NY	John Whiteside, SFA

The Spiny Dogfish Management Board of the Atlantic States Marine Fisheries Commission convened in the Jefferson Ballroom of the Westin Crystal City Hotel, Arlington, Virginia; Wednesday, August 7, 2019, and was called to order at 10:40 o'clock a.m. by Chairman Robert O'Reilly.

CALL TO ORDER

CHAIRMAN ROBERT O'REILLY: My name is Robert O'Reilly, and I'm the Chair of the Spiny Dogfish Management Board. We have a fairly short time period today. After my welcome here to you, I wanted to say bon matin, je suis Robert, in order of all the French lessons I had to take through life, and so good morning.

APPROVAL OF AGENDA

CHAIRMAN O'REILLY: I am asking the Board about the agenda. Are there any changes to the agenda? Seeing none the agenda stands.

APPROVAL OF PROCEEDINGS

CHAIRMAN O'REILLY: Concerning the approval of the proceedings from October, 2018, are there any changes or deletions? To give you a very brief refresher that meeting a year ago, we spoke about the stock assessment update.

Jason Didden from the Mid-Atlantic Council gave a presentation. We also had discussions, which are still going on about the federal trip limit. Also there was a setting of the 2019 to '21 specifications. It can't be ignored that there has been a 60 percent decrease in the coastwide quota in a four year period.

It can't be ignored that there was a situation where some states are worried that perhaps the coastwide quota will be met. That is a little over 20 million pounds, and I think in the 2016/17 season it was about 25 million pounds, so that can happen. The main concern there is if the coastwide quota shuts down that can affect the marketing even more so than the market has already been challenged over the years.

I wanted to mention that.

PUBLIC COMMENT

CHAIRMAN O'REILLY: At this time is there any public comment on matters that are not on the agenda? I see none so we'll proceed forward.

CONSIDER DRAFT ADDENDUM VI FOR PUBLIC COMMENT

CHAIRMAN O'REILLY: The main situation today for us to consider is Draft Addendum VI going out for public comment. Kirby Rootes-Murdy will present that information to you now.

MR. KIRBY ROOTES-MURDY: This is an outline of my presentation. I'm going to go through an overview of the document, kind of how we got here, statement of the problem, background information, and the management options that are included, what the Board action is for consideration today, and take any questions from you.

As part of the overview, just a reminder of how we got here today, in May of this year the Policy Board directed the Spiny Dogfish Board to initiate an addendum to allow unused quota to be transferred between the northern region states to the states that have a state-specific allocation. The motion also specified that the Addendum would allow for quota overage forgiveness, similar to the language in the summer flounder, scup and black sea bass FMP. In response to this motion the Spiny Dogfish Plan Development Team drafted this Addendum with the following recommendations.

To consider a more general approach to allowing quota transfers that include a region, not just from the northern region states to southern states, and the second is to discard the concept of an overage forgiveness, due to the complications presented by the existing unused quota rollover provisions.

But the complication is that, with this FMP, it currently allows that up to 5 percent of a state or region's unused allocation can be rolled over to the next fishing year if the stock is rebuilt. That is above the biomass target. In that situation when we have a rebuilt stock, the annual accounting could become very challenging.

In instances where a jurisdiction is willing to transfer quota, and planning to roll over additional quota, as well as in situations where that jurisdiction receives additional quota and rolls over that quota as well. For those reasons the Plan Development Team recommended not including it in this Addendum.

In terms of the statement of the problem, the FMP currently allows only quota transfers between states with an individual state quota. Regions cannot currently transfer quota. Full utilization of the coastwide quota may not be possible for the 2019 fishing year, due to this quota transfer limitation.

The quota for this fishing year 2019 has been reduced to approximately 46 percent from the previous year's fishing quota, based on the 2018 stock assessment update. What could happen is that some states may have to close their fishery early, while other parts of the coast, regions, may have unused quota that might not be able to be transferred to those states.

Some background regarding this FMP. The fishery for spiny dogfish operates on a fishing year of May 1 through April 30. The Commission has a complementary fishery management plan to the federal joint fishery management plan between the Mid-Atlantic Council and the New England Fishery Management Council.

We've had a number of addenda that specifies how quota provisions work, what the allocations are. But the most recent one that outlines what the current quota allocations are, are laid out in Addendum III. It established the

northern region of Maine through Connecticut, and state-specific allocations for the states of New York through North Carolina.

It also specifies the payback provision of quota overages. Right now if a state or region goes over their quota in a given fishing year, that amount of overage is then deducted from the following year's allocation to that state or region. Up on the screen is also what the allocations are that have been in place since 2011. In terms of the commercial fishery for spiny dogfish, landings along the Atlantic coast follow a seasonal migration that coincides with the resources movement across the coast throughout the year. In recent years the highest proportion of landings in the northern region has occurred during the months of July, August, and September. For the states of New York through North Carolina, nearly all landings occur from November through April.

The fishery in the northern region is largely concluded by November, just as the fishery in the southern part of this range ramps up. In terms of the total commercial landings, they've tracked closely with the coastwide quota for most of the first 12 years of quota management, from fishing year 2000 up to 2011, after which landings plateaued while the quota continued to increase.

