

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

**Crown Plaza Old Town
Alexandria, Virginia
August 20, 2009**

Board Approved: November 2009

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INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of May 6, 2009 by consent** (Page 1).
3. **Move to adopt Options B throughout the document, which would allow the processing at sea, would eliminate the recreational possession limits, and would remove the net-check requirement** (Page 15). Motion by Jack Travelstead; second by Pat Augustine

Move to amend Issue 1 to allow the removal of the head and all fins except two dorsal fins from July to February; and from March to June adopt Option B, allow dressing at sea (Page 15 and 18). Motion by David Pierce; second by Louis Daniel. Motion carried (Page 18).

MAIN MOTION ON PAGE 15 REWORDED ON PAGE 19: The main motion as amended reads move to adopt for Issue 1, to allow the removal of the head and all fins except two dorsal fins from July through February; and from March through June adopt Option B, allow dressing at sea; and adopt Option B for Issue 2, 3, and 4 within Addendum I. Motion carried (Page 19).
4. **Move to grant Maine and New Hampshire de minimis status for the 2010 coastal shark fishing season contingent upon full implementation of all regulations contained in the de minimis proposals** (Page 21). Motion by Terry Stockwell; second by James Gilmore. Motion carried (Page 21).
5. **Move to advise the U.S. Fish and Wildlife Service not to recommend an Appendix II CITES Listing for spiny dogfish at the Conference of Parties to CITES Meeting in March 2010, because spiny dogfish are not overfished and overfishing is not occurring; mature female biomass has reached and exceeded the biomass target; is being effectively managed in a sustainable way by ASMFC in cooperation with Fishery Management Councils; and trade does not need to be controlled to avoid utilization incompatible with spiny dogfish survival; and then, two, request the National Marine Fisheries Service to support this ASMFC advice and similarly advise the U.S. Fish and Wildlife Service not to support an Appendix II Listing** (Page 22). Motion by David Pierce; second by Pat Augustine. Motion passed (Page 23).
6. **Motion to adjourn by consent** (Page 30).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for G.Lapointe (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Pat White, ME (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Doug Grout, NH (AA)	Catherine Davenport, VA (GA)
Dennis Abbott, NH (LC)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
David Pierce, MA, proxy for P.Diodati (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
William Adler, MA (GA)	Louis Daniel, NC (AA)
Mark Gibson, RI (AA)	Bill Cole, NC (GA)
David Simpson, CT	John Frampton, SC (AA)
Joel Hovanesian, RI, proxy for Sen. Sosnowski (LA)	Malcolm Rhodes, SC (GA)
James Gilmore, NY (AA)	Robert Boyles, SC (LA)
Pat Augustine, NY (GA)	Spud Woodward, GA (AA)
Brian Culhane, NY proxy for Sen. O. Johnson	John Duren, GA (GA)
Tom Fote, NJ (GA)	Rep. Bob Lane, GA (LA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Jessica McCawley, FL (AC)
Craig Shirey, DE, proxy for Patrick Emory (AA)	Margo Schulze-Haugen, NMFS
Bill Goldsborough, MD (GA)	Wilson Laney, NMFS
Gina Hunt, MD, proxy for T. O'Connell (AA)	

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

Ex-Officio Members

Lewis Gillingham, Coastal Shark Adv. Panel Chair

Gregory Skomal, Technical Committee Chair

Staff

Vince O'Shea
Robert Beal
Mike Howard

Christopher Vonderweidt
Toni Kerns

Guests

Harry Mears, NMFS

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 20, 2009, and was called to order at 9:30 o'clock a.m. by Chairman Louis Daniel.

CALL TO ORDER

CHAIRMAN LOUIS DANIEL: Good morning. I would like to welcome everyone to the Spiny Dogfish and Coastal Shark Management Board. I'm going to be brief.

There are quite a few issues on today's agenda that I really feel like I need to be sitting at the North Carolina seat as opposed to the Chair. I have talked with my vice-chair, Dave Simpson, giving him I hope ample time, and I'm going to relinquish the Chair to him for the entire meeting. Thank you, David, for doing that; I appreciate it.

APPROVAL OF AGENDA

VICE-CHAIRMAN DAVID SIMPSON: Okay, we begin with approval of the agenda. Any additions or changes to the agenda? Seeing none, do I have a motion to approve the agenda? Do I have a second; Wilson Laney. Any objections? The agenda is approved without objection.

APPROVAL OF PROCEEDINGS

VICE-CHAIRMAN DAVID SIMPSON: We move to the Proceedings from the May 6, 2009, meetings. Are there any comments or edits or changes to be made to that? Seeing none, do I have a motion to approve – Bill Cole; second, Bill Adler. Without objection, then, the proceedings are approved.

PUBLIC COMMENT

VICE-CHAIRMAN DAVID SIMPSON: Public comment; are there any items that are not on the agenda that someone would like to address at this time? I don't see any hands so I think we're good there.

We move then to consideration and approval of Draft Addendum I, and Chris is going to take us through the public hearing summary.

CONSIDERATION OF DRAFT ADDENDUM I: PUBLIC HEARING SUMMARY

MR. CHRISTOPHER VONDERWEIDT: The public hearings for Draft Addendum I, there were two hearings, one in Newport News, Virginia, and one in Manteo, North Carolina. Between the two hearings, the input was nearly identical. The majority of comments focused on the smooth dogfish processing at sea, which is Issue 1. I'm going to spend a lot more time on that issue than the other ones.

I'm going to kind of lump all the comments together because other than a few things, which I'll point out, it was pretty much identical. Like I said before, the majority of comments were on Issue 1. The participants all support Option B, which is allowing the removal of the fins with a 95 to 5 percent fin ratio. All the options that were in the document, they liked B the best. There are only two options in there.

Some of the reasoning behind that is that these participants feel that keeping the fins attached is the same thing as just closing the fishery. Cutting the fins is going to take longer, which increases the time between catch and refrigeration. Smooth dogfish is a meat fishery. The meat spoils quickly and turns green, which will make the product less fresh and make less marketable. They will get less money or not be able to sell it at all.

In addition, a lot of these trips are 18 hours at a time, and so you're going to increase the workload on these already long trips. There is also concern that in these mixed-use marinas these fishermen, if they can't dress at sea it will be problematic to dump the waste either in the water or in dumpsters at mixed-use marinas just because of the smell, so there will be complaints.

That being said between the two options, the participants supporting Option B, they all felt that the 5 percent fin-weight-to-carcass ratio was insufficient for smooth dogfish. It was highlighted that this was developed for large coast shark species and not smooth dogfish. Generally at least 10 percent was considered more appropriate for smooth dogfish.

There was a participant at the North Carolina hearing who averaged his trip tickets and found

that there were between 9 and 13 percent. They commented that it will fluctuate depending who is cutting the meat, depending on the angle of the head cut or how much meat is left on the fins. Because this is a high-volume fishery, they're doing this quickly with a lot smooth dogfish, so there is a discrepancy there on what the difference is.

They also felt that because of this the 5 percent is either going to require fishermen to throw fins overboard so that they get the ratio down from the 10 percent to 5 percent in order to be compliant with the regulation. Some participants were in favor of changing the regulation to have a corresponding number of fins to the carcass so each fin would the same amount of dorsal fins, anal fins and all that.

One participant from the North Carolina hearing cited some of the federal cases and saying that the fin percent ratio is just an unenforceable provision. In addition to that, there were further comments on the removal of the fins where the participants were kind of disputing what they felt the opposition's point was in that they wanted to highlight the fact that smooth dogfish are easily identifiable or distinguishable from sandbar sharks.

Smooth dogfish, the skin is rough and sandy and it also turns translucent when out of the water. Smooth dogfish have a skinny body and the second dorsal fin is farther back in relation to the anal fin, so these things make the identification easier. There is also a line on the side of the body of the smooth dogfish.

The participants from the Virginia Fishery noted that this fishery operates from April to early June. At the North Carolina Fishery the participants said it doesn't overlap. They didn't cite a specific time period at the hearings themselves. In contrast to that sandbar sharks, the skin is smooth and opaque. They have more of a robust body. The second dorsal is further forward in relation to the anal fin.

The participants in Virginia said that they do not show up in Virginia until mid to late June. Again, in North Carolina it was highlighted that these two species do not overlap seasonally and temporally. The participants also noted as far as having incentive to fin and try and sneak fins through or use this as a loophole, they noted that

there is very little incentive to do that. Smooth dogfish is a meat fishery; it is not a fin fishery.

The fins are only worth like \$2.75 or \$2.50 I think is what was quoted versus the meat can be worth around seventy-five cents a pound depending on if it is frozen or fresh. Because of this, the value doesn't justify the risk, the dealers could lose their license and have severe fines. This is what participants had to say Issue 1.

Like I said before, probably 90 percent to 95 percent of all the comments at the hearings were in relation to this issue. I think those participants generally showed up because they wanted to comment on this.

Moving on to Issue 2 and 3, which I've lumped together, which would remove the possession limit in the recreational fishery for smooth dogfish; it is slightly different for vessels versus shore fishermen, but all the participants supported Option B, which would remove the smooth dogfish recreational possession limits.

This wasn't a highly contentious issue, but they felt that there is no assessment so there is no indication that limits are necessary. In general they felt that recreational anglers are not targeting smooth dogfish, and that they are more of a nuisance to recreational anglers than anything else. They said there is no reason to have them in there; there is no justification, so they're in support of Option B.

Moving to last issue, which is bycatch reduction measures, again, participants supported Option B, which is to remove the two-hour net check requirement for large-mesh gill nets. I'll just point out that this is for all the shark species; this is not specific to smooth dogfish. They highlighted that net checks are unenforceable. The participants in Virginia feel that the marine mammals are already protected under the Bottlenose Dolphin Take Reduction Team and that there is no need for this requirement. That concludes the presentation.

VICE-CHAIRMAN SIMPSON: Any comments or questions for Chris? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I didn't catch how many participants approximately were at each of the two meetings. I got that there were two meetings.

MR. VONDERWEIDT: It is on the sheet but there were about I think three or four in Virginia, and were 20 to 25 I think in North Carolina.

MR. PETER HIMCHAK: Chris, are you now going to give the technical committee's comments on the options in the addendum?

TECHNICAL COMMITTEE RECOMMENDATIONS

VICE-CHAIRMAN SIMPSON: Greg will be doing that as the TC Chair. Anyone else? Okay, we will move on to that next. Okay, Greg is going to take us through the technical committee meeting and recommendations, and then we have a memo from North Carolina that will follow that.

DR. GREGORY SKOMAL: Well, we had the initial call on June 5th to discuss the addendum. Then we followed it up on July 15th after receiving the North Carolina memo. We will go with our recommendations and then address the North Carolina memo I think after the presentation on the memo.

Issue Number 1, finning at sea with smooth dogfish, the technical committee strongly opposed this provision for commercial fishermen to remove dorsal and tail fins because of the difficulty associated with identifying these animals once they're brought to the dock. Sandbar sharks, in addition to other coastal species or other shark species, are very similar to adult smooth dogfish and very difficult to differentiate once you've removed those identifying fins.

We consider the identifying fins on those sharks to be the two dorsals as well as the tail, so we think that is important for ID, particularly since this fishery seems to be developing into a high-volume fishery. We have some estimates of trips bringing in in excess of 20,000 pounds. We also feel that it is really important to be consistent with federal regulations; and by allowing some at-sea processing of smooth dogfish, it could potentially open some loopholes.

I think this is where we're going to mix up a little where blend would be the North Carolina memo. We put forth kind of a compromise to what was put forth in the memo by the North Carolina folks and came up with an option that may allow – you see, the big issue I guess for

North Carolina was the freshness of the product and the need to remove the head and guts at sea.

We see no real problem with that so we came up with an Option C, if you will, which would allow fishermen to gut and bleed the carcass with an incision by removing the head and then also allowing them to remove the pectoral and pelvic fins. This would allow them to maintain the integrity of the freshness of the product. In essence this is somewhat of a diagram that allows the fishermen to remove the head, remove the guts and do some level of at-sea processing without compromising identification of the carcass back at the dock.

With regard to Issues 2 and 3, which is centered on recreational possession limits, the bottom line is we don't have a smooth dogfish assessment at this time. It is really hard for us to make recommendations relative to catch limits including those associated with recreational landings, which only account for about 10 percent at this time or less than 10 percent.

Therefore, the technical committee as a whole felt that perhaps rescinding these recreational landings' limits are not likely to have an impact or negative impacts on the smooth dogfish population at this time. The bycatch reduction measures, one of the problems associated with bycatch reduction is quantifying what bycatch is in state waters. It is really hard for us to find datasets that we can mine for this information, so that became problematic for us.

However, the technical committee really feels like it is important to be consistent with federal regulations and therefore supports maintaining the status quo and keeping bycatch reduction measures in place, which would include the two-hour net checks. There are some data that indicates that Atlantic sturgeon incidental catch in the southern states, North Carolina and Virginia, during January and February is significant, and this was yet another reason to maintain these net checks. The TC supports Option A, which is status quo. That is it.

