

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

**The Crowne Plaza Hotel**  
Old Town, Alexandria, Virginia  
August 2, 2011

Board Approved November 2011

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1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of March 22, 2011 by consent** (Page 1).
3. **Move to approve the de minimis requests from Delaware, Georgia, South Carolina and Florida and accept the Fishery Management Plan Review** (Page 3). Motion by Pat Augustine; second by Bill McElroy. Motion carried (Page 4).
4. **Move to initiate an addendum to the Coastal Shark Fishery Management Plan to include a state-by-state allocation for smooth dogfish to be implemented in 2012 or as soon as possible** (Page 10). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 12).
5. **Move to recommend that the policy board write a letter supporting the Atlantic Highly Migratory Species Electronic Dealer Reporting Requirements as proposed** (Page 18). Motion by Pat Augustine; second by Rick Bellevance. Motion carried (Page 18).
6. **Move to adjourn by consent** (Page 19).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	David Saveikis, DE (AA)
Vincent Balzano, ME, proxy for P. White (GA)	Jeff Tinsman, DE, Administrative Proxy
Stephen Train, ME, proxy for Sen. Langley (LA)	Roy Miller, DE (GA)
Doug Grout, NH (AA)	Tom O'Connell, MD (AA)
Ritchie White, NH (GA)	Bill Goldsborough, MD (GA)
Rep. David Watters, NH (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
David Pierce, MA, proxy for P. Diodati (AA)	Steve Bowman, VA (AA)
William Adler, MA (GA)	Jack Travelstead, VA (Administrative Proxy)
Rep. Sarah Peake, MA (LA)	Cathy Davenport, VA (GA)
Jocelyn Cary, MA, Legislative Proxy	Louis Daniel, NC (AA)
Mark Gibson, RI, proxy for B. Ballou (AA)	Bill Cole, NC (GA)
William McElroy, RI (GA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Rich Bellavance, RI, proxy for Rep. Martin (LA)	John Frampton, SC (AA)
David Simpson, CT (AA)	Malcolm Rhodes, SC (GA)
Rep. Craig Miner, CT (LA)	Robert Boyles, SC (LA)
Lance Stewart, CT (GA)	Sen. Thad Altman, FL (LA)
James Gilmore, NY (AA)	Bill Orndorf, FL (GA)
Pat Augustine, NY (GA)	Aaron Podey, FL, proxy for J. McCawley (AA)
Andrew Voros, NY, proxy for Sen. Johnson (LA)	Spud Woodward, GA (AA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Michael Denmark, GA, proxy for J.Duren (GA)
Tom Fote, NJ (GA)	Jaime Geiger, USFWS
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Margo Schultz-Haugen, NMFS

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

### Ex-Officio Members

Lewis Gillingham, Advisory Panel Chair

### Staff

Vince O'Shea  
Bob Beal

Kate Taylor  
Christopher Vonderweidt

### Guests

Bob Ross, NMFS  
Sonja Fordham, Shark Advocate Intl, D.C.  
Rick Robins, MAFMC

Janice Plante, Commercial Fisheries News  
Angel Willey, MD DNR

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, Alexandria, Virginia, August 2, 2011, and was called to order at 2:20 o'clock p.m. by Chairman David Simpson.

### CALL TO ORDER

CHAIRMAN DAVID SIMPSON: Good afternoon, everyone. If you could take your seats for the Spiny Dogfish and Coastal Shark Management Board, we'll get started. Welcome, everyone; my name is Dave Simpson. We have a lot of material for you today that Chris is going to work through for us.

### APPROVAL OF AGENDA

The first thing on our agenda, though, is to approve the agenda. Is there anything to add to the agenda? Dave Pierce isn't going to do it so I'll do it for him. I think there is an issue for – do you want to do it, David?

DR. DAVID PIERCE: Well, it's not going to be an add-on to the agenda, Mr. Chairman, but it does come up under our discussion regarding smooth dogfish, an issue that I would like to raise at that time.

CHAIRMAN SIMPSON: I thought there was a de minimis proposal for large coastals?

DR. PIERCE: Strange you should raise that issue. My colleague, Bill Adler, just noticed that some division staffer, whoever that may be, has indicated that the Commonwealth is going to submit a proposal requesting an exemption from the possession limit requirement for the LCS and that completely escaped my attention.

We have nothing written as a formal request. Obviously, I will follow up and make that as a formal request or I could make a simple motion later on to have Massachusetts with a de minimis for the LCS. In other words, you caught me off guard. I stand to be guided by you, Mr. Chairman, relative to the procedure that I need to follow on that issue.

CHAIRMAN SIMPSON: Okay, thank you, Dr. Pierce. I will put that under other business, which will give you about 90 minutes to catch up with your staff member.

DR. PIERCE: Thank you; if I can find him.

CHAIRMAN SIMPSON: There is some material and it will be passed around; so if you read it quickly, you can then take us through it at the end of the other agenda items. Anything else with the agenda? **We'll approve the agenda by consent.**

### APPROVAL OF PROCEEDINGS

CHAIRMAN SIMPSON: We need approval of the proceeding from the March 22<sup>nd</sup> meeting. **Everyone is okay with that and we'll do that by consent.**

### PUBLIC COMMENT

Any public comment on items that aren't on the agenda? Okay, not seeing any, we'll move on. Our next agenda item is to consider the 2009/2019 Spiny Dogfish FMP Review and State Compliance, which Chris will handle.

### 2009/2019 SPINY DOGFISH FMP REVIEW AND STATE COMPLIANCE

MR. CHRISTOPHER VONDERWEIDT: This is the 2010 Spiny Dogfish FMP Review, which is a review of the 2009/2010 fishing season, as David pointed out, for the status of the stock. Spiny dogfish is not overfished. The F target is 0.207; the 2010 F is 0.113; so that's well below the target. Overfishing is not occurring. In 2010 the SSB 164,066 metric tons.

The target is 159,288 metric tons. This is the third year in a row where biomass has exceeded the target. The blue shaded there is SSB and it's hard to differentiate in 2009/2010 that it's above the blue line, which is the target there, but it exceeded it small amount, but three years in a row above the SSB target.

The F rate is the green line where the triangle is at the actual F rate. The purple with the Xs is the target and the asterisks above that is the F threshold so you could see the rate has been well below both the target and the threshold. You have seen this slide a number of times. It's in most of the dogfish presentations to do with spawning stock biomass or fishing mortality.

Basically, it shows that due to poor recruitment classes there is going to be a drop in the SSB around 2012. The magnitude of that drop is kind

of unknown, and it occurs even when fishing mortality is at zero, so just something to be aware of that there is this looming drop in biomass. For the 2009/2010 ASMFC specifications, 12 million pound coast-wide quota; 3,000 pound possession limit maximum.

Addendum II implemented regional and also North Carolina allocations, so 58 percent of that went from Maine to Connecticut; 26 percent went to states of New York through Virginia; and 16 percent went to North Carolina. On the left-hand side, that's what the initial quotas were based on the 12 million pound quota and their percentages.

There is a payback provision for overages from the previous fishing year, so there is about a half million pounds overage in both regions and then 136,000 overage in North Carolina, so the adjusted 2009/2010 regional quotas was 6.3 for the northern and 2.5 for the southern and 1.7 for North Carolina.

Those overages are primarily because of late landings, late reports and also fishing effort tends to come up once that closure notice is issued, so the weekly catch rates can skyrocket. It's tricky to manage for that. Federal specifications in 2009/2010 is that there is a 12 million pound quota or there was a 12 million pound quota and 3,000 pound possession limit.

This is identical to the specifications set by the management board; however, they allocate the quota seasonally rather than our regional allocation; so about 58 percent of that is available May through October and then 42 percent November through April, or 42.1. They're working through Amendment 3.

Those of you that are on the Mid-Atlantic Council, there was scoping document that was sent out and I think a draft is currently being worked on, so we'll see when that gets implemented. Hopefully, they're moving towards the regional management approach similar to the ASMFC. Landings in 2009/2010 exceeded the quota; however, a large part of the overages, particularly in the northern region, was due to updates in the data base where the initial landing amounts are taken from the SAFIS weekly quota reports and then that information is audited, and the final landings end up in the ACCSP Date Warehouse.