You can really see that from about 2012 onward, until about 2018. Landings during 2012 to 2018 averaged 20.93 million pounds, while the coastwide quota averaged 42 million pounds. For fishing year 2019, the coastwide quota has been reduced to 20.52 million pounds to avoid overfishing the stock amidst declining biomass.

Over the last three years, less than half of the cumulative coastwide quota has been landed, though similar landings in 2019 would achieve nearly 100 percent of that newly reduced quota level. Please note that the commercial landings we have for 2018 are preliminary, and they change.

Proceedings of the Spiny Dogfish Management Board Meeting August 2019

For this Addendum, we have one management issue currently and two management options to deal with that. The first is status quo for adjusting the quota transfer provisions. Under a status quo scenario Option 1 there would be no change. Quota transfers would still only be allowed between states with an individual quota.

Option 2 would allow quota transfers between all states and regions. Regions could participate in quota transfers through mutual agreement of each state in the region. How this would work is that each state's Administrative Commissioner or proxy would have to agree in writing to this transfer. The same provisions we have in place for the state transfer rules between New York through North Carolina would also apply.

Transfers do not permanently affect allocation, and quota management and accountability are based on that transfer adjusted quota in a given fishing year. An additional component of this option is that all transfers could occur during the fishing year, and up to 45 days after the end of the fishing year.

The idea here being that if you get close to the end of the fishing year, and a state decides to close due to concern about an overage, or another state goes over their quota and finds out after the fishing year has ended that there would be a grace period of up to 45 days, for those states to get the transfer needed to cover their overage.

For Board action today this Board should consider whether to add or adjust the current draft options. The other consideration is whether to approve this document for public comment. If approved, final approval of the document would likely occur at the Annual Meeting in October. With that I'll take any questions.

CHAIRMAN O'REILLY: Questions for Kirby. Adam.

MR. ADAM NOWALSKY: Where do we stand as a Board, given that we were given a directive from the Policy Board to draft an addendum with two items in it? The PDT came back and said one is not practical. Because the PDT said so we disregard what the Policy Board directed us to do? I would just like some clarification on where we stand as a Board, given that we were given such specific direction.

MR. ROOTES-MURDY: Thanks Adam for that question. Just as context, this topic came up during the Policy Board and based on some preliminary advice from staff, the thinking was including a quota forgiveness policy similar to summer flounder, or to scup and black sea bass excuse me, would be beneficial in dealing with the potentially reduced quotas in future years.

When we went back and looked at what that FMP outlines and how it compares to spiny dogfish FMP, as I noted earlier in my presentation this could present some real challenges in trying to do accounting annually, and those situations were really close, or if the resource is above the biomass target and rebuilt. It's a recommendation from the PDT. That is where it stands currently.

CHAIRMAN O'REILLY: Follow up, Adam.

MR. NOWALSKY: That would leave us as a Board to make a decision today whether we want to go forward with this Addendum without that provision, based on the advice of the PDT, but contradicting what we were asked to do by the Policy Board. But if we were to go back and say we would like an option drafted for forgiveness, is that something the PDT could come forward with in a future revision?

MR. ROOTES-MURDY: Yes.

CHAIRMAN O'REILLY: Okay other questions? Excuse me, David Borden.

MR. DAVID V. BORDEN: I have a comment Mr. Chairman; if not appropriate I'll hold off.

CHAIRMAN O'REILLY: Any specific questions for Kirby concerning what he outlined and the two options? Mike Luisi.

MR. MICHAEL LUISI: Kirby, you may have said this but I may have missed it. Are the transfer provisions here one directional? Is it just from the northern region to the states, or can it go the other way as well?

MR. ROOTES-MURDY: It can go both ways. That was the recommendation of the PDT, and that is how we drafted up the option.

CHAIRMAN O'REILLY: Are there other questions specific to the options that were presented right now? If not, David Borden.

MR. BORDEN: I'll make this quick, Mr. Chairman. I support the action. To Adam's point, I would like to see that concept included, and in the spirit of trying to solicit more public input, I think it would be beneficial to include the concept of elimination of the federal trip limit. I know there was a subcommittee at the Mid-Atlantic, Mr. Chairman that you served on that dealt with that issue.

One of the dilemmas on the federal trip limit is there are four parties that are actually involved in that. We are just one of the parties, and we don't control federal regulations on the trip limit. I think it would be beneficial if in fact we included that concept in the document, and solicited public input up and down the states.

I spoke to both Dan and Jason about this concept, and I think that the two states would be willing to assist the Commission staff in preparing an alternative for inclusion in the document. I would propose we include that and Adam's concept in the document, and authorize it to go out to public hearing.

CHAIRMAN O'REILLY: Okay so I will get some feedback from Kirby in a second. But one of the things the Mid-Atlantic Council has stated is they have this on their list, and it is relatively low is the way it was described by Jason Didden.

However, if there is enough interest coming back on this item with the federal trip limit, it can be brought up in 2020.

That has already been established by the Mid-Atlantic Council, and Kirby may have some ideas as to whether these are just concepts or information that are included as subsets within the fact that there is a main item here, which is to allow these regional transfers. I would have to ask him for his guidance there.