VICE-CHAIRMAN SIMPSON: Great! Any questions for Greg? Terry.

MR. TERRY STOCKWELL: Greg, did you have any history to groundtruth your Option C?

DR. SKOMAL: With removing the head and the guts and fins, one of the technical committee members indicated to us that was the important thing for fishermen to do to maintain the quality of the product. We felt that this is a way of meeting halfway and allowing the integrity of the product to be maintained.

MR. STOCKWELL: I appreciate your willingness to consider an alternative. I was just wondering if it was practical for the industry.

DR. DAVID PIERCE: Greg, just a clarification, if you will; Chris indicated, when he summarized the public comment, that at least one group or one fisherman made the point that with smooth dogfish there is a line on the side of the body, the skin is rough in contrast to the sandbar where there is no line and where the skin is smooth. Could you comment on that characterization especially in light of the other remarks that you've already offered up about the difficulty in identifying the two species?

DR. SKOMAL: Yes, I mean I've worked with a lot of juvenile sandbar sharks, some as young as neonates, and I think that in terms of size it is clearly overlapped with the smooth dogfish. There are major morphological features which I think the easiest to clearly identify or differentiate between the two species are the two dorsal fins and the tail.

When you get into skin texture, I don't find that those differences are that dramatic, quite frankly, or the presence of the lateral line as well. Plus, I don't think the technical committee really feels it is an issue with regard to the fisherman's ability to differentiate between smooth dogfish and sandbar sharks or other carcharhinus, for that matter. I think it has to do with an enforcement agent's ability or perhaps the dealer's ability to differentiate between the two once they're back at the dock.

VICE-CHAIRMAN SIMPSON: Well, that inspired comments. Tom.

MR. TOM FOTE: It is my understanding that dealers and law enforcement are well trained in basically telling the difference of stocks. If we don't have law enforcement that can tell the difference between sharks, what are we doing here? That doesn't seem like a valid answer. I can understand it if you said the public. That I can understand, the law enforcement is supposed

to be trained to basically tell – I mean, can I have a comment from the Law Enforcement Committee? I don't understand that comment.

VICE-CHAIRMAN SIMPSON: Do you want to try that.

MR. MIKE HOWARD: For the past two years law enforcement has been attending the same classes that commercial fishermen are attending. I will tell you that it is a learning curve. Shark enforcement is something new that many officers on this coast have not participated in. I have seen firsthand in Maryland, Virginia and North Carolina this learning curve, and they are doing quite well. "Easily identifiable" may be a different term than "readily identifiable".

MR. HIMCHAK: Mr. Chairman, I had the opportunity to take this course. It is remarkable how you can take 20 dressed carcasses of different sharks and all fins removed, cleaned, gutted, the whole thing – and a Mr. Paul Sanford developed this dichotomous key for the dealers. This is required training for dealers so they don't list unclassified sharks. It is remarkable how you can identify these to the species level. I imagine it is just a matter of time before enforcement takes this course on that front.

Unfortunately, and here is where I have a problem is that the smooth dogfish and the spiny dogfish were not part of the key process; and while I appreciated the diagram that you put up showing the two dorsals, if you look at the body shape, the body outline of a smooth dogfish and a sandbar, it seems critical that those two dorsal fins at least remain attached.

I'm very sympathetic to the commercial fishermen. Yes, we don't want them cleaning that stuff at the dock, obviously – you know, cut the belly flaps, the whole thing. I support the technical committee's hybrid position on cleaning the carcass on smooth dogfish. My question I guess goes to industry that, yes, we're all motivated here by the quality of the meat; how does keeping those two dorsal fins and the caudal fin on the carcass, how does that affect the quality of the meat? Is it that you have to then reprocess the fish, take them out of ice after you've taken everything off except those fins and you have to handle them twice? Why is it so critical for the quality of the meat to cut off the two dorsals because I see those as critical in

distinguishing the sandbar from the smooth dogfish?

DR. WILSON LANEY: Mr. Chairman, my question just kind of tags on to Pete's. The question I was going to ask – and I suspect Ernie or Louis can answer the question – is a normal part of at-sea processing the total removal of the skin as well? That gets to the point about the line on the sides, so it just tags onto Pete's question.

MR. ERNIE BOWDEN: I really don't understand. If you had a picture of a sandbar up there alongside of that smooth dogfish they look nothing alike. If the gentleman from the technical committee has trouble identifying them, I'll be more than glad to help you. I mean, it is the simplest thing. My son, when he was five or six years old knew the difference so it is really not a hard problem.

It would be like comparing me to Tom Fote. We probably weigh the same amount, but our dressed carcasses would look completely different. I mean, a carcass of a smooth dogfish is generally the total carcass length. It is probably between 28 and 36 inches. The body weight would probably be males around three pounds and as high as six pounds or maybe even seven, but it is doubtful.

A sandbar that would be 36 inches long, the carcass probably would weigh 15 pounds, over double. A three-pound sandbar carcass would probably be in the neighborhood of 16 inches long compared to 28 inches for a smooth dogfish, so there is really no comparison whatsoever. To answer your question, we're looking at more than just meat quality.

We're looking at excessive work. When you come in, you're going to have to dress them. You're still going to have the tail that has to be disposed of. If you're in a marina, it is not a good thing to be throwing them in the trashcans because a lot of times they don't even want commercial boats in a marina. I hope that answers your question.

MR. HIMCHAK: Mr. Chairman, if I might, you know, our shark fishermen in New Jersey; I mean, yes, I'm totally in agreement with them to clean these at sea, but in a smooth dogfish you're essentially cleaning it 90 percent of the way at sea. Unless my Peterson Guide is messed up

here on the diagrams, there is a significant difference between the two dorsal fins on a smooth dogfish and a sandbar shark.

Well, if you take the dorsals off then the carcass – you know, everything you described on the carcass is what is robust and sizes and all this. You know, our expert in New Jersey told me the same thing last week. He said, "I don't have any problem." But, again, I'm still hung up with the two dorsal fins, very different; and if you take those off, then, you may not be bringing in – I think the TC's concern was for the juvenile sandbars, which might be more of a size compatible with some the smooths; I don't know. But that is where I'm hung up on this issue.

DR. LANEY: Ernie, the skin, is the skin normally left on or are they skinned?

MR. BOWDEN: Probably 90 percent or better of the skin is left on. There is some domestic market or local market and they sell them for steak fish. Like I say, you know, we're hung up on this fin issue, and that is certainly not the only identification that you can have. When you took the shark identification school, they showed you with no fins.

A lot of sharks, silkies and duskies, for example, have a lot of body characteristics the same – sandbars are similar, but those two are really close – easily identifiable with no fins at all attached. We're getting into juvenile sandbars, they will not look anything at all like smooth dogfish. There is no comparison.

Well, for one thing all dealers have to go to shark identification school to buy sharks. So, now you went from an issue of somebody not being able to identify them to somebody purposely misidentifying the sharks to sell them, so now you're into a conspiracy between the fisherman and the dealer, so you have really eclipsed the whole management regime.

Now you're into felony charges. Do you think dealers are willing to do that? Maybe some but very few. I don't think the fins are as important as you think it is for identification because the size of the body – just like you said, your shark expert in New Jersey said the exact same thing – the bodies look nothing alike.

I could understand, for example, with the recreational with silkies, they're not allowed to

have them because they may mistake them for a sandbar. You know, I do this for a living. I've been doing it 40-some years. I easily can tell the difference. My son could tell the difference by time he was six years old.

I don't see where there would be a problem identifying them without the fins. As far as your theory about – By the way, you're going to have extra work, extra waste at the marina, you're going to have a deteriorating quality because you're going to have to handle these fish again in the warm air to remove the fin and to remove the tail. You're going to have to take them out of ice, re-ice them again. All of that does lead to lower quality and all unnecessary.

When they say status quo, it is not status quo. Status quo has been allowing us to clean them for all these years at sea. This just changed last year. It wasn't brought in front of the advisory panel, but we were doing a lot of this stuff – well, I'll give you a good example. Last year when they were doing the mission statement, Vince O'Shea made the comment numerous times that they were having trouble with user group buy-in.

They really needed the support of user groups. Well, if you don't listen to them, why do you think they're going to support you? I mean, basically everybody on the advisory panel felt the same way with maybe the exception of Sonja, who didn't make several of the meetings. But, you know, it is not finning. Finning is removing the fins from the fish and throwing it overboard, and that is what everybody is upset with, and I'm upset with it.

I don't think that should have ever been allowed. It is a practice that is very wasteful. You know, we're stewards of God's creations, and we're not supposed to be doing things like that. But this is not finning; this is making a viable product that has been done for years. The fishery is not on the increase like the technical committee suggested. The fishery is on the decrease. There are quite a few less people doing it now than it was ten years ago.

VICE-CHAIRMAN SIMPSON: Ernie, you had a chance to address the issue you raised your hand for? Okay, great! Then I have Jim Gilmore.

MR. JAMES GILMORE: Mr. Chairman, just to echo what Mike Howard said before – and I agree with Tom Fote's comment about if you have law enforcement trained that they should be able to identify this. On a practical note and agreeing more with what Mike had said, there is a learning curve for this.

From New York's perspective – and this goes for all marine species – we have a tremendous turnover. I lose my conservation police in the marine unit every two years, so they don't learn any of this stuff, and they misidentify in those first couple of years quite a bit. I think there is a problem there; I mean, saying that the law enforcement guys can do this right.

I don't know if it occurs in the other states, but, again, because of the cost of living I just lose these guys every two years. They never get trained to the point where they can identify most of the things. Thanks, Mr. Chairman.

DR. DANIEL: Would this be an appropriate time for me to deal with the North Carolina memo? It sort of gives me an opportunity to provide my point on this issue, which is similar to Ernie's, but I would like to have a chance to go that. It won't take me long. I think everybody has got a copy of it.

VICE-CHAIRMAN SIMPSON: That's fine.

DR. DANIEL: Okay. We did submit a memo to the technical committee soon after hearing of the discussions that they had about these issues. Our fishermen and our staff are seeing the same things that Mr. Bowden described in that there is a very distinct difference between smooth dogfish and sandbars.

Our law enforcement officers that are in these areas have been there for 20 years. They know these fish; they know these people. The dealers are being required to have this training if they're going to deal in sharks. I ask what is the purpose of having this training, having people travel to take this training if we're not going to trust what we've taught them; and especially if it is going to disadvantage this fishery to the level that this even compromised position would do?

To have to come back in with 20,000 pounds of smooth dogfish carcasses and have to reprocess those again is just an extraordinary burden on the fishermen that is just not necessary. I take a lot

of exception to the technical committee's report that they can't distinguish between the two species, but more do I take exception to their comments on our trip ticket information; that it is not validated.

Folks, if our trip ticket information is not the best available data, then we're not operating on the best available data. That's the best available data is in that memo that we submitted. The best available data is in front of you, and it says that there is not a problem between spiny dogfish, smooth dogfish and sandbars. There is a spatio-temporal distinction between the fisheries.

Sandbars are taken in the longline fishery; smooth dogfish are taken in the gillnet fishery, primarily inshore; 55 percent or more in state waters. Look at the graphics. It shows a very clear distinction between when and where smooth dogfish and sandbars are taken. I spend a tremendous amount of money with port agents at the dock seeing these fish come to the dock; with the law enforcement agents at the dock seeing these fish come to the dock; biologists at the dock seeing these fish come to the dock.

We have our trip ticket program, and how it could be possibly said that it is not validated makes absolutely no sense to me. If you look at the landings in North Carolina you can see that it is as clean a fishery as exists in the Mid-Atlantic. It is all smooth dogfish. If you go back in time and look back at the time when they could have landed sandbars legitimately, back before they became prohibited species, they didn't land them.

It is not that they're mistakenly identifying them, packing them small sandbars with smooth dogfish, taking that risk. These guys know what they're fishing for. For the technical committee to make the assumption that they don't know what they're fishing for I don't think is a fair characterization of the data that we presented. I encourage you to look at this memo in your decision-making process I submitted as the best available data on this issue that clearly supports Option B. Thank you.

DR. PIERCE: Okay, I have a question for Greg regarding the technical committee's advice, especially in the context of a point that was made a little earlier on that all you need are the dorsals to make an identification between the smooth dogs and the sandbar. The technical committee

has said that the tail of the smooth dog must be on the body for identification. I need further clarification in light of what was said. Do you really need the tail or can you just be satisfied with and be sure of what you've got by leaving the two dorsals on?

DR. SKOMAL: What the technical committee really is thinking in terms of large numbers of fish that an enforcement agent or dealer has to look at. We're not talking about ten fish lined up against each. We're about on the order of several thousand fish per trip in order to get up to 20,000 pounds. What is the easiest way for an enforcement agent to differentiate between species, whether it is a small carcharhinus or indeed a smooth dogfish?

You keep the two dorsal fins on and the tail, it is much simpler for that enforcement agent to differentiate. This doesn't have a lot to do with the fisherman's ability to do that although that seems to be an issue that is surfacing here. If you remove the tail you could still differentiate. It would be a little bit of a more tedious process but you could based on the two dorsal fins.