That's done all the way back to 2008/2009; so if there are fluctuations there, because there are paybacks or overages, it works its way all the way down, so we're several fishing seasons ahead, and so now that these numbers are here, the 2010/2011 quota will be adjusted, so that will be about a half a million pound reduction for the northern region quota.

There should be clarification on that fairly soon. There is about, I think, 4 million pounds left in the northern region as of last week, so it should be able to be rectified well before the quota is harvested. The northern region closed September 27, 2010. The southern region closed December 6, 2010; and North Carolina, they have their own quota and they opened it from January 1 through May 5.

CHAIRMAN SIMPSON: Bill, you had a question?

MR. WILLIAM A. ADLER: Yes, on the chart that you've got right up there now; it says negative value indicates underharvest and yet the harvest seems to have been over the quota, or am I looking at that wrong?

MR. VONDERWEIDT: That's a good catch, Bill. That should say "overharvest". For the northern region that is an overage of 1.19. State landings in 2009/2010 by state, you can see that Massachusetts, New Hampshire, Rhode Island, New Jersey, Virginia and North Carolina were some of the bigger players. All this data is in the FMP review; so if you want to look at it closer, you can do that.

If you look at the landings by region, Massachusetts landed 51 percent of the northern region; New Hampshire, 27 percent; Rhode Island, 13 percent; so those three were the biggest players there. In the southern region, Virginia and New Jersey were the biggest players, 46 percent and 42 percent for 2009/2010. Obviously, North Carolina landed 100 percent of the North Carolina quota.

Canadian landings, just because when the stock is assessed and their quotas are calculated, they account for Canadian landings being just one stock, so the Canadian landings are relevant to ASMFC management. They were very low; in 2009, 249,165 pounds. This is the most recent year landings are available.

It is thought that the landings are low in Canada because there is reduced European demand and some of the perception that dogfish are a species that needs protection. Even if the U.S. Atlantic Coast is sustainable, it's just kind of a perception.

During the Monitoring Committee Meeting last year, there were some Canadian industry representatives there and they were thinking that there are too few processing plants left as result of this lower demand; and so as a result, there is nowhere to cut the dogfish and such a facility can't just pop up overnight. You have to invest in it and you have to get people – it takes a several-year lag if the demand does increase, so it's unlikely that Canadian landings are going to increase significantly in future years.

I communicated with Canada Department of Fisheries and Oceans to ask their staff what they thought, and they felt that there is very little targeting in Canadian waters at this time and it's unlikely to increase as well; so just looking forward to future quota allocations and stuff, the Canadian landings are likely to remain low.

As far as CITES, the spiny dogfish are out for CITES Appendix II listing it seems every year. In 2009 Sweden, acting on behalf of the European Union and Palau, submitted an Appendix II proposal for consideration at the Convention of Parties 15, the CITES meeting in March of 2010. The Appendix II criteria doesn't regulate trade.

It just requires that you need to prove that your stock is sustainable and then you need to have a system of international permits or a paper trail and then you can import or export them. However, there were insufficient votes at the Conference of Parties and so dogfish remain unlisted. A

As far as our FMP requirements of the plan, which is one of the main points of the FMP review, I'll just go over what the requirements are. There are no recreational measures. There is an annual quota set by the board and possession limits set annually. The fishery is closed when the quota is projected to be harvested.

A state can issue up to 1,000 exempted fishing permits for biomedical supply. Finning is prohibited. State dealers must report weekly.

States must report weekly to the National Marine Fisheries Service, and there is no research or monitoring requirements in the FMP. For the biomedical harvest there were no dogfish taken in the 2009/2010 fishing season.

Maine was the only state who has taken them for biomedical harvest in recent years, and they didn't either. As far as after reviewing all states' regulations, the PRT finds that all states meet or exceed the requirements of the FMP. As far as de minimis goes, the de minimis criteria is less than 1 percent of commercial landings exempt the states from biological monitoring of commercial spiny dogfish fisheries.

There are monitoring requirements in the FMP, but Delaware, South Carolina, Georgia and Florida request and meet the requirements for de minimis status, so the PRT would recommend granting these states de minimis status. Up for board action today would be to approve the FMP review and de minimis status for Delaware, South Carolina, Georgia and Florida.

CHAIRMAN SIMPSON: Thanks, Chris. Questions; Pat?

MR. PATRICK AUGUSTINE: No, are you looking for a motion, Mr. Chairman?

CHAIRMAN SIMPSON: We'll see if there are any questions first. I'm not seeing any hands up for a question, so, Pat.

MR. AUGUSTINE: **Mr. Chairman, move to approve de minimis status for Delaware, South Carolina, Georgia and Florida and then a separate motion for the report.**

CHAIRMAN SIMPSON: Second by Bill McElroy. Any discussion on the motion? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I would just suggest that you accept reports and you approve actions, so it's a nuance of the motion. I think the intent is to accept the report.

CHAIRMAN SIMPSON: Did you want to combine –

EXECUTIVE DIRECTOR O'SHEA: No, no.

CHAIRMAN SIMPSON: Do you want to do it separately?

EXECUTIVE DIRECTOR O'SHEA: I mean when you approve a report it means you're approving everything that is in the report, and sometimes you don't always want to do that, but a group can always accept the report and then take action on whatever it has done. We ran into this earlier this morning I think with somebody else's motion on the same thing, so staff just inserted "accept" instead of "approve" a report. I think you're safer in accepting a report and using the term "approve" of any action.

MR. AUGUSTINE: I think I got that. Why don't we include it; not a problem.

CHAIRMAN SIMPSON: So you're looking for your motion to read you accept the FMP Review-

MR. AUGUSTINE: And recommend the de minimis status for the four states noted on the board. Thank you, Mr. Chairman.

CHAIRMAN SIMPSON: Okay, and Bill McElroy seconded that. Any discussion on the motion? The motion is move to approve the de minimis requests from Delaware, Georgia, South Carolina and Florida and accept the FMP Review. Motion by Mr. Augustine and second by Mr. McElroy. Is there any objection to the motion? **We will consider it accepted without objection.** Next, Chris, is the white paper.

### **SMOOTH DOGFISH STATE SHARES WHITE PAPER**

MR. VONDERWEIDT: I'm just going to go over a smooth dogfish management white paper that the board asked for following a suggestion to initiate an addendum for smooth dogfish state shares. The board said that before doing that let's look at how smooth dogfish are managed in the plan, what the federal provisions are and kind of think about this a little bit more before pushing forward.

For background, smooth dogfish were included in the Interstate FMP for Atlantic Coastal Sharks in 2008 and then Addendum I also applied to smooth dogfish. The National Marine Fisheries Service Highly Migratory Species included smooth dogfish in their Amendment 3. These measures will be effective in 2012.

Like I said, in anticipation the board asked for an overview of the measures and also you specified

at the last meeting that you would like an example of state shares using the HMS-based quota, which is 1998-2007, use those years. You also asked for the pros and cons of moving forward with smooth dogfish quota management. That is what is contained in this paper that I'll go over.

The next slide is pretty straightforward. The stock status we don't know because there has been no smooth dogfish assessment. ASMFC recreational measures; our plan allows recreational fishermen to possess and land any species that is not prohibited in federal waters. In the past there was no federal management of smooth dogfish so they were not prohibited.

In the future recreational anglers can retain them so they will continue to be not prohibited, but that's how our plan addresses smooth dogfish. The head, tail and fins of any shark, including smooth dogfish, in the recreational fishery must remain attached through landing. There is no recreational size limit for smooth dogfish. Recreational anglers can only use a handline or a rod and reel, and the possession limit is unlimited.

In the commercial fishery there were a number of species groups for commercial management. Smooth dogfish was put into its own group. It is the only species in the smooth dogfish species group. Now the board can set a possession limit for any species group and they can set an annual quota for smooth dogfish for up to five years.

The plan has only been in place since 2008 and since that time the board has never implemented a smooth dogfish quota or any kind of smooth dogfish possession limit. There was a point where that happened, but it was rescinded quickly so there has never been any possession limits or quota through board action, but the board may do that if they want to.