MR. ROOTES-MURDY: Yes I'll take a stab at it. David, can you clarify whether you're looking to have an option in this document that outlines a situation where we maintain that federal trip limit versus not having a federal trip limit? I ask because as you stated, again the Commission doesn't set the federal trip limit that is set by the Mid-Atlantic Council and the New England Fishery Management Council's recommendations to GARFO. It would not actually be an option if that was to be proposed that the Commission could enact this or make any changes to it.

MR. BORDEN: My response to that is and actually I talked to Dan a little bit about this. At this stage all we're trying to do is gather public input on this. I think the Work Group and the Chair can correct this if this is wrong, specifically the Mid Group that discussed this concept the other day. One of their conclusion was they wanted to go out to their constituents and seek input on this, and this is a perfect opportunity to do it.

If we're going to circulate a document, we simply include that concept. Then we get all the input from the processors in all the states, fishermen. Then that information is then used to inform future positions as a Commission. I'm not looking for a regulatory action in here as much as I'm looking for, include the concept and solicit the public input on it.

CHAIRMAN O'REILLY: Toni Kerns.

Proceedings of the Spiny Dogfish Management Board Meeting August 2019

MS. TONI KERNS: David, I just want to summarize what I think I heard you saying, to make sure that we would capture it correctly. That we are seeking public input on a recommendation to NOAA Fisheries, the Mid-Atlantic Council and the New England Fishery Management Council to eliminate the federal trip limit to allow for the individual state trip limits, or a region trip limit to enforce the quota systems that we have established, or maintain the quota systems.

MR. BORDEN: That's correct, well stated.

CHAIRMAN O'REILLY: Eric Reid.

MR. ERIC REID: Yes I think it's actually pretty good timing, because the basis for this action is to maximize the use of quota. If you were to question the public on would you use more quota if there was no federal trip limit? That is an easy way to get that ask in the document, because that is the basis as to how do we use more quota, and if that's one way to use more quota than is transferred, the numbers are going to look a little different.

CHAIRMAN O'REILLY: Mike Luisi.

MR. LUISI: I certainly support the concept and getting that public feedback will be important. Based on what you said Rob, regarding where this is currently sitting on the Council's priority. That feedback may become very important in October and December of this coming year, or talking with the Executive Committee about priority setting for 2020. I think it's a good idea.

CHAIRMAN O'REILLY: Joe Cimino.

MR. JOE CIMINO: Poor choice of seating, thank you Mr. Chair. Just for the record, I think with what we saw today on some of these slides, I might respectively disagree with Eric on the timing, since with a 60 percent cut in the quota we are looking at a time where we might be reaching the quota as things are. I just want to put that caution out there.

CHAIRMAN O'REILLY: Stew Michels.

MR. STEWART MICHELS: That is a good point about reaching the quota, but I was wondering. This won't slow up development of this measure will it?

MR. ROOTES-MURDY: It's a good question, and the wheels in my head are turning right now, in trying to make sense of what the specific language we would include in this document, based on the discussion today, and how this progresses. It could potentially change our time table, but we kind of need to see how this Board discussion plays out.

CHAIRMAN O'REILLY: Okay I recognize there are comments in the back, but we're going to go through a couple more at the Board, and then I'll come out there if you have a burning comment that's fine. Jason.

DR. JASON McNAMEE: It's to that last point. I guess as we were discussing this I thought, since in particular with the last thing that David brought up. We're not asking for a regulatory action. I was thinking, this might be one where we could turn around so Dan and I could turn around some language quickly that we could then vet through e-mail, sort of a straw poll, rather than having to recycle back on it. There is just an idea, because I also don't want to delay the action, and I thought that might be a mechanism.

CHAIRMAN O'REILLY: Toni Kerns.

MS. KERNS: The Boards have in the past conditionally approved documents, so you could approve the document as today with the addition of the option for overage forgiveness, we'll just call that for now, as well as the recommendation for NOAA Fisheries and the Councils. We could then send that document out to you, ask for a quick turnaround approval, and then send it out for public comment.

I would just remind everybody that this is a document that we were hoping the states

would do the majority of the public comment for, and not have hearings where you needed staff, because it was just a simple issue. We didn't set aside money in the budget to do hearings for spiny dogfish this year. We can find some ways to cover some hearings if we need to, but just to keep that in mind.

CHAIRMAN O'REILLY: Mike Ruccio.

MR. MIKE RUCCIO: I would welcome Jason's suggestion. I'm a little, concerned is probably not the right word, but I would like to see language on this. I understand this has been a concern for the states for a number of years, and they've wanted to try to get traction into either modifying or rescinding the federal trip limit.

But I think the way that Toni had kind of characterized this more as how would regions or states structure trip limits, as opposed to going out and scoping on removing the federal trip limit, because it seems there is a disconnect there in terms of the authorities. I mean it's nice to ask that but that is the purview of the Councils to have to deal with.

The phrasing of it I think can be done in a way that gets at what people are looking for, but still kind of contains it within what's appropriate for the Commission to go out and get more public input on. As Chairman Luisi said, I think that can be valuable this fall as the Councils are setting the priorities that there is a good response to that. I welcome it, I would like to see that language, and if we can do that outside of this meeting quickly, and not delay the timing that sounds preferable.

