

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

**Crown Plaza Old Town  
Alexandria, Virginia  
May 6, 2009**

Board Approved: August 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 approve the 2007 Spiny Dogfish FMP Review** (Page 2). Motion by Pat Augustine; second by Willard Cole. Motion carried (Page 2).
4. **Move acceptance of Options B with Issues 1 through 4** (Page 7). Motion by Roy Miller; second by Mike Johnson.  
  
**FRIENDLY AMENDMENT PAGE 9:** Move to designate Option B for Issues 2 through 4 as the preferred options in Addendum Number 1 to the Coastal Sharks FMP for public comment; no preference is being stated for Issue 1. Motion carried (Page 11).
5. **Move that states that have not implemented regulations consistent with the Fishery's Management Plan for Atlantic Coastal Sharks by the ASMFC Winter Meeting 2010 will be found out of compliance** (Page 16). Motion by David Pierce; second by David Simpson. Motion carried (Page 17).
6. **Motion to adjourn by consent** (Page 21).

## ATTENDANCE

### Board Members

|  |  |
|--|--|
| George Lapointe (AA)                         | Bernie Pankowski, DE, proxy for Sen. Venables (LA) |
| Pat White, ME (GA)                           | Bill Goldsborough, MD (GA)                         |
| Doug Grout, NH (AA)                          | Tom O'Connell, MD (AA)                             |
| Ritchie White, NH (GA)                       | Russell Dize, MD, proxy for Sen. Colburn (LA)      |
| Dennis Abbott, NH (LC)                       | Jack Travelstead, VA, proxy for S. Bowman (AA)     |
| David Pierce, MA, proxy for P.Diodati (AA)   | Catherine Davenport, VA (GA)                       |
| William Adler, MA (GA)                       | Mike Johnson, NC, proxy for Rep. Wainwright (LA)   |
| Mark Gibson, RI (AA)                         | Louis Daniel, NC (AA)                              |
| David Simpson, CT                            | Bill Cole, NC (GA)                                 |
| Lance Stewart, CT (GA)                       | John Frampton, SC (AA)                             |
| James Gilmore, NY (AA)                       | Robert Boyles, SC (LA)                             |
| Pat Augustine, NY (GA)                       | Spud Woodward, GA (AA)                             |
| Brian Culhane, NY proxy for Sen. O. Johnson  | Jessica McCawley, FL (AC)                          |
| Peter Himchak, NJ, proxy for D. Chanda (AA)  | Bill Orndorf, FL (GA)                              |
| Roy Miller, proxy for Patrick Emory, DE (AA) | Margo Schulze-Haugen, NMFS                         |
|  | Wilson Laney, NMFS                                 |

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

### Ex-Officio Members

|  |  |
|--|--|
| Greg Skomal, Coastal Shark Tech. Committee Chair | Lewis Gillingham, Coastal Shark Adv. Panel Chair |
|--|--|

### Staff

|              |                         |
|--------------|-------------------------|
| Vince O'Shea | Christopher Vonderweidt |
| Robert Beal  | Nichola Meserve         |

### Guests

|                            |                           |
|----------------------------|---------------------------|
| Gil Ewing                  | Harry Mears, NMFS         |
| LeAnn Hogan, NMFS          | Steve Durkie, NMFS        |
| Tom McCloy, NJ DFW         | Alexis Gutierrez, NMFS    |
| Bob Ross, NMFS             | Carrie Kennedy, MD DNR    |
| Karyl Brewster-Geisz, NMFS | Arnold Leo, E.Hampton, NY |
| Terry Stockwell, ME DMR    |                           |

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 6, 2009, and was called to order at 1:35 o'clock p.m. by Chairman Louis Daniel.

### **CALL TO ORDER**

CHAIRMAN LOUIS DANIEL: All right, I'll call the Shark Board to order.

### **APPROVAL OF AGENDA**

CHAIRMAN DANIEL: Everyone should have a copy of the agenda in their briefing book. You should have the agenda as well as our Proceedings from our February 2<sup>nd</sup> meeting. Is there any need to modify the agenda and are there any corrections to the minutes? Wilson.

DR. WILSON LANEY: Mr. Chairman, just a reminder to add under other business a brief report from the Cooperative Winter Tagging Cruise.

CHAIRMAN DANIEL: Keep reminding me, Wilson, but, yes, that sounds good. We'll look forward to hearing that.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DANIEL: Any other additions or corrections to the minutes or the agenda? Seeing none, they are approved.

Introduction of new Technical Committee Chair  
First let me go down the table here and introduce our new Technical Committee Chair Greg Skomal; Advisory Panel Chairman Louis Gillingham; and John Tulik, our law enforcement representative on the committee. Thank you, gentlemen, for being here today.

### **PUBLIC COMMENT**

With that I will open the floor if there is anyone here from the public that would like to speak. Is there anyone who wishes to address the board? Yes, sir.