DR. PIERCE: All right, so it's really a law enforcement issue leaving the caudal tail on to speed up perhaps identification, but with the two dorsals on a carcass they could make the identification? No labor-intensive effort on their part, they could know whether that is a smooth dogfish or a sandbar, okay, so the two dorsals would have to remain on. Another question I have is the fin itself, the caudal fin; is there any market for the caudal fin?

I assume there is no market for the tailfin because you're throwing them away, right, so there is no market for them; all right. Yes, the enforcement issue is clearly the sticky one for me because Greg did state it properly – someone comes in with 20,000 pounds of dogfish in one trip, be it in North Carolina or Virginia or wherever, that law enforcement officer has to go through a lot of fish to figure out whether the carcass is a smooth dog or a sandbar.

Right now I'm struggling with how difficult it might be for a law enforcement officer to check on the dorsal. I would think that it would be not much of a problem at all. If the two dorsals are left on, then they could very quickly go through 20,000 pounds or a sub-sample of the 20,000 pounds to know whether they have a problem.

I'm uncertain at this point as to which way to go on this. I'm sympathetic to what the fishermen have said that they've got to look at the fish again, take it out of the ice, and cut those two dorsals off, if indeed that is what is left on the body, but perhaps that would be a justified inconvenience if, for example, by our providing the assurance, as best we can provide assurance, that the carcasses can be properly identified.

That would enable us to convince the National Marine Fisheries Service not to take smooth dogfish away from the councils and also from the ASMFC, because it is on the agenda. This discussion is all well and good, but I think it would be moot if the authority for smooth dogfish management is removed from the states and from the councils.

I would like to make it clear to the National Marine Fisheries Service that ASMFC, in particular, is doing everything possible to make sure that enforcement can be guaranteed; and if that means leaving the two dorsal fins on, take the caudal off, leave the two dorsals on, that should suffice, I suspect, and I would hope that would be a further argument for ASMFC to still be a major player with management of smooth dogs; and that the Mid-Atlantic Council's request for management of smooth dogs actually should be honored and not rejected.

VICE-CHAIRMAN SIMPSON: Okay, at this point I think the discussion would benefit from the reports from the advisory panel and law enforcement committee. Before we get to that, we do have to finish up with the technical committee. We've got a couple of minutes with that and then we will move to the next two reports.

DR. SKOMAL: We received the North Carolina memo and the technical committee did indeed schedule a call where we discussed it specifically. The memo responds to the technical committee's recommendations we made relative to Addendum I. You've all heard and seen, hopefully, the contents of the memo. It is based on North Carolina trip ticket data.

Clearly, there are spatial and temporal overlaps of the species, but according to the memo this differentiates at the fisheries level and by gear location, time of year. Basically, the memo states no sandbars were landed by directed smooth dogfish trips. Federal dealers also, as

stated in the memo, must attend ID workshops, and this will further reduce misidentification. The final point of the memo has to deal with the ratio of 5 percent, which is thought to be too low for smooth dogfish.

With the exception of the North Carolina representative, the technical committee reached consensus, and that was based on the fact that there were some concerns over the use of trip ticket data to come up with this information and that the data are not cross-checked or validated with any other data sources.

There was concern that there could indeed be sandbars and other species of sharks mixed in with the smooth dogfish data that are ignored and not reported in the trip ticket, and this is entirely likely with, again, a high-volume fishery. Also, the North Carolina information doesn't take into account what may be happening in other states. Virginia has a big fishery for smooth dogfish, but they're also landed north of Virginia as well, including states like New Jersey and New York.

There is concern about what may be happening in other states. However, it was noted by a couple of members of the technical committee that if the trip ticket data were indeed validated in some way by some independent data source, there may be a potential, because of the lack of overlap between the smooth dogfish and sandbar fisheries in North Carolina, to allow for some seasonal allowance for the removal of fins, particularly from March through May.

If you go back to your original memo from North Carolina, you'll be able to see some of the graphics with regard to this time period. The technical committee, therefore, did not change its mind relative to not allowing at-sea processing or at least not changing from the hybrid Option C, if you will, modified at-sea processing and maintaining the dorsal fins and the caudal fin.

With regard to the fin-to-carcass ratio, the 5 percent ratio may indeed be too low for smooth dogfish. We feel that additional analyses are needed. Clearly, the bodies are longer; they're morphologically different between the two species. There is smooth dogfish and a lot of other species it may be confused with, so we feel that if there is some allowance for at-sea processing and fins are required to be landed, the

5 percent ratio may indeed be too low for smooth dogfish.

VICE-CHAIRMAN SIMPSON: I think with that we'll go right to the – Okay, Louis.

DR. DANIEL: Two things; maybe I'm misunderstanding what the technical committee means by "validated". That is where my angst is here. What does "validated" mean to the technical committee?

DR. SKOMAL: Louis, perhaps start by explaining what the source of trip ticket data is.

DR. DANIEL: When a fisherman comes to the dock, they offload their catches and they weigh them out, and they list on the report the gear type, the location, codes, various information that they put on the trip ticket, and then, say, they landed 10,000 pounds of smooth dogfish. All right, what we do is we regularly go to the fish house and have staff at the fish house.

We have three different types of folks that can do that. We have port agents that sort of act as our liaison to the commercial fishermen, so they help them fill out the trip tickets and help them with any ID problems. They help them with various things that they're doing, so they watch the catches and see what is being reported on the trip ticket to verify that.

We also have biological staff that go to the fish houses and collect the information. What we aim to do is have the staff at the dock when the boats come to the docks, so we can actually see the boat, we can see the gear, we can see what is on the boat and then watch it be offloaded, sample the catches if we do length stuff, but certainly validate whatever they're saying they're catching.

Then, thirdly, we have enforcement that go down and check these catches pretty regularly. These fish houses where at least this fishery is prosecuted – and I am sure Virginia is the same way – these are our larger fish houses, so we do have a lot more activity at those places than we would, say, at a Mom and Pop House business or whatever.

In my mind we rely heavily on our trip ticket information and consider it to be validated, cross-checked, completed. I don't know how else – I don't know how we could further validate the information that we have. I still look

at these two sharks, though, and I see such a distinct difference between the two in terms of the body shape and size.

I mean, I'm hearing what Dr. Pierce is saying about leaving the two fins on, but again that is just such an onerous requirement, and it just seems to me that if you just saw where that second dorsal had been cut off, the insertion point is going to be so much wider I think on a smooth dogfish than it would be on a – that should be an identifying characteristic right off the bat because if it is a sandbar it is going to a real small insertion point. If it is a smooth dog it is going to be much longer.

That may be an easy way to distinguish between the two for enforcement-type folks. The fins are also different. These guys can distinguish – you can hold up a fin and they can tell you what shark it came from. But if you've just got a basket of fins, instead of having to go through all the shark carcasses, you could go through the fins, potentially. That's where I run into concerns about how it is not validated.

I'm very confident in the information that we've provided you. I do think if there is – if it can help us get smooth dogfish out of HMS, you know, I'm willing to do just about anything. But if you look at the graphic where the fisheries are operating, it is basically March, April, May, maybe the first two weeks of June; and if you look at that, most of the sandbar catches historically have been July to February.

If we need to come up with a seasonal option, then I'm comfortable with that. If the technical committee made that recommendation, that may be an alternative we can consider to allow them to process these at sea during the season and not other times, if that gives the technical committee more comfort. But that's the way we do it, Greg, and I don't know how else to validate it besides that.

VICE-CHAIRMAN SIMPSON: Greg, anything on the validation?

DR. SKOMAL: We appreciate those efforts. I'm sure that many states have port agents and biological staff and enforcement. I guess my next follow-up question would be what level of coverage do you have in terms of percentage of trips that are actually validated; do you have a sense of that?

DR. DANIEL: Yes, it is pretty high. Like for our summer flounder trips, we survey as many as 25 percent of the trawl trips. It varies by fishery. This fishery is in a fairly remote location, so I would say we'd probably have somebody at the fish house one day a week probably seeing these trips, once a week during a six-week season, so probably six or eight times.

You might have a port agent there six or eight times, you might have a biological staff there six or eight times over the course of the six-week season; so probably 16 to 20 days out of the six-week season there would be somebody at the fish house, be it enforcement, port agent or biological staff. That is an estimate; that is my best guess.

VICE-CHAIRMAN SIMPSON: Okay, at this point I think I do want to move on to the AP and Law Enforcement Reports, get that input, because some of the questions and comments certainly relate back to things that they will cover. I think in the interest of time and to get the benefit of their input, we will move to that. Louis, if you would go ahead.

ADVISORY PANEL RECOMMENDATIONS

MR. LOUIS GILLINGHAM: June 20th we had a conference call. Unfortunately, only three members were on the call. One member had called and informed us of a conflict. Two other members did attend their respective state public hearings and commented there. This follows it has kind of been historical that the advisory panel participation has been low in its two meetings and this one conference call. Certainly, we would benefit from increased participation.

However, the people that do and have participated are often the ones affected, and so I wouldn't dismiss what we came up with. Issue 1, smooth dogfish finning and ID; the advisory panel supports Option B which allows commercial fishermen to process smooth dogfish at sea. The rationale here is it is high volume, labor intensive, and these animals are subject to rapid spoilage.

Unlike the spiny dogfish, which is primarily caught in cold water, generally the water temperatures are 60 degrees above and air temperatures can be quite a bit higher. This fish, in addition to its biological characteristics, is subject to pretty rapid spoilage. Number two,

the smooth dogfish cores are readily distinguished from other species. Their skin is very distinct in terms of its sandpaper feel. The flesh is transparent and the fin placement is different from the sandbar shark.

In addition, the body morphology is different in that it is a heavier bodied fish even for the same size. Another reason for this, our rationale would be that there is a high economic risk to federally permitted dealers selling illegal shark as dogfish. The dealers can tell these fish apart. They've been to school. The volume of, I would say, misidentified – not misidentified, the number of fish coming through where the fishermen might be trying to force it through the process, it just doesn't seem like it would be enough of an economic incentive to the federally permitted dealer.

Additionally, the advisory panel noted that the standard fin weight to dressed weight ratio is significantly higher than the 5 percent that was developed for the large coastal sharks, and they request that the board consider something in the 10 to 15 percent ratio for smooth dogfish. I think Mr. Daniel's memo and some of the Virginia data might point out what would be a reasonable allowance for carcass weight to fin weight.

Issue 1 and 2, which are both the recreational possession limits for smooth dogfish, the AP supports Option B, which eliminates recreational possession limits of smooth dogfish for both the shore and vessel anglers mode. The rationale here is there is no possession limit for the commercial fishery, and the recreational fishery accounts for only 10 percent of the harvest.

Secondly, the recreational harvest has been stable. It doesn't show any suggestion that it is increasing. As we know, there has been no assessment done for smooth dogfish, and the AP reinforced the idea that it is vital to properly manage this species. The AP would also like the board to consider allowing the recreational fishermen to cut up smooth dogfish to use as bait while they're fishing. This has been a historical practice in the use of dogfish by recreational fishermen.

The AP again supports Option B, which eliminates the two-hour net check for large-mesh gillnets. Clearly, this is simply impossible to enforce, and it would not be feasible for many of

the fishermen to even set and check nets within the two-hour period. Additionally, it would almost have a negative impact on the stocks in that many of the Mid-Atlantic Gillnet Fisheries catch coastal shark species incidentally, and they will be unable or unwilling to comply with the two-hour net check. If these fishermen essentially self-impose this on them, they'll just become dead discards and they won't be counted against any quota, and it seems self-defeating. I'll be happy to answer any questions.

VICE-CHAIRMAN SIMPSON: Any questions for the AP? Tom.

MR. FOTE: It keeps getting thrown around that the recreational catch is 10 percent and less than 10 percent; what is actually the recreational catch? I think it's a hell of a lot less than 10 percent. I'd really like to have some figures. Once you start putting figures in something, it becomes the record. Is there any information what the recreational catch is?

MR. GILLINGHAM: Certainly, you have the MRFSS survey, and you can believe that estimate to what degree you want. Although the smooth dogfish is something that is caught over a long period of time in most states, it would be something that the MRFSS survey would capture pretty effectively just because of the nature of it and the number of interviews over the time period that the smooth dogfish are available in the year.

MR. FOTE: So what are the MRFSS figures showing; that's the question I'm asking?

MR. GILLINGHAM: I think that was in some of the briefing papers. I don't have it in front of me, but I think that's where the 10 percent – that was kind of an average over a number of years.

VICE-CHAIRMAN SIMPSON: It is in the draft addendum. On Page 6 there is a table that shows the commercial and recreational catch on a percentage basis. In '07 it was 11 percent recreational and 88 percent commercial. It is highly variable but in recent years it is running 2 to 15 percent, something like that. If you go way, way back it appears to flop the other way. It looks like the commercial fishery was virtually non-existent back in the eighties.