CHAIRMAN O'REILLY: Chris Batsavage.

MR. CHRIS BATSAVAGE: Speaking to the option that the PDT didn't recommend including in this Addendum. Again that thing with the reasons Kirby stated I agree with, especially with the timing that we're looking at is my understanding. In order for this to be in place for this fishing year, this has to go for a final approval at the annual meeting to allow time, if

there is any excess quota in the northern region to be available to transfer to the southern regions. If there is any little hiccup in that time table that may not be feasible for this year, and I think this year is the most critical, with the 46 percent reduction. I guess if staff has concerns on trying to hash that option out in the document, and getting it to this time period. I guess something the Board really needs to consider, as far as whether that's worth doing.

CHAIRMAN O'REILLY: Kirby has a comment here.

MR. ROOTES-MURDY: Just to clarify. We are in the current fishing year right now, 2019. That is going to run through April 2020. Whether the Board decides to take action on this document at the Annual Meeting or the February meeting in 2020, it would still be within the same fishing year. I think that's one thing I just want to clarify. Then on what to include in the document, we've heard about the additional language regarding the federal trip limit.

That would definitely be something. If this Board is interested including that I want that to be made clear, so we can start drafting that up. Then the other is regarding a point that Adam brought up. If there is no objection to including an option on quota forgiveness, then that would likely be another issue item. But I want to make sure that that is clear, stated on the record that you all are interested in having that also included in this document.

CHAIRMAN O'REILLY: Dan.

MR. DANIEL MCKIERNAN: I apologize, I'm kind of thinking as I'm going here, and talking to David before the meeting started. But I think there could be some unintended consequences, because the southern states or the states below, I guess Connecticut, they have state-by-state quotas. It makes sense for those states to have whatever trip limit they want.

But is this a precursor? I guess I'm asking this of my colleagues from Rhode Island. Is this a

precursor to having state-by-state quotas in the northeast or New England, because I think fishermen may demand that if they see different trip limits in the two states, but fishing on a common quota? I know this is complicated, and it is kind of late minute, last breaking stuff. But I'm getting a little squirrely about the unintended aspects of this.

CHAIRMAN O'REILLY: Okay I'm glad we started early. I will look to your colleagues to maybe provide some information. I can tell you David Borden indicated there had been a call that Kirby posted, among states from New York to North Carolina last week. It wasn't completely clear, but there was definitely support on removing the federal trip limit.

David Borden also a day before that call, and I understand he had some tremendous computer problems going on, but he did provide us with a document that sort of outlined some of the information you're asking about, Dan. If it's okay I will turn to David.

MR. BORDEN: I'll just answer Kirby's question, or the question I am not proposing state-by-state quotas in the north.

CHAIRMAN O'REILLY: Okay, are we satisfied with the questions and the comments? I did have someone standing up in the back. I'll allow just a brief question or comment, whichever you have. I can't see who you are back there, but come on up. I couldn't see you back there that far, John.

ATTORNEY JOHN WHITESIDE: Good morning, Attorney John Whiteside of Sustainable Fisheries Association. I kind of wanted to just wrap up a couple things. I really want to stress the comment that was made a short time ago about the timing is critical on this that any comments and other aspects of what's been discussed over the last 20 minutes.

If it's delayed past the October meeting that is really going to have an impact, potentially a really negative impact on allowing the southern

states to achieve their quota, even if there is excess quota in the north that hasn't been landed. That is really something I just wanted to bring forward to the Commission, and stress that if there are comments related to federal trip limits, if that's broken apart from this that will be something I would be fully in support of. Breaking those two things apart, and let this go forward to allow the southern states to maximize the quota.

CHAIRMAN O'REILLY: Okay thanks, John. Any other comments before we tackle the three items that Kirby has outlined? We're looking at if there is going to be new language, I know that Jason had offered to do that with staff and help out. Then Toni Kerns has suggested that that could be distributed prior to it going out for public comment.

Adam rightly has some interest in the procedure on the forgiveness, and so that is something that has to be considered. I hope someone is getting busy writing down a motion, and then the third item of course are the two options, status quo or allow region-to-region transfer. Mike Luisi asked a good question.

The transfer can work in either direction. Keep in mind that if there is a transfer that it's going to require north to south, which last meeting we heard is by December something could occur, or earlier. Then each state in the northern region, Connecticut to Maine would be signing off on that; good chance to get familiar with everyone all at once. Those are the three issues, and I'll look to see how someone wants to be creative here. Ritchie White.

MR. G. RITCHIE WHITE: On one of the issues I would ask Adam, and certainly I always support the process, so I appreciate Adam bringing it up. I guess a question Adam; do you think that the Policy Board if they had had the PDT information would have still required two options?

Proceedings of the Spiny Dogfish Management Board Meeting August 2019

MR. NOWALSKY: Well I'm flattered that you think I could think for the Policy Board, but no way could I answer that. There is no way I could answer that.

MR. WHITE: Follow up.

CHAIRMAN O'REILLY: Certainly, Ritchie.