Commercial fishermen must hold a valid state commercial permit. Exemptions can be granted from any part of the plan for display and research purposes. This applies to smooth dogfish; however, since there is no quota and there are no possession limits, there is really no need for an exemption to that because there is nothing to be exempt from.

Dealers are required to hold a valid federal dealer permit in order to act as a dealer and sell



smooth dogfish. In the commercial fishery authorized gear is rod and reel, handlines, gill nets, trawl, short lines which are defined following North Carolina's own regulations of 500 feet or less and 50 or fewer hooks; also, pound nets, fish traps and weirs only.

Addendum I granted an exemption from the fins-attached rule. Commercial fishermen can remove all fins from March through June and the dorsal fin must remain attached the rest of the year. The idea behind that is that smooth dogfish spoil quickly and the fishermen want to gut them and get them on ice quickly.

In discussing the federal management side of this, there have been a lot of questions about, well, what about the Mid-Atlantic and their management authority over smooth dogfish. I didn't see if that ever got sorted out – well, it was sorted out. The National Marine Fisheries Service initiated a formal determination of management authority following a request from the Mid-Atlantic Council.

They found that smooth dogfish fall within the congressional directive of the Magnuson-Stevens Act regarding highly migratory species and would thus fall under the Secretary of Commerce's authority. Now, the specific provisions of Magnuson-Stevens is that highly migratory species are within the geographic area of more than one council. If you want to read in the report, it lists the specific councils.

Their definition of highly migratory species includes oceanic sharks, so oceanic sharks are the HMS part of the first bullet there that falls under the jurisdiction of more than one council. And then finally NMFS determined that smooth dogfish are in fact oceanic sharks based on the habitat, migration and distribution. Oceanic sharks are not defined in Magnuson-Stevens.

This all happened and HMS was given the formal management authority, and I would say that at this point it is kind of a done deal. As such, HMS has included smooth dogfish in Amendment 3. They included smooth dogfish in their smoothhound complex, which includes smooth dogfish and Florida smoothhound.

The document indicates that smoothhound was selected as the name of the species complex to avoid confusion with spiny dogfish regulations and notes that the smoothhound and smooth dogfish are likely the same species, but they're

the only members of the smoothhound family found on the Atlantic coast; and as such, put them in one group and all the landings will be counted.

Just a side note, our technical committee discussed Florida smoothhound during the development of our FMP and they agreed that since smoothhound is probably the same species as smooth dogfish, we shouldn't include it and we should just include smooth dogfish, so we don't include smooth dogfish in our plan if you were wondering about that.

The recreational measures in Amendment 3 that pertain to smooth dogfish is that an individual must hold an open access HMS angling permit or HMS charter/headboat permit. These regulations apply – the conditions of this permit apply when fishing in state waters, so we're really only talking about state-only shark fishermen fishing in federal waters for any of this.

There is no size or bag limit in the recreational fishery and the fins must remain attached naturally through landing. For the commercial regulations in Amendment 3, commercial fishermen are required to hold an open access smoothhound permit. This permit only allows a fisherman to catch smoothhound species.

You need an additional permit to catch the other shark species. Again, it applies when fishing in state waters. Federal dealers are required to have a dealer permit to buy or sell smooth dogfish. There is no size or possession limit in the commercial fishery. The fins must remain naturally attached through landing, but one point I'll make there is that there is a Shark Conservation Act which I'll go over in a little bit and there has been no final rule on that, so that could potentially change the fins attached for the smooth dogfish portion.

The gear that fishermen can use for federal shark fisheries, for smooth dogfish are the gill nets, pelagic longline, bottom longline, handline, rod and reel, and bandit gear, and this gear was included as consistent with other federal shark fisheries. The major commercial provision in Amendment 3 for smooth dogfish is that there will be a base quota of 715.5 metric tons.

This number was derived from taking the maximum landings in 1998-2007, increasing that amount by two standard deviations, and then you

get the 715.5 metric tons. The intent of this is to allow the fishery to continue at current levels, which is indicated in the amendment. That's kind of the background of the management overview portion of this.

However, the board asked for examples of smooth dogfish state shares using the same base years as Amendment 3 quota. To do that, I needed to look at the landings to figure out what the best landing source would be to use because you needed the landings by state. However, smooth dogfish like spiny dogfish landings aren't exactly simple to deal with.

The majority are immediately processed at sea so really what comes in to the dealers and into the data bases are dressed carcasses; they're logs and then those logs need to be converted to whole weight because the assessment folks use whole fish when they're calculating the assessment and it's the way that shark data is generally treated.

To go to the data base now, you're going to find what the whole weight is with the fins. However, to do a quota you want to set a quota based on the dressed weight of the animals after the fins have been removed so you need to convert the whole weight found in the data base back to the dressed weight that the fishermen are going to bring in.

The ACCSP Data Warehouse was extremely helpful looking at this issue, just to note that. The ACCSP Data Warehouse includes grade code so that says whether it was landed whole or whether or it was dressed so you can tell if it's a whole fish or not. It gives the whole weight; also gives the conversion factor that used to go from dressed carcass to whole weight, so you can accurately derive what those initial carcasses weighed by looking at that.

I looked at the Amendment 3 quota to make sure I was using the same base years and all that, and it looks like – well, I communicated with their staff and they used a general shark conversion factor of 1.39, and this is different from what states use. I have spoken with folks over there and they might relook at it, but there is this conversion factor issue that should probably be fixed at some point. It's not the most accurate landings.

And just to kind of explain what I'm talking about – hopefully I'm making some sense – the

second column from the right is the whole weight, so that's with the fins and everything and the guts. Then the column to the right is the landed weight provided by ACCSP; and then if you took the whole weight and converted to landed weight using the 1.39 conversion factor, you get a different number than what the accurate landed weight is.

It's probably good to use the accurate landed weight to establish the quota. Now, the next chart kind of shows us graphically there are three lines there. The black line is the whole weight; the blue line is the landed weight; and the red line is the 1.39 conversion factor, and you can see that those are different.

I don't think anybody is suggesting that whole weight would be appropriate for deriving a quota, but you can see that the blue line and the red line change for the different years. Also noteworthy here is that the blue horizontal line and the red hash line here represent what the quotas would be if you looked at the maximum annual landings from 1998-2007 and then increased them by two standard deviations, which is what HMS did; but if you look at what happened to smooth dogfish landings in 2009/2010, they were much higher than what the proposed quota would be.

If the intent is to not impact existing fisheries, if smooth dogfish landings at the same levels as 2009 and 2010, this quota based on 1998-2007 would cause a reduction in the current fishery it looks like by about 25 percent just looking at that figure. It's an important thing that sort of presented itself after going through these landings. Another caveat to the dogfish landings is that there is a number of dogfish that remain unclassified, and I mean by this is that in the data base fishermen and dealers could report shark, dogfish rather than dogfish, smooth or dogfish, spiny, so there are probably smooth dogfish there are probably spiny dogfish, but fishermen didn't have to classify them until the summer of 2009.

As a result there is a lot of unclassified landings that could be smooth dogfish landings; so if you're going to appropriate a quota, it might be important to classify those first so that states get – those landings are included in those states and they get credit for their landings in those allocations.

One thing that might help a little bit is when the spiny dogfish technical committee looked at spiny dogfish landings for the Addendum III states shares, they classified unclassified dogfish from 2003-2010, looking at the seasonality of the landings, the trip amounts because there were trip limits for spiny dogfish state-reporting requirements and the state fisheries and so as a result of that several states actually went back and they reclassified their dogfish landings, and so the data bases have been updated.

However, there was no reclassification from 2002 backwards because the technical committee deemed the landings in the FMP as more accurate because the technical folks looked at those landings closer to 2002, so they just felt like those were the recommendations. You might be able to use the same methodology and recommendations or have the technical committee look at it if you were interested in classifying dogfish landings prior to setting quotas.

If you look at the number of dogfish landings, there are certain years like 1992-1998 where the dogfish landings unclassified are pretty high. Now, why is that important to smooth dogfish? Well, if you look at this next slide, the green line is smooth dogfish and the red line is unclassified.