MR. FOTE: What I would also point out there, if law enforcement has a hard time basically

figuring out – because of the training they're getting and they get the training – I wonder how these MRFSS figures, the people that go out there and do MRFSS, where they can tell the difference what shark they're basically doing. That's just a personal comment.

VICE-CHAIRMAN SIMPSON: Okay, let's move on to the Law Enforcement Report.

LAW ENFORCEMENT RECOMMENDATIONS

MR. HOWARD: First I'd like to echo a couple of the comments that I've heard previously, and that is from North Carolina and Virginia. The officers there, because they deal with these fish all the time, are experts and can readily identify and understand the fishery and the spatial differences and what they're going for. I will also echo that the smooth dogfish fishery, by and large the most part, is a different fishery than the whole shark plan together.

Those discussions all have occurred within our committee. Having said that, we moved forward to specifically speak to enforceability issues on the plan, and there is some difference on the smooth dogfish and the spiny dogfish in identification, and because they're unloaded in bulk, et cetera, so I'm echoing that, Louis and Ernie, the states that deal with those – especially the smooth dogfish specifically have a better understanding of the processes.

Having said that, the consensus of the committee, if I can just go real quick down to 4.2.7, the recreational angler possession limits, there is going to be significant confusion among recreational anglers with very poor identification of species when caught. You can see that now, that misidentification among recreational anglers either in a boat, inshore fisheries or shore fisheries.

They have limited experience in identification of sharks and using various local names for various species. Educational help would be a difficult task and compliance may be low. However, it appears that the catch is low, also, in the recreational.

Soak time, we have talked about that for years. With the current technology in enforcement resources, it can't be enforced. If it is critical to the plan, you need to think about it. Finning and

identification, the committee as a whole, with the references I just said, strongly support the section that provides for retention of fins on the carcass.

It is easier but not impossible to identify those species. I just want you to know that the officers can identify – it is not impossible but it makes it easier to enforce. Having said that, the Office of Law Enforcement for NOAA decided and requested and wrote us a letter, and I would like to just briefly mention that.

This is out of the Office of Law Enforcement Headquarters. They wanted to provide comments on Draft Addendum I. I am going to go through this very quickly: “Allowing commercial fishermen to remove the fins of smooth dogfish at sea would undermine the effectiveness and enforceability of recently promulgated federal regulations for Atlantic sharks as well as the amendments to Magnuson-Stevens Conservation and Management Act proposed by the Shark Conservation Act of 2009 currently under consideration in congress.

“Requiring all sharks to be landed with fins naturally attached greatly increases the at-sea enforceability of the finning ban by obviating the need to match loose fins to carcasses. The fins-attached requirement also facilitates enforcement of prohibitions on the landing of protected sharks by improving identification of shark catch at the species level.

“Federal regulations currently require all Atlantic sharks to be landed with the fins naturally attached and the Shark Conservation Act of 2009 would extend this requirement to all federal shark fisheries. Passing Draft Addendum I with the proposed exemption for the smooth dogfish would, therefore, be entirely inconsistent with current and pending federal shark management measures.

“In addition to the enforceability concerns created by the proposed exemption, Office of Law Enforcement is also concerned that carving out an exemption for one fishery in one region of the country may generate pressure to establish similar exemptions for other shark fisheries that will ultimately undermine the positive advances that have been made towards more enforceable shark regulations and by extension the sustainable management of sharks.”

That is authored by Todd Dubois, Office of Law Enforcement out of Washington, D.C. He requested that he do this in addition to the states’ law enforcement. Other than the federal letter, I can comment on the states.

VICE-CHAIRMAN SIMPSON: Okay, questions for Mike on his Law Enforcement Report.

MR. PATRICK AUGUSTINE: I read the letters, also, and it just seems to me it looks like Big Brother is getting bigger all the time. It just seems that this fishery happens to be so unique and so different people are figuring that it is just another shark, it is just a part of the ocean out there, and a few guys are going to be affected by this.

The real question is are we – maybe I should hold this question – are we going to try to support and keep that fish in ASMFC or are we just going to cave in? I’ll hold that for later, but that was my concern, Mike. I think the report is clear; the feds want to do it their way. I wanted to ask you a question about the new gear that came out last year.

One of the organizations came forth with an electronic timing device to be put on nets. That was one of the devices that the councils had a presentation on. Is that too new a gear to consider in the future for a two-hour check? I do think two hours is ridiculous, but have you any comment on that?

MR. HOWARD: We’re aware of technologies developing. From an enforceability standpoint we’re also aware of the great effort it takes to set long ocean gillnets, and we have not seen any viable options that would be economically feasible to the fishermen and enforceable at this time.

VICE-CHAIRMAN SIMPSON: Okay, I’m going to try to keep the questions very narrowly to law enforcement. Tom, if you had something for Mike.

MR. FOTE: Mike, did anybody convey to the federal law enforcement – already listening to Ernie that there is no matching of the fins because the fins are thrown overboard. I mean, there seems to be a disconnect for what people are saying and what is actually happening in the

fishery. The letter says they can match the fins; that is what it is.

I mean, I have been a big supporter of basically now allowing finning of sharks at sea. I mean that's it, but this is not where you can match fins because we're basically taking excess fins because there are no fins on board. They're thrown overboard from I understand.

VICE-CHAIRMAN SIMPSON: Okay, I didn't hear the question in that, but, Joel.

MR. JOEL HOVANESIAN: Has there been a significant problem with enforcement in this fishery?

MR. HOWARD: The answer is no. The training the dealers get has resulted in an excellent case being made in Delaware. It is a case that would not have been made without the training.

MR. JACK TRAVELSTEAD: Mr. Chairman, I don't have a question. I was wondering at what point you would be ready for a motion. I've heard quite a bit and I think we've heard from all of the advisors. I'm ready to make a motion.

VICE-CHAIRMAN SIMPSON: Well, that inspired three or four hands, and I was trying to emphasize we're at the stage of asking questions and not commenting on the draft, but if you have a question for clarification for law enforcement. I would like to keep it just to law enforcement. I'm trying to keep us somewhat on schedule, if I could. If it is a burning question you need an answer to once we have a motion, we will get there. Bill, question for law enforcement.

MR. WILLIAM A. ADLER: Did you say that they are finning and there isn't – right now, anyway, and there isn't a significant law enforcement problem with enforcement right now? And if I may, also, I'll throw, Mr. Chairman, over to Louis whether there has been any enforcement problems with the way they're going about it now?

MR. HOWARD: I don't think I said they are finning. If I did, I misspoke; I meant to read the letter from the federal people. I have not received any information on significant law enforcement problems with sharks, either the dogfish or what I consider highly migratory stock.

MR. ADLER: Thank you, and if I could, Mr. Chairman, see if Louis has indicated any enforcement problems the way it is operating now down there?

VICE-CHAIRMAN SIMPSON: Louis, any law enforcement problems in North Carolina?

DR. DANIEL: None that I'm aware of, no, sir.

VICE-CHAIRMAN SIMPSON: Pete, you had your hand up to a law enforcement question and then Margo.

MR. HIMCHAK: The law enforcement memo isn't dated, and my question is the presentations today about the clean, high volume, et cetera, no problems; was that relayed – and there are all kinds of AP reports to the TC. Now, did the TC have the benefit of the law enforcement comments; did they have the benefit of the advisory panel; were there fishermen such as the man from Virginia at the TC meeting to provide this input? I'd like to know that; and if so, then – if not, then perhaps the TC's tenacity in requiring the fins may be diminished somewhat. Thank you.

VICE-CHAIRMAN SIMPSON: Any response; did you have the benefit of the Law Enforcement Committee Report?

DR. SKOMAL: It wasn't available.

VICE-CHAIRMAN SIMPSON: Okay, I guess it was not available at that time, but we've had it here. Margo, and then I think we'll move into the motion and debate of the addendum.

MS. MARGO SCHULZE-HAUGEN: I just wanted to clarify one of the comments being made in terms of problems with enforcement. One of the primary reasons we went to a requirement for fins to be naturally attached was because of consistent, persistent enforcement problems with finning in the HMO Fishery. I can't speak at this point to smooth dogfish fishery enforcement issues, but please bear in mind that this has been a problem in the remaining shark fisheries, and that's the driver for the recent action that we took in Amendment 2.

VICE-CHAIRMAN SIMPSON: Okay, thanks. Greg, you had one final thing and then I will entertain a motion.

DR. SKOMAL: Well, I just had a question for enforcement. There were a couple of questions regarding has there been enforcement issues. I'm just wondering what provisions are currently being enforced in state waters?

MR. HOWARD: Each state has a wide variety of state rules and regulations regarding sharks. Are you speaking specifically on smooth dogfish?

DR. SKOMAL: Yes.

MR. HOWARD: I would have to get back to you.

DR. SKOMAL: I mean that is the crux of the question; have there been enforcement issues? Well, what provisions relative to smooth dogfish are currently being enforced in individual state waters? Many of the states have yet to implement the management plan, so I wonder whether those provisions are even being enforced at this point? It is just a question.

MR. HOWARD: Just to reiterate; speaking to smooth dogfish, there haven't been enforcement issues. Because of that, the concerns that were raised within the committee are in identification of those and mixing in large volume, whether or not a weight by percentage is easily enforced versus an easily enforced no-finning provision.

VICE-CHAIRMAN SIMPSON: Okay, thanks. With that, Jack, you suggested you may have a motion for us?

MR. TRAVELSTEAD: Well, that last conversation just raised a question in my mind to Mike, and that is have we made any cases on the illegal take of sandbars or juvenile sandbars? Has that been a problem anywhere?

MR. HOWARD: It has not been brought to my attention, and I would have to survey the committee.

VICE-CHAIRMAN SIMPSON: Margo, it looks like you have a response for that?

MS. SCHULZE-HAUGEN: Well, just to reiterate, sandbars have been one of the primary

species targeted by the commercial fishery. There have been numerous enforcement actions on the federal side. I believe the states have been involved and been aware, and this has been an enforcement problem for some time. You know, maybe we can, at a later date, get some summaries from the NMFS enforcement folks to the committee.

VICE-CHAIRMAN SIMPSON: Okay, thanks, Margo, that was important. Louis.

DR. DANIEL: To that point, I think Mike is right, there are a lot of various shark regulations. To address Greg's comment, I think there are no regulations on smooth dogfish, but North Carolina at least has the prohibited sharks list; and so if we see sharks, we will be looking for those prohibited species. That would be where a violation would come in would be if they had brought a prohibited species or a species out of season. Then we would make that case. As far as I know, we have not made any of those cases, and we have been complementary of the federal regulations for years and are today.

VICE-CHAIRMAN SIMPSON: Okay, I want to thank Greg, Louis and Mike for their presentations.

BOARD DISCUSSION OF DRAFT ADDENDUM I

VICE-CHAIRMAN SIMPSON: I think we should address the addendum itself and the issues if we have a motion to begin the debate with. Jack.

MR. TRAVELSTEAD: This is a difficult decision I think for some. I'm convinced that the smooth dogfish fishery is not a growth industry. I don't see people entering this in great numbers. In fact, I see the numbers in the fishery declining. It is not a huge fishery. When you can look at the landings on Page 5 of the addendum, we're looking at somewhere around a million pounds. I'm convinced the fishermen know how to identify this animal.

In our management plans we do strive to make it as easy as possible on our enforcement people, but there are times when that is not entirely possible. Every management plan has measures that are more difficult to enforce than others. If we need to redouble our efforts to train our officers and our buyer, then we should do that.

The problem I have is if we don't adopt this addendum we will have eliminated a fishery. That's not a very reasonable choice. Is it worth eliminating a fishery because there is a little bit of trouble with identification that might be solved with a little more training? I think it is worth doing a little bit more training. I am prepared to offer a motion to – I'm not sure you want to do this, if you want to do it issue by issue, Mr. Chairman.

VICE-CHAIRMAN SIMPSON: It is your pleasure. I think with only four issues that one motion would be –

MR. TRAVELSTEAD: **Well, my motion would be to adopt Options B throughout the document, which would allow the processing at sea, would eliminate the recreational possession limits, and would remove the net-check requirement.** That's it.

VICE-CHAIRMAN SIMPSON: Okay, we have a motion; is there a second? Pat Augustine seconds. Discussion on the motion? David.

DR. PIERCE: This indeed is a tough one, but I feel obliged to pay special attention to the advice of the technical committee that I thought was very good advice, recognizing the high-volume nature of this fishery. The identification problems, the letter from NOAA Law Enforcement, the looming discussion of incorporating smooth dogfish into HMS, I really think that if we adopt this motion as it stands we will have a very difficult time in dealing with NMFS in terms of our defending our position to continue management of smooth dogfish, especially because of the enforcement concerns that have been raised.

I recognize that some of the concerns raised by NOAA Enforcement might not necessarily be – how should I put this – well, they were written in June, and they didn't have the benefit of the suggestion by the technical committee. I feel obliged to make a motion to amend, and that would be to amend Issue 1 – and here is where it becomes a little bit tricky since I'm not looking to adopt A or B.