MR. WHITE: I mean you have a big chunk of the Policy Board here right now. I think it's something that we should decide today. I guess I favor not including that in this document, and if it comes back with something that we have to address in the future, we would have a new document, because clearly we're not going to be able to solve the trip limit in this document either to solve it. I mean we can get information. That would be my take.

CHAIRMAN O'REILLY: I'm looking over at Toni.

MS. KERNS: It's the pleasure of the Board. I wasn't 100 percent, having a small conversation when Kirby went over part of this. The rollover provision is a slightly complicated issue. One, because it's only allowed when the stock is not overfished and overfishing is not occurring, and the second complication to the issue is that the rollover provision is only in our plan.

If we actually enacted the rollover provision then we would have a different quota than what the federal government would have in place, because they do not allow rollover provisions. One thing that Kirby and I had talked about originally, when we were trying to figure out whether or not the PDT should leave this in the document or not is we could say; well in years that the rollover provision cannot be enacted you could do the forgiveness, in the years that it could that that forgiveness provision does not come into play.

You could leave, which this gets very complicated, leave the 5 percent that could go to the states, but any other quota could be put into the forgiveness provision that was still on the table. But again, I think it's up to this Board,

because this Board didn't meet that is why we took up the action at the Policy Board level before.

It wasn't necessarily that the Policy Board was coming down on this Board; it's just that we didn't have a Dogfish Board Meeting, and it was an issue that was important to members of this Board. They asked to have it on the Policy Board agenda last time. There are a couple ways that we could creatively address this provision, or we could wait and address it at a later date.

I don't know when we would have it on the agenda. I mean there is this complicating factor though that if it ever does come into play you would have a different quota. That is something that the Board would actually have to think about is if they wanted to have a different quota than that of our federal partners.

CHAIRMAN O'REILLY: I'll get right to you, Megan. I certainly remember the last time that there was a little bit of getting sideways on different quotas, and that it resulted in the following meeting, coming back to make sure there wasn't a sideways situation between quotas. I certainly remember that. I just don't know, Adam whether this is something that could be a work in progress. Is it something that the Board could work on itself later on as an addendum? In other words, what type of timeline do you see for this being settled? Adam.

MR. NOWALSKY: Joe could speak more to this, but I'll just say that there is interest in this provision from New Jersey. I spoke from both that perspective, as well as just asking the question we were tasked to do something, now we're saying we're not doing it. What is the implication of it?

I think Toni cleared that up some in saying well because the Dogfish Board didn't meet there were enough members here. That is why it came from the Policy Board. I think I'm

comfortable that we addressed that aspect of it on the record. The question now comes, is there enough interest in other states to have the forgiveness provision here? Do states think it's an issue that needs to be in here, and does it warrant a review of those proposals to come back to the Board for review before we send this document out, or could we limit it to the suggestions that Toni made, or some subset of the suggestions, such as status quo as an option for forgiveness, and an option where forgiveness is only allowed where the rollover provision is not enacted.

I think I heard her state those two. I think that would be a step in the right direction, and it sounds like that would not need to go back to the PDT. It sounds like something I'm clear enough on what those options would be that they could go in the document. The document could be provisionally approved today, circulated for final review by the Board, and then go out to public comment. But it would ultimately be the will of the Board. I would support that direction on the issue of the forgiveness, if the will of the Board allows that today.

CHAIRMAN O'REILLY: Megan.

MS. MEGAN WARE: I'm just wondering if overage forgiveness and transfers are somewhat duplicative in what they're trying to achieve. If I was a state with an overage, and there was an overage forgiveness, and then we approve this transfer provision, I would ask for a transfer from another state. I think there are multiple ways to address that overage. I'm wondering if we need both of those passed.

CHAIRMAN O'REILLY: I'm going to ask for a motion. David Borden.

MR. BORDEN: I would like to move, if the staff wants to put that up I'll go slowly, because I haven't written it out. **I will move provisional approval of the Draft for public hearing purposes, subject to the inclusion of the provision that Toni just characterized, and the**

inclusion of a concept of eliminating the federal trip limit. If I get a second to this I will comment so the record is clear on this last point.

MR. ROOTES-MURDY: Dave, will you give us a minute to try to take that and put it into a motion, because there was some referencing to previous discussion.

CHAIRMAN O'REILLY: Okay, we'll have a pause.

MR. ROOTES-MURDY: Yes, we're going to need that I think read into the record, but just to be clear with this motion. We do currently have state and regional trip limits in place for state waters.

CHAIRMAN O'REILLY: David Borden how does that read to you? Does that capture?

MR. BORDEN: Mr. Chairman that is fine with me. **I just want to make sure it reflects the point that Toni has made on the issue of the overage forgiveness.** I think what she characterized was two options there; so that this is orderly I'll make that as a motion that can be perfected by additional discussion. If I get a second then I would suggest discussion on it.

CHAIRMAN O'REILLY: You'll have friendly amendments is what you're suggesting, okay. Emerson Hasbrouck, are you seconding it?

MR. EMERSON HASBROUCK: I'll second that motion.

CHAIRMAN O'REILLY: Okay so we have a motion and a second. Ritchie White.