There are some years where the unclassified landings greatly exceed the classified dogfish; so if those are smooth dogfish, you could actually have more unclassified dogfish than what the allocations are based on. That might be another factor that needs to be looked at in greater depth before doing the state allocations. I wish the landings were really easy to work with, but those are kind of the caveats.

So moving forward and doing what the board asked, to use the example state shares, this is based on the ACCSP Data Warehouse landings as provided by ACCSP. They follow the same base years 1998-2007, and I would just ask that you look on Page 10 of your document because if I was to put it up on the board you wouldn't be able to read it.

But North Carolina gets 38 percent; Virginia gets 33 percent; New Jersey gets 15 percent; New York, 6 percent; Maryland, 4 percent; and everybody else would have less than 1 percent of the quota. In that document it has a quota based

on 715.5 metric tons, so it lists what each state's quota would be under that system.

Moving forward to the pros and cons of smooth dogfish state shares, these are pretty general. There is not a whole lot known about the smooth dogfish fishery and the inner-workings. Basically some of the pros could be that you can manage when the demand and the value are greatest. It might prevent a race to fish. States that have historical participation can get future access, and it also gives stability for fishermen and the associated industries. It might allow for more long-term planning.

The cons, kind of the opposite, it prevents any new fishermen from entering the fishery. There is no access for states without historical participation. It might be unnecessary is not going to be reduced to set up the state shares. I think that's it. Thank you.

CHAIRMAN SIMPSON: Thank you, Chris. Pat.

MR. AUGUSTINE: Great presentation, Chris. In referring to your Page 9 on the charts about those that were unclassified, it's interesting, Chris, that you note that not knowing the unclassified dogfish versus smooth dogfish for that period from about 1989 to about 1997 – well, maybe 1998 – it's a blip. However, it has been relatively straight line with the exception of 2007 and 2009 on the smooth dogfish.

Isn't a ten-year timeframe long enough to develop a breakout of percentages of state landings as opposed to considering the whole of that? You said that the ones that were unclassified in that period of time might skew or change the outcome. Could you clarify that again one time? I got a little confused when you stated that. Could you restate that, please?

MR. VONDERWEIDT: Actually, we can bring that chart up on the screen; so 1997, Pat, was used as one of the years where we took an average of the state landings and then said New York would get X-amount. There are all these unclassified dogfish in that year. I haven't looked at the data so this is just for exercise and I have no indication that these are New York landings, but if these were New York landings?

What if, for whatever reason, all of a sudden there was 2 million pounds of unclassified

smooth dogfish that turned out to be New York smooth dogfish? That would increase your quota. That's a very dramatic overstated example, but a spike could increase a state's percent share by 2 or 3 percent, maybe more or maybe less. I don't know, but it's a consideration.

MR. AUGUSTINE: To that point, okay, that's all well and good, but if there is no way of identifying what they were now, and I understand it would affect some states whether it was New York or North Carolina or whatever, it may affect them by some amount, but how we can we deal with what it? It just seems to me it's a matter of fact, if that's what the record shows, then so be it unless someone can come up with a better way of identifying what those were.

CHAIRMAN SIMPSON: Yes, I think it's just something to be aware of. David Pierce.

DR. PIERCE: Chris, thank you for putting the paper together and giving us some further insights into the pros and cons of smooth dogfish state shares. Obviously, that's the principal reason for you putting it together. I think there is an overarching consideration that we need to think about. I'm glad the HMS people are here and glad that you reference what is happening with HMS. Councils don't manage smooth dogfish; it's HMS. Because of that fact, I wonder if HMS regulation of smooth dogfish, management of smooth dogfish precludes the ability of ASMFC to actually establish state shares.

I asked that question because I've had similar discussions with the leadership of the New England Council when every time we have told the New England Council, during briefings, that the states were considering state shares for spiny dogfish, the response was you can't do that because there are no federal/state shares of spiny dogfish.

Of course, we did it and it was the right thing to do, but now it's a different ballgame in that we're dealing with HMS. My question simply is HMS management of smooth dogfish a consideration regarding whether or not we can actually move forward, if we decided to do so, with smooth dogfish state shares?

CHAIRMAN SIMPSON: Right, it's a fair question and, Margo, do you have thoughts on it?

MS. MARGO B. SCHULZE-HAUGEN: No, not at this time. It's certainly something that we could look into. It sounds very legal and we could have our attorneys get in touch with yours. The statutory authorities are different and how it would interplay I don't know at this point.

MR. PETER HIMCHAK: But to that particular point, I was under the impression from past board meetings on sharks and smooth dogfish that the HMS folks were constantly trying to alert us to a coast-wide quota coming up in 2012, and that we should have the foresight to start thinking about how we were going to have state-by-state shares. That has been my impression for kind of like carrying on this crusade over the last year, and we weren't getting the message like I tried to be the message carrier on proposing an addendum.

MR. ROBERT E. BEAL: Well, not commenting on the legality of it, but there is precedence for the commission taking a federal quota and subdividing that into state quotas. We have it for the Black Sea Bass Fishery Management Plan on the commercial side and we also have a summer period scup quota, so there are instances where the Secretary of Commerce sets up a quota and then the states establish the same quota but then subdivide that into state shares. It has been done by the commission and it seems to be working frankly pretty well for a number of species.

CHAIRMAN SIMPSON: Right, and my sense of it is we can do it as long as the federal government allows us to, and then there is the matter of preemption. David, did you have a followup?

DR. PIERCE: The followup would be that I would request that we do have some look at the legality of our having state shares for dogfish under management of HMS. I think it's an issue that could come up in the future, so let's deal with it now and get that legal interpretation before we go down the road and perhaps find ourselves in the position where the federal government would say that's not approvable.

MS. SCHULZE-HAUGEN: And to that point, the distinction between council-based versus HMS/NMFS-based, all of the council actions ultimately are approved or disapproved by the

secretary as are HMS actions. The fundamental legal basis may not be different, but, again, that's something I think we would want to double-check on.

CHAIRMAN SIMPSON: Okay, then can staff inquire as to the secretary's view on that? It's one of those things you may want to think twice about asking. Wilson.

DR. WILSON LANEY: Mr. Chairman, just a minor correction. Chris, you had on your powerpoint slide that a short line was 500 feet, but it's 500 yards, Louis tells me. It's correct in the text, but it was wrong on the slide.

MR. ROY MILLER: Chris, I was wondering if I could request some clarification of the points you made and some points in the document with regard to recreational smooth dogfish measures. It stated that recreational anglers must hold an open access HMS permit or HMS charter/headboat permit in order to retain smooth dogfish in federal waters.

Literally, if a person is fishing in federal waters and catches a smooth dogfish and cuts it up for bait, which is a common practice in the Mid-Atlantic area, that person, in order to do that, must have an HMS permit; is that what I understand?

CHAIRMAN SIMPSON: Chris is deferring to either Margo or – Margo, do you want to handle it?

MS. SCHULZE-HAUGEN: Yes, that is correct and I further note that the federal regulations do not allow processing at sea even for bait or your landing conditions would apply.

MR. MILLER: If I may follow up, the statement also says, if I could go on, the conditions of these permits apply while fishing in state as well as federal waters; so do I take that to mean that you're no longer allowed to cut up a smooth dogfish for bait in state waters either unless you have an HMS permit?

MS. SCHULZE-HAUGEN: That is a permit condition of the federal permit, that the federal regulations no matter where fishing. It would not apply to state fishermen fishing within state waters. They would be bound by the commission plan. And further to note, none of

the smooth dogfish measures are currently in effect. The delay was until 2012.

MR. MILLER: One final point, Mr. Chairman, this fits within the category I'm sorry I asked.

MR. HIMCHAK: Chris, I think you did an excellent job in dealing with not only the conversion factors but with the classified versus unclassified, and we'll audit the landings and then we'll just take a percentage. It becomes a rather complicated process and I think you did a good job explaining it.

I had one other point, and again what I just heard about the 2009/2010 landings exceeding what would be the 715 metric ton quota for 2012 makes me even more concerned that we may want to start locking in state-by-state shares. You know, the New Jersey guys have been pushing me on this and we're not going to get rich at 230,000 pounds, but they just don't want to get shut out.