I want the technical committee recommendation but modified, so I would move to amend the Issue 1 so that it would be to allow removal of the head and all fins except the two dorsal fins. It is a hybrid of A

and B, consistent with the technical committee recommendation regarding enforcement but modified somewhat in light of the remarks made by Greg that indeed you can still do the necessary identification with the two dorsal fins with the caudal fin removed.

VICE-CHAIRMAN SIMPSON: Okay, we have a motion to amend; is there a second? Seconded by Robert Boyles. Discussion on the motion to amend. Ernie.

MR. BOWDEN: I really think if you're worried about leverage with NMFS, NMFS only considers you a partner when you do what they want. There is no compromising with NMFS, and it is going to get worse. The issue she is talking about is probably longlines in the federal EEZ. I don't know that.

We've had no significant problems in the state of Virginia that I'm aware of, and I'm fairly aware of stuff in the state. Sitting on the commission, I would think I would know. To make it easier on law enforcement by making it much, much harder on the fishermen is not acceptable to me. Mike has said that they could identify them by carcasses. Now, that is coming from a law enforcement man.

If we have to go to school to identify them, law enforcement goes to school to identify them, I don't see where the problem is. You have scup in the northeast. I'm sure you have size limits. Do they measure every scup that comes off the boat to make sure? No, they do a sampling. It is the same way with any fishery.

Louis has a very high rate for a fishery when he says probably 15 to 20 days out of 6 weeks. That is unheard of to have that high of a thing. This is a fishery that has been executed for decades if not centuries. I have been doing it for a very long time. It is not necessary to leave the fins on. All you're doing is giving additional work to fishermen every single day that they're fishing to make it somewhat easier on law enforcement.

As a fisherman I already feel law enforcement has it a whole lot easier than I do. They're going to get paid vacations and they're going to get certain hours of the day. This is a fishery where you're talking probably ten-hour days or more, and to add two or three more hours to that for an issue that doesn't exist – law enforcement says it

doesn't exist. He is not aware of it existing; we're not aware of it existing.

You know, Virginia has been in the forefront on sandbar conservation. We closed all of our internal waters until you really wanted us to open them again and adopt the federal plan. This is something that we'd probably be willing to do again. I think the fishermen would be willing to do it again.

Not only would you conserve sandbars but you would also move people out of there from smooth dogfishing. This is putting law enforcement's wants way in front of fishermen's needs. I think we are supposed to look out for everyone concerned and not just a select group. This will be totally unacceptable.

VICE-CHAIRMAN SIMPSON: With the law enforcement questions brought up, I'd like to ask Mike to respond.

MR. HOWARD: Just briefly again, I want to make sure that you're understanding what law enforcement is saying in totality is we want consistency between federal and state waters in everything. It helps us. The issue that we're talking about here today is the large-volume smooth dogfish fishery which in those states the officers on our committee are very familiar with and understand there is generally a difference.

The sandbar sharks and other sharks like the case made in Delaware where fins had been removed and the head was removed and an officer using his schooling made an excellent case, and I'm sure there are cases being made throughout the country on sharks and finning issues. Significant problem versus cases made two different things, but consistency is always important to law enforcement in regulations and landings. I just wanted to make sure that – I'm not hedging or anything – consistency is important, but the committee fully recognizes a difference in the dogfish fishery and other shark fisheries.

VICE-CHAIRMAN SIMPSON: Okay, thanks for that. I had Dennis and then Louis, and this is to the motion to amend.

REPRESENTATIVE DENNIS ABBOTT: To the motion to amend, first of all, in the initial motion we have four different issues, and now we have an amendment to one of the issues. It would seem if we want to talk about amending

the main motion, that we should divide the four issues and deal with Issue 1, then Issue 2, then Issue 3, because that might affect how people might vote on the motion. I have concerns about amending one part of the four issues, so I would appreciate it if we would separate, and I would make a motion to divide the question, and I would divide the question into Issue 1, Issue 2, Issue 3 and Issue 4.

VICE-CHAIRMAN SIMPSON: Dennis, you see a decision on Issue 1 affecting a decision on Issue 2? I see them as being quite independent, and so I don't see the conflict. I could see where in other cases a decision here would affect the subsequent one, but would this amendment affect how you think about shore or boat-based recreational possession limits or the two-hour gillnet limit? I don't see where it would affect those decisions.

REPRESENTATIVE ABBOTT: That's probably true; I may be wrong in my thinking, but that's just what I thought. I would go along with whatever the Chairman decides.

VICE-CHAIRMAN SIMPSON: Okay, they're fairly distinct issues, and I don't see that one will influence a decision elsewhere. I had Louis next and then Margo.

DR. DANIEL: I'm fearful that this amendment would pass; and so with that fear, I would bring up a potential compromise here. **I think 90 percent of the landings are in North Carolina and Virginia with the information showing that there is very little bycatch of anything other than smooth dogfish from March to June. After June and through February is when the sandbars are taken.**

If Dr. Pierce would be willing to have a seasonal aspect to where from March through June they would be allowed to dress the fish at sea, and then from July through February require the two dorsal fins attached when there is well documented spatial and temporal overlap between smooth dogfish and sandbar sharks. Would accept you that as a friendly amendment?

DR. PIERCE: I'm tempted to do so, but if I may, Mr. Chairman, could I just check with the technical committee regarding the statement about the temporal overlap. I believe that Louis is quite right, and would there be any technical

disagreement with the statement that there would not be any overlap during those months?

DR. SKOMAL: Distribution studies indicate that there is definitely temporal and spatial overlap during the winter months. It just doesn't seem to be occurring in these fisheries, so it is important to differentiate between the two. It's one of the reasons the technical committee had some concern with those datasets to begin with, and that's why we looked upon some other method to cross-validate.

Now, Louis brings out some good points with regard to the presence of his people. Nonetheless, it is not a hundred percent coverage. It is only a small percentage of coverage in the big picture. The short answer is I can't answer that question without additional analyses.

DR. PIERCE: Thank you, but in light of everything that Louis has said regarding the attention that North Carolina is paying to this issue and in light of the very well put together letter that he sent to all us describing the nature of the fishery I think that what you have offered up, Louis, is a good friendly amendment, so if you were to state it again so I could see how it would be worded on the screen.

DR. DANIEL: I think Toni is working on it right now, from July to February –

DR. PIERCE: All right, so the landing of the fish without the head and without the tail and just maintaining the two dorsal fins, that would occur from July through February?

DR. DANIEL: Yes, sir.

DR. PIERCE: And then in the other months there would not be the need to have that retention?

DR. DANIEL: Correct.

DR. PIERCE: All right, this an acceptable friendly amendment.

VICE-CHAIRMAN SIMPSON: So that is no finning in the months from March through June; is that right?

DR. DANIEL: No, you would be able to dress the sharks during the primary season, which is

March through June. It is essentially March-April for North Carolina and May-June for Virginia. That way they could continue to process their fish the way they've been processing them in state waters; and then during the times from July through February any smooth dogfish would have to come to the dock with at least the two fins attached, the two dorsal fins attached.

VICE-CHAIRMAN SIMPSON: **Okay, so finning would be permitted from March through June and the two dorsals would have to be attached the rest of the year; is that right?** Is that how everyone understands it. Okay, any comments on this? I did have Margo and then Pat.

MS. SCHULZE-HAUGEN: My overall comments as opposed to this specific motion is that I wanted folks to just get on record that the federal statute requires the 95 to 5 percent ratio for all sharks in all federal waters, so that includes smooth dogfish now as well as any other species. Currently sharks under the Federal Fishery Management Plan are required to be naturally attached. That does not include smooth dogfish at this time, as you will see in a few minutes we are proposing to include it. Part of the intent of our proposed Amendment 3 is to try and initiate management without having a significant effect on the fishery to the extent that we can.

The federal statute is not something that we can affect, and for that reason I think we would not be able to support this. I also wanted folks to just know that anyone that has the Federal Shark Permits at this time would be required to follow the federal rules regardless of where they're fishing, so they may not be able to access these changes. This would be applicable to state-permitted-only fishermen. I just wanted folks to know that.

If folks are doing multiple things, they may not be able to avail themselves of this. I just wanted to make a general comment as well that we are definitely interested in being partners with the commission and working with the commission. To the extent that the commission plans are strong and conservation-oriented, that helps us be able to mirror it.

VICE-CHAIRMAN SIMPSON: Okay, thanks, Margo. Robert, I should have gone to you as the

seconder to make sure you were okay with the perfection of the motion.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, I am not so I withdraw my name as the second.

DR. DANIEL: I'll second it.

VICE-CHAIRMAN SIMPSON: All right, so we have a seconder in Dr. Daniel. Pat.

MR. AUGUSTINE: My question was answered; my comments were taken care of.

MR. HIMCHAK: Mr. Chairman, I came here convinced that it was essential to keep these two dorsal fins on, supporting what the technical committee had recommended. After hearing the Law Enforcement Report and the gentleman from Virginia, I'm inclined to – and also considering that there is a commercial fishery for sandbar sharks. It is a research-only category, but it is not a prohibited species. Again, theoretically, yes, I'd like those two fins to be on there, but for all practical purposes I would support the finning at sea for the smooth dogfish fishery.

VICE-CHAIRMAN SIMPSON: Okay, so you're in favor of the amended motion. Jim.

MR. GILMORE: Mr. Chairman, from the discussion it sounds like I was pretty comfortable that there is not a problem. I'm a firm believer if ain't broke don't fix it. It is a point of clarification, though. If we approve this and if we find out later on we do have a problem do we have to go through another addendum?

VICE-CHAIRMAN SIMPSON: That's right.

MR. ADLER: Mr. Chairman, I would like you to ask Ernie if this is acceptable or doable for the fishermen. It may not be perfect but does it improve things; that's the first thing. The second thing, I did want to talk just briefly about our partner. I would suggest that NMFS be a partner and not include the smooth dogfish or adjust in some way to really be a partner with us on this instead of the other way around. Thank you.

VICE-CHAIRMAN SIMPSON: Okay, thanks, Bill. Ernie, did you want to help Bill?

MR. BOWDEN: I think it is acceptable for us. In the spirit of cooperation I think it is a very good move and I do believe it is workable.

MR. STOCKWELL: Mr. Chairman, I think this amended motion is a very good compromise, but I have a question that I'm still trying to wrestle with. I can it can be answered by either Ernie or Louis. What percentage of the fishery is in state versus federal waters?

DR. DANIEL: For our fishery it is 50 percent state and 45 percent federal, but it sort of straddles the line. I mean they're real close to shore. It's a nearshore fishery.

VICE-CHAIRMAN SIMPSON: Jack. Okay, more in federal than in the state of Virginia. Okay, thanks, Jack. Any other comments on the motion to amend? Mark Gibson.

MR. MARK GIBSON: Mr. Chairman, I think this is a good compromise and it is really in the spirit of the commission's deliberative process. I appreciate North Carolina. Just to get it on the record, it is my assumption that Options B are on the table for the other three issues that are embedded. It is understood that is what in this motion?

VICE-CHAIRMAN SIMPSON: This is an amendment so we'll have to come back to the main motion, yes. Is there any comment before we caucus and vote on the motion to amend? We're going to take public comment when we vote on the final main motion. That's the traditional process with the commission. I'll give you a moment to caucus. **I'll read the motion into the record: move to amend Issue 1 to allow the removal of the head and all fins except two dorsal fins from July to February; and from March to June, adopt Option B, allow dressing at sea. Motion by Dr. Pierce; second by Dr. Daniel.**

(Whereupon, a caucus was held.)

VICE-CHAIRMAN SIMPSON: Have you had enough time to caucus? You're all ready for the vote? All those in favor please raise your hand, 10; all those opposed, 2; abstentions, 2; null votes, 1. **The motion passes ten for, 2 against, 2 abstaining and 1 null.** Any other discussion on the main motion? Wilson.

DR. LANEY: Mr. Chairman, I had my hand up earlier, and this is not totally germane, but I

wanted to get it into record anyway, and that is with regard to the recreational fishery. We talked earlier about the percent of landings that were recreational, and I'm prompted to make this comment based in part on Ernie's comment about being good stewards of the resource.

My concern is recreational discards and how well we're measuring recreational discards with a view toward especially trying to protect this fishery for future years. I can't tell you how many times I've been fishing on piers in North Carolina and seeing recreational anglers catching smooth dogfish and not retaining them for consumption but also not practicing catch/release either.

They whack them over the head and/or they leave them lying on the pier to die in the hot sun. How we address that issue I don't know. I guess from a technical committee perspective it is a discard issue. Maybe it is an educational issue, too, which is something the commission might want to consider undertaking not just for smooth dogfish but the philosophy of stewardship of the resource in keeping with Ernie's comment. Thanks.

VICE-CHAIRMAN SIMPSON: Thanks, and hopefully the creel agents capture that correctly, which is to record it as taken but not released alive. Any other comments on the main motion? Comments from the public? Arnold Leo.