MR. WHITE: I'm trying to understand this, David. The process will be that the Technical Committee or PDT will draft the language for the forgiveness option that we will see by e-mail, but we won't see it at a meeting. I'm afraid I'm not comfortable with that.

CHAIRMAN O'REILLY: Stew Michels.

MR. MICHELS: I'm trying to understand the overage forgiveness option, ultimately would that result in a recommendation to NOAA, I mean as I understand it that is inconsistent with the Federal Plan.

MR. ROOTES-MURDY: The original idea and I think this is what people are still grabbing onto, was the quota forgiveness policy that's in place for scup and black sea bass. Under that we have the state allocations in the Commission's Plan. In a situation where the coastwide quota is not exceeded, if there is a state allocation where that quota had been exceeded, so long as the coastwide has not been exceeded it is forgiven. That is the concept that as staff we've been working under in terms of what was directed by the Policy Board.

CHAIRMAN O'REILLY: Dan McKiernan.

MR. McKIERNAN: As I mentioned earlier, I'm really uncomfortable having state trip limits, but I do favor regional trip limits. I wouldn't support this motion unless the reference to state trip limits were taken out, because if we don't have state-by-state allocations, and we have regional quota, then we need the same trip limits. I want to eliminate state trip limits, I want regional trip limits. I want Rhode Island and us to have the same trip limits if we go forward with this.

MR. ROOTES-MURDY: You do.

MR. McKIERNAN: We do now. But I don't want Rhode Island and Massachusetts to have different trip limits after this is enacted, fishing on a common quota.

CHAIRMAN O'REILLY: Go ahead, Kirby. We're moving off in some directions right now. It's okay.

MR. ROOTES-MURDY: Just to clarify what the FMP currently is versus what this motion is proposing. We currently have state-by-state trip limits, all right. The Board specifies what the regional trip limit is. They can do it annually

and they can specify it up to multiple years. Unless this motion I think is perfected to exclude state or regional trip limits, you currently have those things in place and that would continue.

MR. McKIERNAN: Even in New England where there is a regional quota, there is state trip limits option?

MR. ROOTES-MURDY: Yes. Each of the states set their own trip limits, right. For example, some states like Maine set a trip limit that's actually lower than what the regional trip limit is, because that is their preference.

MR. McKIERNAN: To continue my argument. Unless I'm guaranteed that with the elimination of the federal trip limit that we're going to have the same trip limits in our region, because we're fishing on a common quota, then I will oppose this motion.

CHAIRMAN O'REILLY: May I come back to you, Megan? Mike Ruccio had his hand up.

MR. RUCCIO: I'm a little uncomfortable with the language as it stands on the portion regarding the federal commercial trip limit. Again I think I understand what the objective is, but there has already been a recommendation to the Councils to consider rescinding that trip limit. As I understood it what the function here is, is to scope on if there is support for either state or regional trip limits and possibly what those might be in the absence of the federal trip limit, which I think is a little bit different ask than making the recommendation again.

I want to see if that is kind of consistent with how people are viewing this, because I think as it's worded it's redundant to conversation that has already occurred regarding the disposition of the federal trip limit. I think that is known. I'm trying to get at how this is different than what has already occurred, relative to eliminating the federal trip limit.

CHAIRMAN O'REILLY: I too thought that really the situation was to have this federal trip limit

Proceedings of the Spiny Dogfish Management Board Meeting August 2019

issue move ahead a little faster than where it's destined to be right now, and get to, it's going to take at least two framework meetings is what I understand. I thought that was the intent of what we were talking about earlier to draw emphasis on the need to consider the federal trip limit a little more quickly than maybe it's planned right now. Megan, you did have your hand up.

MS. WARE: Maybe this is a little bit of what Mike was saying. I was having a sidebar over here. But I guess my question to David is; are you looking to have a recommendation to NOAA in the Addendum, or are you looking to, I'll say scope on the issue, and if it's the latter. I'll look to Toni.

But I think in one of the Herring Days-Out Addendum there was an issue that didn't have management alternatives, but it was just an open ended question that was part of the public comment. I'm wondering if that would be an avenue to take in this instance, to just have an open-ended question in the Addendum to get feedback.

CHAIRMAN O'REILLY: David, your name came up.

MR. BORDEN: To answer Megan's question. I think the intent is to scope on it. This goes back to the point that Mike Ruccio made. If we change the language on the third line there, if we were to change the language and include some language that we would scope the concept, it might be clearer. Scope on the concept of eliminating the federal trip limit, does that allay the concerns, in other words this body has other than an advisory role, we have no role in setting the federal trip limit. We can just provide advice. If you do what I'm suggesting here, all you are going to do is get advice, consolidate the advice, and that would inform a future position that's all. It's not a regulatory action.

CHAIRMAN O'REILLY: Emerson, does the modification sit well with you?

MR. HASBROUCK: Yes, I'm fine with that.

CHAIRMAN O'REILLY: Chris Batsavage.

MR. CHRIS BATSAVAGE: I think that clarification works for that. I had some similar thoughts that Megan had regarding the overage forgiveness that it seems like that could already be done in the Plan by having 45 days to balance the books, for lack of a better term. But I'm okay with including this in the Addendum, only if staff thinks that we could do all of this and have it ready for final action at the Annual Meeting.