They just want a percentage that they could land if the opportunity presents itself. Obviously, North Carolina and Virginia are going to get the lion's share of this fishery. That is where it is landed and we have no problem with that, but we don't want to end up with, oops, the quota is taken and you're not going to get anything. That was my whole purpose for pushing this state-by-state allocation issue.

CHAIRMAN SIMPSON: Any other questions or comments about the white paper?

DR. LOUIS DANIEL: Just a question and maybe I'm the only one that doesn't understand, but where are we with this state – I mean, what are we going to need to do in order to implement all of this, and is that what you're going to be asking us for next here or are we just going to maintain moving along status quo until the federal rules kick in? I'm very concerned about this. Looking at it from what Chris has pointed out, which is excellent information, we would have had to close fairly early last year on a stock that we really don't know anything about.

CHAIRMAN SIMPSON: Well, I think the purpose of the white paper was to stimulate some conversation and thought and next steps to consider for the board. Margo.

MS. SCHULZE-HAUGEN: Just one point also for the board to consider; we've noticed the increase in the 2009/2010 landings as well and are evaluating our next steps and whether we want to revisit the quota as the intent of Amendment 3 was to not disrupt the fishery, but at this point we don't yet know what we're doing but we have noticed that as well.

MR. HIMCHAK: I guess to answer Dr. Daniel's concern, my idea was that we would have to develop an addendum and essentially allow – which we could a status quo option, we could have the same years as what the HMS folks use, we could have the options of 1998 through the most current landings.

The whole point is to lock something in before 2012 when the coastal quota starts. I introduced the motion and I got a second the last time, and then there was a substitute motion to do the white paper, so we could just recycle the motion and put it on the table and just get the process started.

MR. AUGUSTINE: Well, Mr. Chairman, can we bring that motion back and readdress it since the white paper has been presented. Although the board did not make a conscious decision to say we would prefer to go with the state by state, looking at North Carolina and the impact it would have on them, New Jersey, it would have them and us in New York were the numbers to change, it would almost seem it would be logical for us to go back and readdress that or remove from – not even tabled; it was substituted – **that we actually direct the PDT to develop an addendum to the Coastal Shark FMP to address the state-by-state issue at this point in times. If it's okay with you, Mr. Chairman, I would make that motion.**

CHAIRMAN SIMPSON: That motion being to initiate an addendum? There is no outstanding motion to be brought back to the board or anything so we have a clean slate here. We have new information and you're open to motions.

MR. AUGUSTINE: Unless Mr. Himchak would like to restate the original one that was off, I would move to direct the PDT to develop an addendum to the Coastal Shark FMP to include a state-by-state allocation for smooth dogfish to be implemented prior to – we have said the 2012 fishing season, and I would leave that open to other board members to decide whether you want

to go for 2012 – can we do it or should we go for as soon as possible? If I get a second to that, we can discuss that.

CHAIRMAN SIMPSON: Okay, Bill Adler is seconding the motion. What we have up right now is move to initiate an addendum to the Coastal Shark FMP to include a state-by-state allocation for smooth dogfish.

MR. AUGUSTINE: Yes, Mr. Chairman, with the added section to be implemented – dash – whether it's 2012 or the 2012 season if we have time or as soon as possible. I like to get some input from the board and the technical committee; is it possible to do it for the 2012 season? If it is, I would like to include "prior to the 2012 fishing season".

CHAIRMAN SIMPSON: Okay, so the added language "to be implemented in 2012 or as soon as possible"; is that adequate?

MR. AUGUSTINE: If those words satisfy the board, yes, Mr. Chairman.

MR. HIMCHAK: I might be able to shed some light on this. If I'm not mistaken, the fishing year for smooth dogfish starts January 1<sup>st</sup> and not May 1<sup>st</sup> like it does with spiny dogfish, but the actual fishing activity would not be taking place until around April. Conceivably we could have something up and running before there is a rush on landings in 2012.

MR. BEAL: Well, I think the normal timeline for an addendum would be the PDT would draft the document between now and the annual meeting and public hearings – assuming it's approved for public comment – public hearings between the November meeting and the February meeting of next year, and the board would be in a position at the February meeting to take final action at that point, which isn't obviously by January 1 but it is before the bulk of the fishery starts, which appears to be in April.

I guess there is still the question of the states' ability to control smooth dogfish landings through quotas, how long it would take to implement state regulations following a February approval of the document.

EXECUTIVE DIRECTOR O'SHEA: I think realistically for the board to be able to say that here and not knowing again what the nuances are

of the individual – usually when you all approve an addendum, you then agree, after you see what all the details are, when the implementation date is going to be. I don't know how you'd have information to forecast that you're going to implement this in 2012 right now and not even knowing what it's going to look like.

CHAIRMAN SIMPSON: Right, I think that's where the "or as soon as possible" captures the spirit of what you're after and you heard the timetable. As Vince properly pointed out, it will be a matter of the details involved and quickly the states can respond. We'll find out about that second part if this indeed passes. Bill.

MR. ADLER: So, we are going to have a February meeting unlike this year when we didn't have a meeting until March? We are going to have a February one?

CHAIRMAN SIMPSON: Yes. Pete.

MR. HIMCHAK: Regarding the 2012 year, the more important thing is to develop the allocations before you have a fishing year where there is a premature closing and then how do you determine allocations after that point. If there is a problem in 2012 where the quota is run up real fast and some of us lose out, well, so be it, but at least in the following year we would know what our particular percentage would be.

MR. THOMAS O'CONNELL: A question and then a comment; I guess the question would be when would we know from the National Marine Fisheries Service on what the quota is going for 2012?

MS. SCHULZE-HAUGEN: Soon.

MR. O'CONNELL: What does "soon" mean in federal government terms?

MS. SCHULZE-HAUGEN: I would hope by your annual meeting.

MR. O'CONNELL: Thanks, and then my comment would be – and I'm not sure if this would have to be an amendment to the motion, but as Commissioner Himchak noted I would like to see an inclusion of the harvest years through 2010 in regards to an option to look at state allocations. In Maryland's situation, for example, this is our largest coastal shark fishery.

It's still very small but our average landings from 1998-2007 are about a third of what they've been in the last couple of years. Looking back at our spiny dogfish discussions, I don't want to disadvantage a state that has a more newly developed fishery by looking at average landings in a more historical timeframe.

CHAIRMAN SIMPSON: All right, thanks. Yes, the graphic showed the increase in the last two years, so clearly there has been some change. It sounds like the intent of HMS is to set limits that aren't restrictive to the fishery at this point. We'll have information coming out on – presumably they'll be looking at those recent landings when they set the quota and we should have that information in time for the annual meeting. If that develops that way, that would be great timing to inform how we go forward. Pete.

MR. HIMCHAK: One last comment, I promise. Yes, I understand Tom. We could the PDT to have two options in the addendum; essentially use the 1998-2007 years upon which the HMS set their coast-wide quota and at the same time the other option could be to use 1998-2010 landings. That addresses more the – you know, we have few unclassified dogfish within more recent years. Again, I'd like to hear the comment from Virginia and North Carolina because they have the biggest stake in this fishery. I have no objection to Tom's concern about carrying it up to the most recent years.

MR. AUGUSTINE: Mr. Chairman, to that point and a follow-on to Mr. O'Connell and Mr. Himchak, why would we not direct the PDT to take all of those years on an individual basis when we set the baseline when we were doing summer flounder, scup and black sea bass. In other words, it would be 1998-2007; 1998-2008; 1998-2009 and to 2010; and then through a discussion around the table decide which one of those we will agree on collectively, but the drop-dead date would be the end of 2010.

So we would have actually four options as opposed to two and it would cover all four years. Some other states may argue that their catch rate was higher in 2009 and 2010 and would vie for those as opposed to us where we may want 1998-2007. Would the PDT consider the four as opposed to the two; can we do that, Chris?