MR. ARNOLD LEO: Arnold Leo, consultant for commercial fisheries, Town of East Hampton. This actually was a question for Mike who no longer is here. When a catch comes in of 10 to 20,000 pounds, what does law enforcement do? I gather they've got to break the catch out of ice, spread them out on the dock or in the packing house at best. What does the catch look like after that treatment? Remember, if the catch is up to 20,000 pounds, we're certainly dealing with six, seven, eight thousand fish in count. That's my question.

MR. HOWARD: Law enforcement takes random samples, watches the unloading, looks for any unusual irregularities, and that's why fins attached often make it easier. That is why percentages were adopted as compromises. We certainly cannot look at every single fish, but every aspect of the fish that is identifiable easily makes it easier for law enforcement. Of course,

again, we're speaking to the large-volume dogfish fishery.

VICE-CHAIRMAN SIMPSON: Okay, thanks, Mike. Any other public comment. I'll give you a few seconds to caucus. **The main motion as amended reads move to adopt for Issue 1, to allow the removal of the head and all fins except two dorsal fins from July through February; and from March through June adopt Option B, allow dressing at sea; and adopt Option B for Issue 2, 3, and 4 within Addendum I.** Motion by Mr. Travelstead and the second by Mr. Augustine. Jack.

MR. TRAVELSTEAD: Real quick a minor point; it probably would be clearer if it said "through" instead of "to"; July through February and March through June. Just a minor point.

VICE-CHAIRMAN SIMPSON: I agree; can we make that change? Okay, any other comment on the motion as you see it? Any further need to caucus? All those in favor please raise your hand, 12; opposed, 2; abstentions, 1; null votes, 0. **The addendum passes 12, 2 and 1.** The next agenda topic is the plan review team and technical committee Review of Maine and New Hampshire's De minimis Shark Proposals. Chris has something for us on that. Bill.

MR. ADLER: Just a point of order; we adopted the options; do we now need a motion to adopt the addendum as amended and approved? Is that necessary?

MR. ROBERT E. BEAL: I don't know if the board needed to approve an implementation timeline. This may fall in line with the 2010 timeline that the board is set up for the implementation of the overall Shark FMP. What this addendum has really done is modify existing language in the Shark FMP that isn't fully implemented by a lot of the states due to a number of reasons.

I don't know if there is any additional timeline that needs to be developed by this group or maybe there is the understanding already that the January 1, 2010, implementation timeline for the overall FMP also applies to what was approved today.

VICE-CHAIRMAN SIMPSON: Does the board agree that this would fit in with the January 1, 2010, timeline for the overall FMP? Any

concerns with that? Then that will be the understanding. Bill.

MR. ADLER: Actually what I was after was we approved the issues that were in the addendum in this motion. Do we now say, "As we approved the issues, we now approve the full addendum?" I didn't know if that is necessary.

VICE-CHAIRMAN SIMPSON: Yes, I think we did that just then as we voted first on the amended motion and then on the main motion to adopt the addendum as amended. That would be for implementation January 1, 2010. Chris.

REVIEW OF MAINE AND NEW HAMPSHIRE'S DE MINIMIS SHARK PROPOSALS

MR. VONDERWEIDT: Next I'm going to give just a quick overview of the plan review team and technical committee review of Maine and New Hampshire's de minimis proposals. These would be for the January 1 timeline when the FMP goes into place. I'll just say beforehand they are asking kind of for a preemptive approval that if they go ahead and go through the legislative process to adopt these regulations, that they would get the board's consent that they will approve them when they come back with these regulations before 2010, after actually putting them in place. I guess that is what we would be looking for.

Just to kind of review what de minimis is from the FMP, there are no specific guidelines and it goes on a case-by-case basis. It is largely in part that there is no monitoring requirements in the plan, which a lot of de minimis plans will exempt you from a monitoring requirement. It does read, "If implementation and enforcement of a regulation is deemed unnecessary for attainment of the fishery management plan's objectives and conservation of the resource."

The objectives are on Page 3 of the report. I'm not going to read through these, but there are five them in there if you'd like to take a closer look on Page 3. New Hampshire brought forth a proposal October 1, 2008 – actually, I'd like to go back and just highlight that the plan review team – the FMP requires that the plan review team and technical committee review a state's reports, and then that gets forwarded to the board

for final say, but just to highlight that is what the process established in the document.

Moving forward to New Hampshire's proposal, it was originally submitted October 1, 2008, and the plan review team looked at it and said that, yes, most of the species are rarely found in New Hampshire waters, but they suggested additional regulations to ensure timely quota monitoring and close any enforcement loopholes as a result of the plan.

New Hampshire went back and submitted a new proposal that now includes all the regulations that the plan review team suggested. After that proposal was sent in, the plan review team and the technical committee looked at these and recommends that the board grant New Hampshire de minimis status, granted that they implement all the regulations.

In their proposal, which is to prohibit a number of species which are in the prohibited species group, and in addition to this sandbar, which is a research-only, would be prohibited, and porbeagle shark, which is a coastal shark species group, would also be prohibited, and in addition to that federal dealer permits are required for anybody who like to buy or sell sharks, and also the fins and tails must remain attached to the carcass through landing. It is also the head in the recreational fishery.

Moving forward to Maine, they gave the same reasoning that few of the species in the FMP are found in their state waters. Few of these species are actually encountered by fishermen. The report has exactly the same regulations or proposes the identical regulations to New Hampshire. Again, the plan review team and technical committee recommends that the board grant Maine de minimis status as long as they go forth and implement these regulations as proposed in the proposal.

Just to recap, both of these proposals are likely to provide sufficient regulation to obtain the objectives of the FMP. Both groups recommend that the board grant them de minimis status, and it is contingent that they implement the regulations as proposed.

VICE-CHAIRMAN SIMPSON: Great, thanks. Terry or Doug, do you have anything you want to add? Terry.

MR. STOCKWELL: I have a motion when you're ready, Mr. Chair.

VICE-CHAIRMAN SIMPSON: Okay, go ahead.

MR. STOCKWELL: **I move to grant Maine and New Hampshire de minimis status for the 2010 coastal shark fishing season contingent upon full implementation of all regulations contained in the de minimis proposals.**

VICE-CHAIRMAN SIMPSON: Seconded by Jim Gilmore. Any discussion on the motion? Any objection to granting de minimis status? **I see none; without object, then, we approve this.** The next agenda topic is Spiny Dogfish CITES Consideration Update; again by Chris.

SPINY DOGFISH CITES CONSIDERATION UPDATE

MR. VONDERWEIDT: I'm just going to give you a quick update of happenings in spiny dogfish and actually also porbeagle sharks. In a Federal Register Notice that was on the briefing materials, the U.S. Fish and Wildlife Service is still undecided pending additional information and consultation whether or not to recommend the Appendix II listing of spiny dogfish and porbeagle. This was published on July 13th in the Federal Register. They will be taking comments until September 11, 2009.

Just to review, they were up for this listing last year so we've kind of already gone through this. Appendix II are species that are not necessarily now threatened with extinction, but then may become so unless trade is closely controlled. You need an export permit or a re-export certificate to export these.

There is no necessary import permit, so an export permit is if a scientific authority of the state has advised that such export will not be detrimental to the survival of the species; or, and management authority is satisfied that the specimen was not obtained in contravention of the laws of that state for the protection of the flora or fauna and also management authority of the state of export is satisfied that any living specimen will be prepared and shipped to minimize the risk of injury, damage, health or cruel treatment.

The re-export permit is kind of similar, but it only has two parts to it. Management authority of the state of re-export is satisfied that the specimen was imported into that state in accordance with the provisions of the present convention; and, management authority of the state of re-export is satisfied that any living specimen was prepared and shipped to minimize injury, damage, health or cruel treatment.

Obviously, the second one is for a living specimen which probably isn't relevant to spiny dogfish. The third Appendix II is that species can be introduced from sea. That is if a scientific authority of the state advises that the introduction will not be detrimental to the survival of the species involved; and, management authority of the state feels that they're handled to minimize the risk of injury, damage, health or cruel treatment. That is just what the process is.

Also, I'd like to point out that Jim from the Mid-Atlantic Council has informed me that the New England Council and the Mid-Atlantic Council are going to write and send a letter to the Fish and Wildlife Service suggesting that they should not support the listing of these species.

VICE-CHAIRMAN SIMPSON: Thanks, Chris. Anything on this? Dr. Pierce.

DR. PIERCE: The consideration of spiny dogfish to be listed in Appendix II of CITES is not new. This has been an ongoing initiative for quite a few years now. My agency has been involved in that discussion, obviously, because of our interest in spiny dogfish; involvement with the New England Council, of course, ASMFC, and we have, in a very formal way in previous years, submitted extensive comments regarding whether or not it made sense to list spiny dogfish in the appendix.

Chris has already identified what the appendix is all about and what it means. And for those of you who've looked at the Commercial Fisheries News, the issue of Commercial Fisheries News that was over on the table for your use, I'll just call your attention to Section B where there is an excellent article about CITES relative to bluefin tuna trade.

There is a box that shows CITES, what it is and how it works, so if anyone cares to reference it later on, please do so, it is a very good job. I'm

grateful that U.S. Fish and Wildlife Service is once again requesting views as to whether or not the U.S. Government should support this listing. Nothing really has changed my mind regarding spiny dogfish and the appropriateness of it being listed in the appendix.

There really is no justification for it in light of the status of the stock, in light of the fact that indeed we have no need to be concerned about spiny dogfish survival by any means in light of the status of the stock. Of course, everyone around this table involved with spiny dogfish has heard from commercial fishermen and recreational fishermen and, of course, from stock assessment scientists about what is happening with spiny dogfish. There is nothing but optimism.

We're not overfished, overfishing is not occurring, and we've hit our target for biomass of mature females, the 200,000 metric tons. In 2008 we were something like 240,000 metric tons of large females with the trend still going up; so nothing but optimistic news. It makes a lot of sense for this board to weigh in on this particular issue. The request has been made, so I would move on behalf of the board – Chris has the motion – I would move to do two things in this motion.

It is a motion that is directed towards the U.S. Fish and Wildlife Service as well as the National Marine Fisheries Service who, of course, is involved in these discussions, working with the U.S. Fish and Wildlife Service.

The motion reads move to advise the U.S. Fish and Wildlife Service not to recommend an Appendix II CITES Listing for spiny dogfish at the Conference of Parties to CITES Meeting in March 2010, because spiny dogfish are not overfished and overfishing is not occurring; mature female biomass has reached and exceeded the biomass target; is being effectively managed in a sustainable way by ASMFC in cooperation with Fishery Management Councils; and trade does not need to be controlled to avoid utilization incompatible with spiny dogfish survival; and then, two, request the National Marine Fisheries Service to support this ASMFC advice and similarly advise the U.S. Fish and Wildlife Service not to support an Appendix II Listing.

VICE-CHAIRMAN SIMPSON: Okay, thank you, David. We have a motion; is there a second? Seconded by Pat Augustine. Discussion on the motion; any comments? Wilson.

DR. LANEY: David, I haven't discussed this at all with Dr. Rosemarie Nam, who is our Chief of the Office of Scientific Authority, but I don't have any problems with the rationale Dave has put forth for ASMFC sending a letter. I'll just note for the record that I think the Service is obligated to consider not only the status of U.S. Stocks but also other stocks internationally that may be affected in reaching a determination as to whether to list something under CITES or not.

That is a consideration that I think the Service would have to consider. Other than that, I'm not educated enough on this particular point to comment further. I would be interested in hearing – I guess this hasn't come to the technical committee for their consideration. I'm not sure it is something that normally would come to the technical committee. I guess I'd be interested in hearing some discussion in that forum about it. Maybe Greg can comment off the top of his head with regard to any comments he might have. Other than that, we'll just commit to consulting with the NMFS, and I'm sure the Service will welcome any comments from ASMFC.

VICE-CHAIRMAN SIMPSON: Okay, thanks. The statement that you might bounce it off the technical committee, they're not overfished and overfishing is not occurring, biomass has reached or exceeded the target; are those in line with your understanding, Greg?

DR. SKOMAL: I apologize but I'm not on the Spiny Dogfish Technical Committee, so I have nothing to add.

DR. PIERCE: I'm referencing the latest assessment document that we have been working with for the past year. I've been, as I always am, true to the science relative to spiny dogfish.

VICE-CHAIRMAN SIMPSON: Okay, thank you, David. Any other discussion on this motion?

MR. GROUT: Mr. Chairman, I would like to support this motion. Given the latest status of the stock, I think it is warranted that we advise

the Fish and Wildlife Service of our viewpoint on this. Just to clarify since we're going to be advising, this is going to involve the letter that is written by the board chairman or the executive director commenting on this; is that the intent?

VICE-CHAIRMAN SIMPSON: Yes, I expect it would come from Vince. Is that normally what we do; the letter would come from the executive director? Yes. There would be a letter going to the National Marine Fisheries Services and the Fish and Wildlife Service; is that right, David? Yes. To Wilson's point on stocks, is there a clarification to be made on the North Atlantic Stock or something to that effect? Mark, do you have something?