CHAIRMAN O'REILLY: Mike Luisi.

MR. LUISI: I'm just wondering if we just started out with something really simple and then just complicated it, you know made it too complicated. I'm trying to think through the connectivity with the Council on this. Whether it might be another direction that we take here today, to go forward with the document as Kirby presented it, but have this Board write a memo.

Write a letter which could be direct to both the New England and Mid-Atlantic Councils, suggesting that they elevate this on their list of priorities for 2020. We take this whole thing up in a 2020 action rather than complicating what was a very simple document, just a thought.

CHAIRMAN O'REILLY: We have two suggestions, one the transferability is still there. Does that sort of mitigate the situation with such a low coastwide quota that we're in? I guess secondly Mike Luisi's suggestion, which might carry as much weight, I don't know. I would need to have some comments on that because we have sort of complicated the initial situation from where we left off last time at the Board, so comments on either of those suggestions. Stew.

MR. MICHELS: Just to point out that I believe the Board suggested such action last year of the Councils, and that ultimately didn't happen this year.

CHAIRMAN O'REILLY: Go ahead.

MR. ROOTES-MURDY: I'll pass it off to Toni, because she wants to answer.

MS. KERNS: I just want to clarify. I think from what I heard from Adam, and to keep it simple in terms of overage forgiveness it would just be one option, to allow for overage forgiveness in the years that we do not enact the quota rollover. Am I correct in that is what you said, Adam?

MR. NOWALSKY: That was what I suggested, but I did not make this motion. But that was what I said and support that way forward.

MS. KERNS: I think that that is something that we could easily add to the document. I think the background of the document has the information that they are ready, and for the transfers this coincides with that same type of information, so they could just be one simple option in the document to be added.

MR. ROOTES-MURDY: I can follow up and just clarify. There would be an additional two options, status quo and one that will allow this. You could be in a situation if both of those are selected, where the resource is not rebuilt but the quota forgiveness is in place. The other would be when the resource is rebuilt then the quota forgiveness is not allowed, but you can have the 5 percent rollover, just to make sure that this potential option is clear to me and staff.

CHAIRMAN O'REILLY: Is there further comment or discussion on the motion? Chris Batsavage.

MR. BATSAVAGE: Just to clarify from staff and Toni's comments about this should be a pretty straightforward option for overage forgiveness. That basically means that the document can be ready for final action by the Annual Meeting in October, right?

MR. ROOTES-MURDY: Yes.

CHAIRMAN O'REILLY: Mike Ruccio.

MR. RUCCIO: Just for my own clarification before we presumably vote on this. Will we see language on how the forgiveness will function? Because I'm not clear on how the 5 percent relates to potential quota disconnects, and that is obviously of concern to me. If it's as simple as when the criteria are triggered it functions as black sea bass and scup does now, and we would be on level terms in terms of quota.

That is a perfect description for me, I get that. If it's something different I'm going to have to kind of dig into it and understand it, I think before we not necessarily here, but if we're looking at the language. We might have concerns about that. I just want to be forthright about that.

CHAIRMAN O'REILLY: I think Kirby outlined the same situation, but Toni is here too. But my understanding is that yes it would be a situation if the coastwide quota is not met then that is what they're looking forward to. I think that that is what the situation is now. We're in a very tough season coastwide quota wise, so I understand where this all came from. But if Toni or Kirby has anything to add that's fine.

MS. KERNS: Kirby said this before, but I want to make sure everybody heard it that quota forgiveness would be tied to the status of the stock then, because the 5 percent rollover is only allowed when the stock is rebuilt, so quota forgiveness would not be applied then during a rebuilt resource, because we could potentially use the quota rollover. Is that what you were getting at, Adam? I just want to make sure that that is clear to everybody.

MR. NOWALSKY: I don't think I was providing clarification on that point. I think I would have to defer to you as staff with the expertise in what the Plan calls for to explain; this is the implication of that decision, and then the Board. I appreciate; again I'm flattered you keep coming back to me. But this is a Board motion. This is a Board action.

Proceedings of the Spiny Dogfish Management Board Meeting August 2019

MS. KERNS: I think from a staff perspective it would be the cleanest and easiest way to address quota forgiveness. If the Board then wants to reconsider quota rollover at any point in time, due to its incompatibility with the federal plan then you could consider that in the future.

CHAIRMAN O'REILLY: Ritchie White, and Megan after that.

MR. WHITE: Would it be possible to write out that option now, take a ten minute recess so that we can see it? I'm uncomfortable with this coming out in an e-mail, and then if somebody is uncomfortable with some wording or something then you're stuck with it.

CHAIRMAN O'REILLY: Yes. Megan, did you have something?

MS. WARE: Yes. Maybe Ritchie has solved that but I'm a little concerned that we're moving really quick on this one issue of overage forgiveness, and I don't want us to rush into something that maybe isn't fully thought out. I was going to maybe make a motion to amend to strike that. If Adam you want to open up another addendum to address that and maybe rollovers, I'm happy to consider that. But I think it might be a little short for this. I'm happy to defer to the Board if you guys want to see draft language in ten minutes, or I can make a motion.