CHAIRMAN SIMPSON: Pat, I think there has got to be a hundred combinations possible to consider and I think if all the years – the message would be make sure you include at least through 2010 so that we have through current landings including the last two years where it seems there has been an elevated catch. The board will have the chance to look at that and refine what goes out to public hearing in terms of combinations of years. Dr. Daniel.

DR. DANIEL: Well, just thing; we're kind of getting into I think directions to the staff before we have agreement to do an addendum, so I'd like to address some questions to staff but I think I would prefer to wait until we've decided if we're going to move forward with an addendum or not.

CHAIRMAN SIMPSON: Right, I thought we were filling out if this needed to be refined at all as a motion, and I don't see that need right now. Any other comments or questions relative to this motion? The motion is move to initiate an addendum to the Coastal Shark FMP to include a state-by-state allocation for smooth dogfish, to be implemented in 2012 or as soon as possible. Motion by Mr. Augustine; second by Mr. Adler. Do you need a moment to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN SIMPSON: **Okay, all those in favor raise your hand, please, 12 in favor; opposed same sign, none opposed; any abstentions, 4 abstentions; any null votes.** Dr. Daniel, a comment or a question?

DR. DANIEL: Well, now that we're moving forward with an addendum, just an idea that I just came up with that may be a bad idea, but I'm going to bring it up, anyway. Since we don't have an assessment and we're looking at these standard deviations around the mean and all that and we've got folks that are looking at more recent years and we don't want to have disadvantages from this smooth dogfish plan like we had with the spiny dogfish plan, I would suggest we look at like a rolling quota so that as circumstances changed throughout the coast, if North Carolina all of a sudden wasn't catching any smooth dogfish, why would we maintain 38 percent perpetuity if other states could use it.

So if you were able to somehow calculate a quota based on the last five years or something

running average, then if the stock starts to decline the quotas are going to decline; and if the stock improves or it can withstand that level of pressure, the quotas will move.

CHAIRMAN SIMPSON: So the motion passes to initiate an addendum; it carries 12 in favor, none opposed with four abstentions. I think I understand what you're suggesting as an alternative to be developed, but I'm not entirely sure. Are you saying that quotas would be based on, say, a five-year rolling average so that if by your example North Carolina's landings started to fall down, that would become incorporated into the calculation and so Connecticut's 1 percent would become 2 percent, something like that, or is it more subtle than that?

DR. DANIEL: Well, just looking at it in that right now we sitting on a, was it, 1998-2007 quota of 715.5 metric tons, which is not a lot of fish. When you look at what at least North Carolina and Virginia landed last year, we caught that, I think, and that's going to create a problem. If you were to take, say, 2005-2010 is a quota and based on the distribution of the catches, divvy it up percentage-wise by state that quota, and then that quota would run for a period of time and then you would have another five-year running average quota and it would change it. That way if the percent allocation changes, you're not always locked in because that's always a problem.

Nobody is ever happy, except for maybe Massachusetts, with dogfish with their percentage allocation. This way you kind of plan for it – with a fairly small fishery, you kind of plan for these changes that could occur in the allocation scheme so that if you've got somebody with 1 percent, they may have an opportunity to grow or take advantage of other states not participating or it shifts in the distribution of the fish.

CHAIRMAN SIMPSON: Okay, I think there is enough there of a concept for the plan development team to develop and see if it's what you had in mind, but the concept of a rolling allocation that would be, say, on a five-year moving average so it could evolve over time when climate change leads all North Carolina's resource to reside off the state of Connecticut, for example.



DR. DANIEL: Exactly, but also I would be curious – you know, the HMS would have to buy into it. And then one final point and then I won't say anymore is about the finning issue. We're going to have to resolve that in this because that could create some real problems for us if we don't get the Conservation Act done that exempts dogfish or at least gets the carcass-to-fin ratios correct.

CHAIRMAN SIMPSON: Okay, good, and the one thought I have on this is that unidentified dogfish category, this would kind of put states on notice if they think they have issue that can be resolved, that sooner rather than later is the time to visit that. I know that has come up for other species so just be mindful of that. In one recent year the example we used – I forget which it is – unspecified was 2 million pounds and smooth dogfish was 1 million, so two-thirds of the total was unspecified. Anything else on this subject, then, before we move on. Dr. Pierce.

DR. PIERCE: Yes, another alternative I would like to see, you know, for state allocations really cannot be entertained, which is very unfortunate, and it's because we don't have a stock assessment for smooth dogfish. I would like to believe that we could explore adoption or consideration of an option that would say percent shares would be set in a certain way, below a certain stock size, and then above that particular stock size the percent shares could shift.

We've considered a strategy like that for other species and I think it's a very attractive alternative. As the resource grows, then states that have low shares could have their low shares bumped up a little bit to account for the growth in the stock.

But we don't have a stock assessment so I'd like at least the document to reflect that kind of strategy and assess the potential for that strategy being considered and when in light of the fact that I assume an assessment will be done some time, I would hope.

Otherwise, we continue to move forward with spiny dogfish with quotas that are set based on what the fishery has been taking, which is kind of a lousy way to set quotas, but we did that with black sea bass in one year so I guess we can do it with smooth dogfish. Anyway, again, I'm not making a motion but I would like to have that concept explored by the plan development team

in the context of our eventually having an assessment and when that might be.

CHAIRMAN SIMPSON: Okay, and this has come up in other cases, so the base allocation would be history based, and then above some level of quota to be determined might be distributed equally among the states, as an example. Do people understand that concept, so that would be an alternative the plan development team – Chris.

MR. VONDERWEIDT: Point of clarification, David; I'm just trying to think in my head how that concept – which I understand could be implemented, so I guess Step 1 would be the assessment results and then there is going to be either the positive results that allow for a higher quota or negative results that allow for a lower quota or somewhere in between there.

I mean, once the assessment comes out, it could say we can land 1,500 metric tons instead of 715 or something or lower than that, so I have no concept – and I don't think until the assessment is available, there is no concept of what the quota ranges could be, which would allow the PRT to look at the amount of quota based on the assessment and say, well, this is what is necessary for the current fishery and then anything above that is sort of icing on the case so maybe you could give it to states that have had less landings?

DR. PIERCE: Well, the strategy could be to adopt state shares based on some formula we all agree to and then that would be contingent on the eventual assessment that would be created and I assume some spawning stock target – biomass target that would come out of that assessment threshold and all the information that we really need to responsibly manage a resource; so once we have those numbers in hand, that would put us in a position to make some judgments, I suppose, as to what stock size would then trigger the other way of distributing the quota.

CHAIRMAN SIMPSON: If I could just so that the plan development team can develop an example in the document, if the initial allocation was made on the first year's harvest limit and then demonstrate a scenario where the quota went up by some amount, 25 percent, and that additional 25 percent was distributed equally, it would provide the example of how it would work out. That gives the plan development team

something to work on in the next few months; and then once we see the document and give more thought to this, then we could identify the specific level at which such a scenario might take place. Pat.

MR. AUGUSTINE: To that point, that sounds like it's started to get a little bit complicated. If we look at all the quota shares that have been established over the years, we have not had a cushion or a change in the percentage level that each state got. If the quota went up we took a share of that, an equal amount of that share of the overall quota.

Seventeen percent is 17 percent whether it's a million pounds, ten million pounds or a hundred million pounds. Conversely, if you have 0.003 and the quota goes from a million to ten million pounds, you've still got 0.003 of whatever that overall quota change is. If I understand correctly, where we have bluefish in that quota setting whereby the recreational group allows a certain amount of poundage to be transferred to the commercial side if the recreational doesn't reach a certain threshold, that's a whole different scenario, but the percentage remains 83 percent recreational and 17 percent commercial.

This flex thing that David is trying to explain, it just sounds complicated the way we're trying to address it. Maybe it should be put on the PDT to try to come up with that and maybe look at another scenario where we'd have a similar situation where we have set state quota shares; and if one sector – well, in this case we won't have a large recreational sector. But it seems to me that if states are not using that quota and it gets toward the end of the year, maybe we need to consider a mechanism where one state, State A could make quota available to State C, which is North Carolina or Virginia, as the case may be.