MR. MARK GIBSON: Well, that's what I was going to question. Given your comments on that and Wilson that there may be other issues relative to other countries – and I don't know anything about the spiny dogfish stock structure – I'm wondering if there needs to be a clarification here that this refers to U.S. North Atlantic – whatever it is, but I would defer to Dr. Pierce and his understanding of that.

VICE-CHAIRMAN SIMPSON: Is there a refinement to be made to specify the stock that we're managing?

DR. PIERCE: Well, I'd simply put the spiny dogfish that is managed jointly by the Mid-Atlantic Council and the New England Council and the Atlantic States Marine Fisheries Commission. That clarifies it; we're not talking about European dogfish or West Coast U.S. Dogfish, which have their own issues relative to how it is managed and where the stock status is. This is us weighing in on the stock that we have been managing for so long.

VICE-CHAIRMAN SIMPSON: Okay, great, I think that's clear enough, then, in the record. Any other comment? Do we need to vote on this or can we accept this without objection? We will note that the National Marine Fisheries Service usually withholds comment on that or abstain from this. Wilson, did you want to say something to that?

DR. LANEY: Yes, Dave, for the record I have to abstain on it, also.

VICE-CHAIRMAN SIMPSON: **Okay, so both the National Marine Fisheries Service and the**

U.S. Fish and Wildlife Service abstain, but otherwise we'll go ahead and do that without objection from the board. Okay, next on the agenda is Draft Amendment 3 to the Consolidated Atlantic – Margo, did you have something?

MS. SCHULZE-HAUGEN: I just wanted to mention to folks that the Federal Register Notice also includes requests for information and potential positions on a number of other shark species that folks may be interested in. At our upcoming Atlantic HMS Advisory Panel Meeting on Friday, September 11th at 10:30 we will be discussing the CITES issues relevant to sharks and bluefin tuna. Folks are welcome to come to that.

VICE-CHAIRMAN SIMPSON: Great, thank you. Okay, the next agenda topic is Amendment 3 to HMS Fishery Management Plan, and Karyl is going to provide an update for us.

DRAFT AMENDMENT 3 TO HMS FISHERY MANAGEMENT PLAN

MS. KARYL BREWSTER-GEISZ: All right, thank you, everybody. I appreciate having the opportunity to be here. I realize that I don't have much time, so I'm going to apologize up front for probably running through this a lot faster than I normally would. This is about our Draft Amendment 3. We are currently in the public comment period.

This amendment relates to blacknose sharks, shortfin mako and smooth dogfish. The first slide just outlines what I'm going to be talking about. Our need for action, our latest stock assessments indicate that blacknose sharks are overfished with overfishing occurring. Shortfin mako sharks was assessed internationally, and we found them to be not overfished but overfishing is occurring, and they are approaching an overfished condition.

Smooth dogfish, as you know, currently has no federal management, so we were looking at this as a result of several requests and in order to match or be consistent with what this board was thinking of in your own plan. Very briefly, our objectives in this plan are to rebuild and end overfishing of blacknose sharks, end overfishing of shortfin mako sharks, and ensure sustainability of the smooth dogfish fishery.

I outlined this a little bit more specifically, but I'm going to skip over most of these. I think the only other objective that wasn't mentioned in the previous one or the last two, Magnuson-Stevens currently requires us to implement annual catch limits or ACLs and also to implement accountability measures or AMs.

Within our draft plan we do outline a mechanism for implementing ACLs for all Atlantic sharks along with accountability measures. I came to you last year around this time to show you what we were doing for scoping. We released a pre-draft to our advisory panel in February. We are currently in the proposed rule stage, so we are accepting comments through September 25th on this. We hope to have the Final EIS and rule in place in early 2010.

For those of you who work on the councils, you're probably very familiar with this picture. This goes through how the National Standard 1 Guidelines look at implementing annual catch limits. Where you have the overfishing limits, that's the maximum threshold for fishing mortality. Accounting for uncertainty in the stock assessment leads to the acceptable biological catch. From there you calculate the annual catch limit.

For our shark species we're proposing we then implement the commercial quota after the annual catch limit, so that is the new part of this slide. Then you have the annual catch target and accountability measures under that. This slide has a lot of words but it does go through how we would implement the mechanism.

The main things I want to point out is the acceptable biological catch. We do not currently have that in our stock assessments. It is something we are going to be requiring from our stock assessments in the future. In the meantime we are using the annual catch limit and acceptable biological catch as the same.

Our commercial quota, we get the annual catch limit from the stock assessment. We then break that out in direct landings, commercial landings and discards. Our commercial quota is that commercial landings' portion of the ACL. Then our accountability measures, as you all know we close the fishery when we project we're at 80 percent of the quota, so that is an accountability measure; and then also accounting for over and

underharvest is also another accountability measure.

I am now going to spend a little bit of time on the alternatives we're proposing for blacknose, shortfin mako and smooth dogfish. Just one note, if you're following along in the EIS you'll see it in a slightly different order. In this case we're focusing on it by a species basis. In the EIS we focused on commercial versus recreational.

For blacknose sharks, you've seen this chart before during scoping. The main point to note is we have about 86,000 blacknose sharks taken per year across all fisheries. As you can see, most of the mortality happens both in our gillnet fishery along with the Gulf of Mexico and South Atlantic Shrimp Trawl Fisheries.

You can see that the percentages change slightly when you're looking at it by number versus weight. The gillnet fishery catches much larger fish than they catch in the Shrimp Trawl Fisheries. The assessment that was done in 2007 found that it is overfished with overfishing, and we need to reduce the number of blacknose being caught from 86,000 down to 19,200 across all fisheries.

That is a 78 percent reduction and that would lead to a 70 percent chance of rebuilding by the year 2027. That is our overall ACL is the 19,200 individuals. We looked at five alternatives for the quotas. The first alternative, of course, is the status quo which is 454 metric tons for the whole small coastal complex.

The second alternative, A2, was rather easily obtained by taking the average number of blacknose sharks, taking that out of the complex quota, which is 392 for the rest of the complex, and then reducing those average landings by 78 percent. That led to a quota of 13.5. Alternative A2, we realized if we did that the bycatch and discards happening as you fished for the rest of the small coastals would cause us to exceed that overall ACL.

Alternatives A3 and A4, we looked at ways of balancing the landings in the small coastal fishery, including blacknose, and staying under that blacknose overall ACL. We looked at two ways of doing that; keeping the current authorized gears and then also prohibiting shark

gillnet gear, so there are two slightly different numbers based on those results.

Alternative A4, which would close the gillnet fishery South Carolina south, is our preferred alternative. Then we looked at closing the small coastal fishery as well. One thing I should note as you're looking through all these alternatives is the Shrimp Bycatch Fishery, we are requesting that the two councils take action to reduce their blacknose interaction. There are no proposals in here that would affect the Shrimp Trawl Fisheries.

The commercial gear restrictions, as I said, we looked at closing the gillnet fishery, so we had three alternatives for that. One is status quo, which would keep the gillnet fishery. We also looked at Alternative B2 that would close it across all of our fisheries. We quickly realized that if we are planning on taking on smooth dogfish, that would be a problem since they are caught mainly in the gillnet fishery.

We seem to have run into a little bit of luck. It appears that most of the blacknose fishery and most of the gillnet fishery occurs South Carolina south; and at the current state of affairs most of the smooth dogfish fishery occurs in North Carolina north, so we put that boundary in Alternative B3 at that South Carolina/North Carolina border. We are asking specifically for comments on whether that border is appropriate.

The recreational considerations, we looked at different things. Our current management is one shark per vessel per trip with a 4-1/2 foot minimum size. There is an exception for two small coastals, the bonnethead and sharpnose, which is one per person per boat with no minimum size. That minimum size was based on the sandbar shark biology, a point at which 50 percent of the females mature. We did look at whether or not we could change it.

Based on the blacknose biology, that would lead to a 36-inch minimum size, which would, obviously, increase blacknose landings. Right now with a 4-1/2 foot fork length, blacknose rarely reach that size, so we ended up preferring prohibiting the retention of blacknose sharks in recreational fisheries.

Shortfin mako sharks, as I said, they were assessed internationally. When we looked at the results compared to our requirements in our

FMP, we found that they are not overfished but overfishing is occurring. The other thing to take into account is the U.S. proportion Atlantic-wide is less than 10 percent.

I'm not going to spend a lot of time going over these alternatives. I think the main thing to realize is for both commercial and recreational we looked at different size limits and had very differing results depending upon which fishery you were talking about. In the end we ended up preferring to take the alternative to take action internationally and negotiate internationally through international bodies such as ICCAT on preventing overfishing for shortfin mako.

We are also proposing to promote the live release of shortfin mako so that would not be a regulation. It would be something we would ask all fishermen, commercial and recreational, to do. I'm skipping through slides, but I believe you all have copies of them.

Now I am going to go to smooth dogfish. As I mentioned before, they are not federally managed and we do not have a stock assessment. There are also issues with the Florida Smooth Hound. Currently they are classified as two different species, but they look almost identical. We have indications from the Science Center that they may not be two different species after all.

I have included a map showing datasets from all the scientific surveys. As you can see, they are found throughout the Gulf of Mexico, up along the coast, in the Delaware Bay and up off of Massachusetts. They are also found in the Caribbean and going all the way down to Brazil. They are found in quite a lot of places.

Our main intent in taking on smooth dogfish is not to really change what the fishermen are doing. There are going to be some changes if we move it into our management, but overall that is not our intent. Our intent is to collect data in order to do a stock assessment. We looked at three different alternatives.

One is status quo, which would be no management. Alternative F2 is our preferred, which would bring it into federal management. Alternative A3 would also bring it into federal management, but it would exactly mirror the ASMFC regulation. Our preferred alternative, what this would mean is it would mean fins

attached requirement to match our other shark regulations.

There would also be a commercial and recreational permit requirement, but there would be no logbook requirement. This permitting would be solely so we can get a sense of the universe and the people who are fishing for smooth dogfish. It would be an open access permit, so it would be a different permit than the current shark permit. Anybody could get a commercial or a recreational smooth dogfish permit.

There would be dealer reporting, and that would just match their current dealer logs so we would get a sense of how many dogfish are coming in. Gillnets would be an allowed gear from North Carolina north. We are proposing an essential fish habitat designation. As with our other highly migratory species fisheries, if you're selected to carry an observer you would be required to carry one.

Also, due to the Magnuson Act requirements we would be implementing a quota on this fishery. We would not be implementing the workshop requirements that currently all longline and gillnet fishermen are required to take regarding protected resources and handling and release of them. There would be no logbook. As I said before, we're not intending to really change how the fishery is operated; just collect the information.

There would be no recreational size or retention limit and there would be no commercial size or retention limit. At the end there are a number of comments and questions that we're asking specifically for comments from the public on this. Very briefly, some of the quotas that we are looking at, we looked at the average landings that we could find for over the last ten years.

W, and we looked at a quota of just the average landings, which is about 400 or so metric tons. We then looked at the maximum annual landings, which is a little over 500 metric tons. We are preferring one standard deviation above those maximum landings, which is about 710 metric tons. We are not intending to close this down. We are intending for the quota to be large enough for the fishery to continue, but we are asking specifically on whether or not these numbers are appropriate. We also are proposing a quota of six metric tons for research.

As I said, we also looked at mirroring the exact ASMFC regulations, but with your addendum going out for public comment we weren't quite sure what those regulations would be. Also, the ASMFC FMP does not include a quota at this time, which we are required to do, and does not have essential fish habitat. Those were the main reasons we did move forward with Alternative F3.

This is just a map showing what we are proposing for essential fish habitat. That's pretty much all I have. The comment period closes on September 25th. You can submit it to regulations.gov or through mail and FAX. Then we have a couple of slides showing how to submit it on regulations.gov. I'm not going to go through these because I don't think I have the time, but we have a number comments and questions that we are looking specifically from everybody for answers. This is just a list of the public hearings. Thank you.

VICE-CHAIRMAN SIMPSON: Great, Karyl, thank you, that was a good presentation. The specific questions you had are available on the website if they go into comment; is that right?

MS. BREWSTER-GEISZ: Everything is up on the website, both on our website; and if you go to regulations.gov and search for it there, you will find everything there, too.

VICE-CHAIRMAN SIMPSON: Okay, great, thanks. Bill, a quick question or two; we're going to try to catch up on our schedule here.

MR. ADLER: Under the smooth dogfish options, if they go with F1, no action, then does the ASMFC, basically their rules prevail; whereas, with 2 you probably would destroy the fishery; and F3, we end up with some more stuff; and if you have that F1 option as a partner with the ASMFC, that may be our rules on the smooth dogfish would rule; is that the way it would work?

MS. BREWSTER-GEISZ: There would be no federal management; and that means if you were fishing in federal waters there is nothing. There are no limits; there are no restrictions. The only restriction would come through statute, such as the Shark Finning Prohibition Act which requires the 5 percent carcass-to-fin ratio.

MR BOYLES: Karyl, thank you for that great presentation. Just one thing on the public hearing location; I'm a little concerned about your meeting location in Charleston is going to conflict with the South Atlantic Fishery Management Council Meeting that week. In that particular timeframe, I believe the council has got an open session with the Regional Administrator and the Council Chair. I'm afraid we may be splitting audiences. I don't know if it's too late to change that.