CHAIRMAN O'REILLY: Let the writing begin, and we'll just have a few minutes to go over that. Ritchie White has had concerns all throughout, so I think it's worthwhile, and maybe for some others who haven't spoken up to see what it would look like, rather than wait for the e-mail. Thank you. We have a ten minute break, and we're still on time so all is well. Be back by 11:50.

(Whereupon a recess was taken.)

CHAIRMAN O'REILLY: Okay the Spiny Dogfish Management Board is back in session. Kirby is going to give you some information.

MR. ROOTES-MURDY: Based on the Board's discussion, we have drafted out what the potential language that could be included in the Addendum, based on the idea of including a quota overage forgiveness similar to scup and black sea bass. In the Summer Flounder, Scup, Black Sea Bass Plan, Addendum XX on Pages 3 and 4 have language about how a state overage of their quota, but the coastwide quota has not been exceeded is included in there.

The concept is generally simple. That is if you are over your state quota but the coastwide quota has not been exceeded, there is a forgiveness. There is then also a reconciliation process that allows for those states that have the underage to pool their underage together to cover effectively the overage. We have a table in that Addendum that lays out how that math works out. We've tried to perfect the language that is taken from that Addendum, for this Board's consideration today to be specific regarding the status of the resource. If the stock is above the biomass target, then this quota overage forgiveness would not be allowed. That is some clarifying comments on the language that has been drafted and included on the board currently.

CHAIRMAN O'REILLY: Questions, Megan.

MS. WARE: This is I think a lot to be putting into a document right now without fully thinking it through. **I'm going to make the motion to amend to strike overage forgiveness from this Addendum.**

CHAIRMAN O'REILLY: Okay, we'll wait for that to appear. We have a motion; move to amend to strike quota forgiveness from this Amendment by Megan Ware. Do we have a second? Okay Bryan Plumlee seconds the motion. Okay discussion on the motion, keep in mind we are time challenged at this point, but no one is going to chase me down afterwards.

I don't see any hands, so we're going to call the question. I want to take about 30 seconds to caucus. Is that enough time? Let's do 30 seconds. **Okay I'm going to read the motion again for the record. Move to amend to strike quota forgiveness from this motion, which is the motion above. Could I have a show of hands for all those who are in support of the motion?**

Opposed like sign. The motion carries 11 to 1. Are there any abstentions? I should have asked you that. Did anyone want to abstain? A little after the fact question. No that's good, my record is clean. Thank you. Okay that brings us back to the main motion. Has that been altered? You're working on the main motion. Mike Ruccio.

MR. RUCCIO: I know they are still working on the language, but just a question of whether or not there is any need to retain provisional approval with the removal of the overage forgiveness. It's not the only concept within Addenda VI as we previously discussed. Is there still language that we anticipate seeing after the fact?

Because we've already modified the language on the federal trip limit, and clarified that that is just to be scoping on that concept. I don't think there is a regulatory component to that. But if I understand it we're voting on taking this out to public hearing now, right?

CHAIRMAN O'REILLY: I do understand. I look to Kirby for maybe some certainty.

MR. ROOTES-MURDY: Again, the motion on the board right now would only add language asking for feedback regarding the elimination of the federal trip limit.

MR. RUCCIO: Correct, but I think my question was whether or not provisional is still required.

CHAIRMAN O'REILLY: Provisional should go.

MR. RUCCIO: I thought that was predicated on us discussing overage forgiveness, and the need to have some language that would go out to the Board in the interim between now and whatever public scoping happens. I guess I'm asking if this is final approval for the scoping document.

CHAIRMAN O'REILLY: Toni Kerns.

MS. KERNS: It's a decision of the Board. It's not required regardless, but that was a contingency that the Board put on, on adding language to the document. They wanted to see it before it went back out. We would still send the additional language back out to the Board for your review. We would ask for a quick turnaround and then move forward. But if the Board wants to move in a different direction now that it's only this scoping information, then that is the prerogative of the Board.

MR. RUCCIO: Thanks for clarifying.

CHAIRMAN O'REILLY: I get the sense that this is okay. Is there anyone who has a problem with the way the motion is written right now, the writing of it? I don't think you need a caucus, so I'm just going to ask the question. **All those in favor of the motion please raise your hand. Keep your hands up for a second while I read it in the motion, don't let them down.**

Move provisional approval of Draft Addendum VI for public comment subject to the addition of scoping on the concept of eliminating the federal commercial trip limit to be replaced by the state trip limits (North Carolina-New York) and northern region trip limit. Okay that's good exercise. Kirby has counted, opposed like sign, abstentions. Seeing none, the motion carries unanimously, 12 to 0. Thank you very much. Is there any other business to come before the Board? The next person you see up here next time will be Chris Batsavage. Thank you very much.

MS. KERNS: Thank you, Rob.

ADJOURNMENT

CHAIRMAN O'REILLY: We are adjourned.

MS. KERNS: For those of you that haven't heard, Rob is retiring. I think that is what he was getting at there.

(Whereupon the meeting adjourned at 12:00
o'clock a.m. on August 7, 2019)