Think outside the box on that kind of approach, but it seems that when we set a baseline line quota percentage, it's locked into the plan for a certain period of time. I like the idea of maybe five years go back and address and look at what the trend has been, the shift and where the stock is and where the harvesting is occurring may change significantly, so we may want to go back and look at those quotas.

You and I have talked on the record how do we get a different quota share for scup, how do you transfer it within an addendum or within an

amendment that's locked in that says commercial will have this and recreational will have that, and you beat your brains out on the table about it and so did I. We haven't come up with a mechanism to do it. Maybe the PDT could look at a mechanism here that we could consider. Thank you, Mr. Chairman.

MR. HIMCHAK: Just to address Dr. Pierce's concern in a very short statement; the spiny dogfish addendum that we recently adopted for state-by-state shares in the southern region specifically put in a – was it a three-year re-evaluation of the state shares percentages because we recognized that there could be enormous growth in the fishery and that to lock Delaware into such a small percentage or Maryland at a certain level where they could expand into the fishery, we would have a three-year re-evaluation so that we're not locked in at perpetuity for what we originally established. You can borrow that section out of the spiny dogfish addendum.

CHAIRMAN SIMPSON: Okay, in other words, an option for a sunset provision using an example of three years. Okay, these are things that we're just sort of giving the PDT to work on and we're doing it not by motion but just sort of by nod around the room. If anyone finds real objection to it, let me know and we'll get more formal about it. Any other concepts to bring in? Tom, you had your hand up.

MR. THOMAS FOTE: Many years ago when we thought we were going to actually recover and starting greatly increasing these quotas, we were trying to figure out how we would divide them up among states. Basically, there was a committee formed to take a look at this and some of the suggestions were that we would basically – when a stock jumped by a big percentage, that we would divide that equal share of that percentage and make it equal.

Since we started off with a baseline as the baseline and if we had a ten million pound increase in that stock, which is what we had hoped for with scup and black sea bass before we got into all these crazy SSC situations, that we would basically have that and be able to say, well, we'd give that equally among the states to help them share equally.

That was a whole committee, there was a white paper on it, we worked on it for years. Bill Cole,

you remember and I think, Louis, you were part of that committee. We should relook at that because maybe some day we will actually have recovered stocks where we basically are allowed to fish on them. When we have recovered stocks, we're not allowed to fish on them, but when we get to that point where somebody actually decides we can fish on them, then we should be able to handle the quota. That's one of the ideas that we have looked at. We performed the white paper. The commission invested a lot of time and we should go back and revisit that.

CHAIRMAN SIMPSON: Okay. Yes, I think that's the concept that David Pierce put forward, so it sounds like that's worth pursuing and looking at this fall. Is there anything else on this before we move to the next agenda item because I see we're beginning to run a little bit behind? Seeing nothing, then we will move to the item, which is an overview of state possession limit regulations.

#### **OVERVIEW OF STATE SHARK POSSESSION LIMIT REGULATIONS**

MR. VONDERWEIDT: As you might remember at the last board meeting there was a discussion of the Office of Highly Migratory Species using in-season adjustments to possession limits as a means to manage quota, and the board said that we'd like to have an overview of what the state shark possession limit regulations are, what each state's ability to make an in-season adjustment under current regulations are before commenting on the use of possession limits.

That is what this is based on your request at the last meeting. As I just said, HMS recently indicated – and this was part of the draft specifications – that they may employ in-season possession limit adjustments as a quota management tool. There are two ways that could happen. One would be to set the possession limit for a species at zero, which is essentially a closure but it would be using a zero possession limit as an administrative tool to close the fishery essentially.

Another possibility of how they could employ in-season possession limits would be to reduce the existing possession limit in season to a smaller amount. For example, I just made the 15 upper here, but right now there is a 33 large coastal shark possession limit, so an example of

an in-season adjustment to that would be to reduce it to 15 large coastal sharks.

The ASMFC Commission Plan was developed to complement their Amendment 1. This is back in 2008, and at that time there was no discussion of in-season possession limit adjustments, so our plan doesn't require states to have the ability to do that, and I'll explain that a little bit, but that's just why we don't have that in there.

You all asked for an overview of the state regulations before commenting on this, and I would just point out that the federal permit holders are still restricted in state waters, so this is really just the state fishermen. Our FMP closes the fishery for a species when federal waters close. From a staff perspective, we're not really sure what a zero possession limit closure or a zero possession limit specification in federal waters might mean.

I think we're looking for feedback at the staff level of, well, if HMS implements a zero possession limit for a species and we receive notification at the staff level; do we interpret that as a zero possession limit which would not apply as fishery closure for a species or do we interpret that as a closure so then we would issue a closure of that species.

For example, if we got notice that the large coastal shark possession limit in federal waters was set at zero fish; do we interpret that as a closure or do we just say, well, their possession limit is zero fish and the board has set a 33-fish possession limit at the beginning of the season, so we're looking for guidance on that because if that scenario presents itself I don't think staff wants to be the one making that judgment. It's your FMP. That's kind of the first discussion item here. I've got more but this is a good time to talk about it.

CHAIRMAN SIMPSON: Okay, I think I would offer – well, Margo, go ahead.

MS. SCHULZE-HAUGEN: Just a little more context and we took this path; when we were seeing quotas going very quickly and fish not necessarily being available in all areas when the quota is available, and so this was – and Chris described it as quota management, but it was a way to slow the fishery down but then also provide the ability to provide more fishing opportunities based on fish availability and what

we were seeing at the landings. It's an attempt to be more flexible to match the opportunities with the availability. It's a range and so zero is obviously the lowest of the range, but we were anticipating in this that it may not be to zero all the time but may be some number higher but not necessarily 33.

CHAIRMAN SIMPSON: Okay, I think in the interest of time I would just offer that the board would interpret a zero possession limit as a closure and the staff could handle it that way. If there is a different view, let me know. Okay, go ahead, Chris.

MR. VONDERWEIDT: Now the second part of that would be the reduced possession limit, and our board sets possession limits annually. That is what is required in the FMP. The process is that the technical committee will annually review the best available data and provide recommendations to the board, and the board will implement quotas or possession limits for smooth dogfish – possession limits for all the species, a quota for smooth dogfish, but this happens through board action usually at the annual meeting.

It was modeled after the spiny dogfish specification-setting process. Once a possession limit for a species is set, board action has happened; so in order for the board's action and specification to change, there needs to be a board meeting with a quorum and a two-thirds majority vote to modify the already established specifications.

A number of you probably remember when the spiny dogfish quota was increased a few years back, it took a two-majority vote, so it's a sticky process that sort of has to happen there. Then there is that technical committee review provision for setting annual specifications, so would the board be interested in getting the technical committee there.

This is just the process that would need to happen for the board to change the possession limit annually. I would remind the board that it's an annual specification in the plan, so states aren't necessarily required through the FMP requirements to actually change the possession limits, but they're required to annually set a possession limit. That's kind of the stickiness that happens here through our plan.

Looking at the individual state possession limit regulations and whether or not they would be compatible with an in-season adjustment – and this kind of only would occur if the board decided to modify the FMP to require possession limits identical to NMFS or to allow for in-season quick adjustments.

This is a hypothetical, so would states be able to do that without changing their regulations. Maine and New Hampshire do not apply because they're de minimis states and they're not required to implement possession limits. Massachusetts we're going to cover quickly under other business, but they recently submitted a de minimis proposal for possession limits; so depending on the outcome of that review, they might also not apply.

Connecticut prohibits all possession and landing, so that would be compatible because it doesn't really apply because you can't keep any. Rhode Island, New York, Delaware, North Carolina and South Carolina can all change their regulations quickly. There is a table on the last page of the document that has each state – it has a timeline and then it has the current possession limit.

The range here is between 72 hours and 48 hours to change so that is considered compatible to be able to do it in a couple of days. New Jersey and Virginia do not have the ability to do that quickly. Georgia and Florida fall into this sort of recreational limits and commercial fishery where would they even need to change their limits.

Georgia is one large coastal shark per person or boat and one small coastal shark per person, so they would be compliant under all scenarios here. Florida would be one shark per person with a maximum of two per vessel; so if the federal limit went down to one, that would be less than two so to be compliant they would have to reduce that to one.