MS. BREWSTER-GEISZ: Part of intent is to try to match a public hearing with a council meeting, so you will see that we are doing that with every council meeting. While we appreciate and consult with the councils, oftentimes the councils don't give the public a chance to comment as much as they would like. This is the opportunity for the public to come if they would like.

DR. DANIEL: As you would expect, I've got real concerns about the blacknose issue and reducing that quota from the 392.5 down to 56 and disadvantaging the guys that are fishing small coastals that do avoid blacknose, and we can avoid blacknose. I think the numbers are whacky, at least what I'm seeing off North Carolina in terms of blacknose. The numbers are impressive. I've got some pictures I showed Margo and I'll send them to you so you can take a look. From the air it is pretty remarkable.

The smooth dogfish issue really concerns me for several reasons. I just don't think they're an HMS species. Knowing how EFH designations can really cream you with the closed area off of North Carolina for sandbars and duskies, the document says that there is insufficient information available at this time to justify any EFH yet we're proposing EFH.

I think if you look at the bible here of shark identification, it indicates that smooth dogfish are primarily found out to 60 feet. What we know is that the majority of the fish are taken probably within four or five miles. That is straddling the line. I tend to echo Mr. Adler's comments. We can properly and appropriately manage this fishery under the ASMFC.

Right now you've got basically two states that are the major players in the fishery. The justification that they occur in the Caribbean and the Gulf and they don't have a fishery for them, so I think at this time instead of having to require

everybody to have permits and fall under the federal management program it is going to be a long climb for a short slide for you to manage smooth dogfish.

I think the commission needs to go on record supporting Option F1 which would allow us to be the sole managers of smooth dogfish; or, an acceptable alternative would be to have the Mid-Atlantic Council manage smooth dogfish. The last point I'm going to make, I was very disappointed not to see the issue of the North Carolina Close Area when now we've basically closed the entire east coast to pupping season and nursery closures.

One of our main intents of supporting this Coastal Shark Plan was to provide some relief off of North Carolina. This closure off of our coast still remains even though everybody has implemented their pupping season closures. I talked with Margo about this, and I'm understanding of the issues that you are dealing with and agree to discuss this in more detail at our annual meeting.

The closure in June before the area off North Carolina even opened had a huge disadvantage in North Carolina and Virginia particularly to where we didn't even have this fishery this year. We landed about 7,000 pounds of sharks, and all the fish were caught presumably in Florida. I know you're looking into that right now, but we have got to come up with some solution in October on how to make certain that all the states are advantaged in this large coastal shark fishery.

I know what happened in Florida was unexpected, but my final comment is I just wanted to draw your attention to Amendment 2 comment where the state of Florida specifically said that if you delay opening the large coastal shark fishery until July 1 it would give everybody fairer and equitable allocation of the resource. I think that is a critical move that we need to take place.

I think it would be great if we could avoid opening large coastal sharks next year until July 1st and make sure that everybody around this table has fair and equitable access to large coastal sharks. That's something for the board to decide. I appreciate the time that you have taken dealing with me. I know it is frustrating, but it goes both ways. I look forward to having a

further discussion in October as Margo and I discussed. Thanks.

VICE-CHAIRMAN SIMPSON: Thanks, Louis. I'll just point out we're about 25 minutes behind schedule and into lunchtime here, but I did have a couple of other people who wanted to talk. Jack was next.

MR. TRAVELSTEAD: I'll make it short, Mr. Chairman. I agree 100 percent with Louis' comments. He raised all of my concerns. I will leave it at that. Thank you.

VICE-CHAIRMAN SIMPSON: Thanks, Jack. David Pierce and then Wilson.

DR. PIERCE: Jack and Louis made my points. Thank you.

VICE-CHAIRMAN SIMPSON: Perfect! I had Wilson; do you want to make the same statement?

DR. LANEY: No, Mr. Chairman, I had a question for Bob and possibly a comment for Karyl then. The question is don't we have a mechanism through our plan provisions to make recommendations to the Secretary that would allow ASMFC to request the Secretary to implement complementary measures to an ASMFC plan in the EEZ?

MR. BEAL: The short answer is yes, and many of our boards have commented and requested certain things from the Secretary of Commerce.

DR. LANEY: So given that answer, I would suggest something that the Service might want to consider would be an option which may fall under the one that Bill is pointing out, their F1, that would undertake ASFMC management with complementary management by the Secretary in the EEZ as requested by ASMFC.

MS. BREWSTER-GEISZ: That is Alternative F3.

MR. HIMCHAK: Mr. Chairman, I thought the Mid-Atlantic Council made a very compelling case for management of smooth dogfish in the current Amendment 3 to the Spiny Dogfish Fishery. We wanted to include smooth dogfish. Unfortunately, we have already started the scoping process. I believe Jim is going to talk about that next. In the scoping process our

desire to include smooth dogfish is not included in the scoping document, so the horse may have already left the barn as far as this opportunity on the Mid-Atlantic Council managing the dogfish.

MR. FOTE: I will not be at the hearing tonight. I don't think I can make it up there by five o'clock in New Jersey. I will make my comments really brief. I look at mako sharks and it is disappointing. One of the first things I testified when I got involved in this was like 1987 and basically requested on behalf of a number of fishing clubs at that time for a two-fish bag limit on makos and a minimum of a six-foot size limit.

The only thing that happened on make sharks really over the last 22 years is that the recreational sector has basically been cut back to one and put a size limit and not the size that we requested but smaller than that, and nothing has ever been done on the commercial because you've lumped it in with other sharks.

It so important to the recreational fishing industry, and there are not a lot of numbers of sharks being caught, but just the fact that tournaments generate a lot money and keep most of those fish, because they do; and those tournaments, to their credit, all have made six-foot minimum size on it. It's disappointing to see this, and I'm sorry I couldn't comment tonight because I'm here, but I will send that in written comments.

MS. BREWSTER-GEISZ: Please, and also there is a lot of information. As I said, we went through minimum sizes both for commercial and recreational, including a nine-foot minimum size and a six-foot minimum size. Both of those sizes would have major impacts on the recreational fishery with most of the recreational fishery landing under the six feet. All that information is in the EIS, and I can point that out after the meeting.

MR. FOTE: Just to that point; but the recreational community as a whole has always supported the six foot, but they did not want it just on them.

MR. LEO: This section on smooth dogfish reminds of the firing squad that was instructed "ready, fire, aim". There is simply no data here to justify anything that is being proposed. I noticed that there is a need of conservation and

management under NMFS authority was determined by NMFS and by some public comment. I wonder, Karyl, what sector of the public commented to such effect?

MS. BREWSTER-GEISZ: We had specific requests from the environmentalists that management was needed. We also, as noted earlier, had a request from the Mid-Atlantic Council that they would like federal management, and then we were also taking clues from ASMFC that you would want some sort of federal management to go along with the state management.

VICE-CHAIRMAN SIMPSON: Okay, great, Karyl, thank you for coming and presenting the draft. We have one more presentation. Jim Armstrong from the Mid-Atlantic Council is going to give us an update on the Amendment 3 Scoping Document for Spiny Dogfish.

UPDATE ON THE AMENDMENT 3 SCOPING DOCUMENT FOR SPINY DOGFISH

MR. JIM ARMSTRONG: Okay, thank you very much for having me here today. Amendment 3 to the Spiny Dogfish Plan was initiated in the April meeting of the Mid-Atlantic Council this year. Formal scoping hearings were conducted last week, August 10-13. This isn't a formal scoping hearing, but I'm going to briefly go over the issues that are addressed in the amendment as we envision it so far very early in the process.

Just to remind everyone, the amendment process is a lengthy one with a great number of steps, and we're very early in the process. Scoping is one of the initial steps in the amendment process, and it deals with issues at a very general level. I've highlighted in yellow the steps in the amendment process here where public comment can be offered. As you can see, there will be a lot of opportunities in the future to chime in.

The scoping hearings that were conducted were in Newport News, Virginia, a week ago Monday; followed by Toms River, New Jersey; then Portsmouth, New Hampshire; and finally in Plymouth, Massachusetts. The comment period closes September 4th, 5:00 p.m., and e-mail comments or written comments sent to our address or fax to us are still being accepted.

There were originally six issues under consideration in Amendment 3. One of them has been struck for consideration, although there seems to be some lingering interest in maintaining that. Given that Amendment 3 for HMS, unfortunately, they're the same number, has a no action alternative in it, and I suppose we can't completely strike that from consideration, so comments in support of including that issue and any other comments are being accepted.

However, a formal request for management authority of smooth dogfish was sent shortly after our April meeting from the Mid-Atlantic Council to the Secretary of Commerce making what we thought was a good case for why the Mid-Atlantic Council should assume management authority primarily based on the distribution of the fishery and the nearshore distribution of the species.

However, in its July response to our request the Secretary, by way of the National Marine Fisheries Service, made the determination that smooth dogfish were in fact going to be managed by HMS. That's as much as I said in the scoping hearings that we have conducted so far. That leaves five issues for Amendment 3, and I'll just briefly run through those.

The first issue is the research set-aside provision, which doesn't exist in the Spiny Dogfish FMP. We just missed the bus on that one. All of our other species have a research set-aside option for annual management measures. The Spiny Dogfish FMP is one of our more recent FMPs. It was put into place in 2001; implemented in 2001. The RSA framework that affected our plans went into place in 2002, so I think the things were being worked on at the same time and spiny dogfish just didn't make the list.

This wouldn't be an obligatory option in any given year, but it would just be available. Specifically what is under consideration, although it is not the only option under consideration, would be an allowance of up to 3 percent of the commercial quota to be set aside for research purposes.

The second issue in the current suite is to explore alternative quota allocation scenarios. The commission, in its relatively uncomplicated process of amending its plans through addenda, recently went with regional allocation of the

commercial quota. This was a transition from seasonal allocation of the quota, which in both the federal and the commission plans previously was a proxy for regional allocation.

I think that the contentious issue of regional allocation was avoided when the Federal FMP was established, so seasonal allocation was the easier path to go down. But what has resulted since the commission has gone with a regional allocation, a straightforward regional allocation system, is a disconnect, and we've had a history of disconnects between the two plans.

What this results in is the potential for the EEZ to be closed while state waters remain open or the opposite, and this presents problems potentially and just complications for fishermen in terms of having to drop their federal permit when the EEZ is closed. Then when the federal season reopens, because it is an open access permit, they reapply for the federal permit so that they can be in possession of spiny dogfish in federal waters. We would like to have a much more complementary allocation scenario if not identical to the commission allocation schemes and certainly something that doesn't conflict with it.

The third issue we are considering is being able to specify the quota and/or trip limits of spiny dogfish by sex, and this addresses the perennial interest though there has never really been any development in a male spiny dogfish fishery. Because identification by sex is fairly straightforward, such an arrangement might allow for a fishery to develop that concentrates on males and doesn't impinge on the component of the stock that we're primarily focusing our conservation efforts on, the mature female component. That's up for grabs and we'll what happens with it.

The fourth issue under consideration is a limited access permit. The federal permit for spiny dogfish right now is an open access permit. This got on the list because there is some interest from historic spiny dogfish fishery participants in maintaining their stake in the fishery if this fishery starts to plateau at some level and becomes a value fishery.

On one side there are folks who are interested in keeping the historic participants in the fishery and sort of closing the door so that it is not just the quota which is likely never going to be a very

large quota, certainly nothing comparable to the fishery that existed in the nineties, allow that to be spread out among folks who have been in the fishery for some time. That issue was brought forward to the public during the scoping process.

Finally, the recreational fishery, this issue was suggested for inclusion and is almost an administrative bookkeeping. The recreational fishery for spiny dogfish is almost negligible certainly in terms of recreational landings. The removals of spiny dogfish; that is, the proportion of fishing mortality that comes as a result of recreational fishing – and this would primarily be dead discards from the recreational fishery – can comprise upwards of 7-1/2 percent of total removals, so it is not entire dismissible.

With the requirement that we adopt annual catch limits and accountability measures for each of our fisheries, we're going to have to account for each sector or each part of the fishery, and the recreational fishery is likely going to be one of the components of the fishery that we're going to have to address.

The amendment does not directly address ACLs and AMs. We have an Omnibus ACL/AM Amendment, which I'm sure you all know about, that is also going to amend the plan. Amendment 3 will be developed in a way that is complementary and supportive of that Omnibus Amendment. The implementation date that we're looking for Amendment 3 is May 1 at the beginning of the fishing year of 2011. That's it.

VICE-CHAIRMAN SIMPSON: Okay, thanks, Jim. Any questions for Jim? Where are we for a comment period; that's on or before September 4th; is that right?

MR. ARMSTRONG: That's right.

ADJOURNMENT

VICE-CHAIRMAN SIMPSON: Anything else for Jim? Anything under other business? Do I have a motion to adjourn? Everyone. Thanks very much.

(Whereupon, the meeting was adjourned at 12:10 o'clock p.m., August 20, 2009)