They the recreational limits in the commercial fishery so it might not really be necessary because it is already so low and it would depend on the number. That is the answer to which states are compatible with the in-season adjustment. That concludes the review.

CHAIRMAN SIMPSON: All right, thanks, Chris, so it sounds like most states could be responsive to in-season adjustment that the Fisheries Service may make. There are a couple

of states that couldn't respond that quickly, but again if they're operating federal waters they would have an HMS permit and would be bound, anyway, so this would be an issue for state waters only, which minimizes the concern. If the board felt it needed to address it can address it but it's a pretty labor-intensive process for us. Pat, knowing we're into time here.

MR. AUGUSTINE: Mr. Chairman, could Chris go why we decided that we have to have a two-thirds vote to change the – is that in the FMP itself?

MR. VONDERWEIDT: That's commission policy on board action.

MR. HIMCHAK: I would just make a quick correction on New Jersey. What I described to you was the Notice of Administrative Change; that applies to most species, summer flounder, et cetera, et cetera, black sea bass. With sharks it would be automatic; not two months or a month or two weeks, because the way we wrote our regulations is that in the commercial fishery you either have to have a federal permit or authorized gear for state waters, and you have to sell to federally permitted dealers, so it would be an automatic within-season adjustment for all of our commercial shark fishermen. This is a regulatory miracle. We wrote this up and it actually comes out this way. I'll make that correction; it's automatic.

MR. AARON PODEY: I would like to make a similar correction for Florida. We require the federal permit for commercial harvesters in state; so if it would go to one per vessel, you'd already have to follow that rule.

MR. ROBERT H. BOYLES, JR: Mr. Chairman, let me also make a correction and clarification. It's not that South Carolina can respond quickly to these things. It's the fact that we adopt by reference federal regulations on sharks. You all have heard me say time and again that our process is rather lengthy and is indeed, but for sharks we do adopt federal regulations by reference.

CHAIRMAN SIMPSON: Okay, the next agenda item, Chris.

## **REVIEW OF THE SHARK CONSERVATION ACT OF 2010**

MR. VONDERWEIDT: I'm just going to quickly go over the Shark Conservation Act of 2010. The provisions of the Act amend the Magnuson-Stevens Act to prohibit removal of any fin of a shark including the tail at sea; possession of a shark fin at sea left naturally attached to the carcass; transferred or receiving of any such fin from one vessel to another; landing of any such fin that is not naturally attached to the carcass.

This applies to all coastal sharks except for the savings clause part of the Act. The amendments do not apply to individuals engaged in commercial fishing for smooth dogfish who are between shore and 50 nautical miles from shore if an individual holds a valid state commercial fishing license and the total weight of the fins do not exceed 12 percent of the total weight of smooth dogfish. This is new federal legislation from January of 2010.

The ASMFC's smooth dogfish management measures, if you're interested, our FMP currently requires that all shark fins remain attached naturally through landing, so that's consistent with most of the Act. Then Addendum I provides an exemption for smooth dogfish similar to the savings clause, but it is different.

Ours allows commercial fishermen to remove all smooth dogfish fins from March 1 through June 30 and the fins cannot exceed 5 percent total weight, so that's different than the savings clause in the Act. I would just point out there is no proposed rule to implement Act in federal waters; so if the board is interested in initiating some kind of a document to make our plan consistent with the federal legislation, it might want to wait until after seeing the federal waters proposed rule or not. I just wanted to point that out.

CHAIRMAN SIMPSON: Any questions? The final agenda item other than other business.

## **FEDERAL SHARK ELECTRONIC DEALER REPORTING PROPOSED RULE**

MR. VONDERWEIDT: There has been a proposed rule that impacts sharks in federal

waters. It's to require electronic reporting for dealers. It was published on June 28<sup>th</sup> and they're accepting comment on or before August 12, 2011, so the board has the luxury of convening and meeting and discussion the proposed rule to send a letter commenting on the provision.

The current federal HMS dealer reporting; dealers are required to submit reports to NMFS no later than the 25<sup>th</sup> of that month for any landings received from the 1<sup>st</sup> to the 15<sup>th</sup>; and for any landings received from the 16<sup>th</sup> through the end of the month dealers have to report by the 10<sup>th</sup> of the following month.

Kind of the takeaway there is if there is a 10- to 25-day delay before these landings become available in the data base, language in the proposed rule points out that the current system does not deliver data in a sufficiently, timely, and efficient manner to allow effective management and monitoring of small quotas and short seasons, so to fix this the proposed rule would implement electronic reporting and require federal Atlantic shark dealers – and I just want to point out that I'm not going to go over the provisions for the other highly migratory species since you're the Shark Board.

The provisions for sharks would be that federal Atlantic shark dealers have to report within 24 hours while the quota for LCS blacknose and non-blacknose SCS are open, and the previous reports have to be submitted before they can receive more sharks to sell. They would be notified electronically through the system and they would have to submit deficient reports before they could enter new landings and continue to buy and sell fish.

Also, one change would be that the first receivers must have a federal Atlantic HMS dealer permit rather than just the dealer. And as a stipulation of these increased reporting, currently the quotas for any of the species close at 80 percent and this was implemented because it's hard to manage the quota with such a 10- to 25-day lag, so 80 percent is necessary to try and prevent the overages, and so in the rule they indicate that they would consider changing the 80 percent closure percentage based on the timeliness of the e-reporting. Those are kind of just the snapshot of the facts and if the board wishes to comment.

MR. AUGUSTINE: **Mr. Chairman, I'd like to make a motion, if it's in order, and move that the board write a letter supporting the Atlantic Highly Migratory Species Electronic Dealer Reporting Requirements as proposed.** If you need further information, we'll take it out of the Federal Register. Is that enough information, Mr. Chairman?

CHAIRMAN SIMPSON: Yes, I think so. Is there a second to that motion; second by Rick Bellavance. Bob.

MR. BEAL: Just a technicality; I think usually when a board wants to write letters, we run them through policy board to get the buy-in from the full commission and then send them off. It's recommending that the policy board –

MR. AUGUSTINE: Change it to the policy board. Thank you for that correction, Bob.

CHAIRMAN SIMPSON: That correction is being made that this will be a recommendation to the policy board to consider that and write the letter. Any objection or comment? **Seeing none, we will consider that motion approved and we will bring that up with the policy board.** Other business; and Chris is going to get you started, David, and then you can follow.

## OTHER BUSINESS

MR. VONDERWEIDT: Just kind of a heads-up, Danielle is passing out a de minimis request by Massachusetts requesting an exemption from the 33 LCS possession limit requirement of the FMP. The background is basically that Massachusetts doesn't land any large coastal shark species. They've got mandatory dealer reporting.

They close the fishery when the federal quota is closed. The idea of exempting them from the LCS possession limit would not undermine the conservation value of the plan. The ASMFC FMP de minimis section doesn't list specific exemptions for states that have harvests below a certain level, but what it does is it says we'll take these case by case because even the harvesting of one shark could potentially undermine the stock. The plan review team and the technical committee will review the de minimis proposals and then report back to the board.

That was given to us on the 19<sup>th</sup>, about a week and a half ago, and I've started to initiate the review process. All that I'd say is that it's really similar to the de minimis proposals that were approved by Maine and New Hampshire and everybody seems to be fairly supportive of it. Delaying final action to the November meeting shouldn't really be an issue as far as the conservation value of the plan. Here is the proposal and that's just a heads-up because we got it in time for the board meeting.

CHAIRMAN SIMPSON: David, anything to add to that?

DR. PIERCE: Well, the board hasn't had an opportunity to read this request. I was prepared to make a motion for approval of the request, but if the board would like to wait until November then that's fine, too. We can address it in November after board members have had a chance to think about this, if indeed they need time to do so. I can wait if the board can wait.

#### **ADJOURNMENT**

CHAIRMAN SIMPSON: Okay, so it needs to go through a little technical committee review and so forth so it would probably be best to pick it up in November. If there is nothing else then before the board and no objection, we're adjourned.

(Whereupon, the meeting was adjourned at 4:00 o'clock p.m., August 2, 2011.)