MR. MATT RAND: I appreciate this opportunity to speak about sharks and smooth dogfish. My name is Matt Rand; I'm with the Pew Environment Group, and I'm speaking on behalf of the Pew Environment Group; the Ocean Conservancy; Oceana; The Humane Society, International; and the Animal Welfare Institute.

I have a letter that hopefully has been circulated. I won't get into all the details of it. I appreciated what the ASMFC has done in the past already developing a policy for fins naturally attached. We think that is an excellent move in the right direction for shark conservation. We believe that has implications for shark conservation internationally.

It follows the lines of what Congress is now proposing. It has been proposed in the Shark Conservation Act of 2009 that Congressman Bordallo has introduced into the House and passed unanimous consent; and now Senator John Kerry has also introduced it in the Senate. We feel that you have already followed those along the same lines as that legislation so we appreciate that movement.

We are concerned about something that may also have implications in a negative manner, which is the proposal to allow for fins to be removed at sea of smooth dogfish. We don't think this is the right direction to go for conservation internationally. It has enforcement problems, identification problems, and we would encourage you not to move in that direction.

I don't want to take up too much more of your time. I think we fairly well succinctly discussed our concerns within the letter. I think I covered most of it, but I appreciate the opportunity to speak today and would encourage you all to look at your already existing policy, and we encourage you to be consistent with that policy. Thank you.

DR. DANIEL: Thank you. Is there anyone else from the audience? Seeing no hands, we will move on to our 2007 Spiny Dogfish FMP Review. I will ask Chris to walk us through that.

### **2007 SPINY DOGFISH FMP REVIEW**

MR. CHRISTOPHER VONDERWEIDT: This one is fairly simple. As you may recall, the

board reviewed the state compliance reports and Fishery Management Plan Review at the last meeting. This is for '07 and '08. All the reports had gotten to the plan review team except for one report.

The plan review team has received that report. We have reviewed all of the states and all states meet or exceed all the requirements of the Fishery Management Plan. I will also remind you that at the last meeting the board approved de minimis status for Delaware, South Carolina, Georgia and Florida, so further action wouldn't need to be taken as far as de minimis at this time.

The board has not approved the FMP Review, which was on the CD. It has not changed since the last meeting except updating the Massachusetts survey information and removing language that said that we're still missing one report.

CHAIRMAN DANIEL: I'm going to need a motion to approve the 2007 – Mr. Augustine.

MR. PATRICK AUGUSTINE: Mr. Chairman, I move that the board approve the Final Draft Addendum I to the Coastal Sharp FMP for public comment.

CHAIRMAN DANIEL: First we're doing the 2007 Spiny Dogfish FMP Review. That is what we need, a motion to approve the 2007 Spiny Dogfish FMP Review.

MR. AUGUSTINE: I'm sorry, I'll do that one first then. **I move to approve the 2007 Spiny Dogfish FMP Review.**

MR. WILLARD COLE: Second.

CHAIRMAN DANIEL: I've got a motion by Pat Augustine and seconded by Bill Cole to approve the 2007 Spiny Dogfish FMP Review. Is there discussion on that motion? Seeing none, is there any objection to the motion? Seeing none, **the motion carries.** Thank you, Chris. You can just move right on to Item 5, which is to review the adjusted 2009/2010 Spiny Dogfish Regional Quotas.

## REVIEW OF THE ADJUSTED 2009/2010 SPINY DOGFISH REGIONAL QUOTAS

MR. VONDERWEIDT: About a month ago the board received a memo that included the updated spiny dogfish specifications to include the regional quotas of Addendum II and also account for overages from the 2008 and 2009 fishing season. This is the table from that memo and I just wanted to kind of go over it and make sure that everybody was comfortable. The quota in 2008 and 2009 was 8 million pounds.

In the northern region there was an overage of 49,619 pounds, which leaves the northern region with 6.9 million pounds, roughly. For the southern region there was an overage of 431,930 pounds, which brings the adjusted quota down to 268,807. North Carolina had an overage of 29,301 pounds, leaving them with 1.8 million pounds for 2009 and 2010. I just wanted to update the board on what the overages were, what the updated quotas were.

I would also point out that these are preliminary landings so they might have slight adjustments to them. It is from the SAFIS data base and North Carolina logbooks. The overages from 2008 and 2009 were a result of late reports and then also the rate of landings the last week before the closure increased. That's for your discussion.

DR. DANIEL: If we need it; does anybody have any questions for Chris or have any comments on the adjusted quotas for this upcoming fishing year? Okay, seeing none, we will move into our review and consideration of approving the Draft Addendum I to the Coastal Sharks FMP.

All right, just to give the board an update on one issue, I asked staff to draft a white paper instead of just inserting another item into the addendum. You will recall we've discussed the issue of the two-hour soak time in state waters, and so I asked Chris to put together a brief white paper explaining the issue. We can discuss whether or not to include it in the addendum. I hope we will decide that today and then we can move forward with the public comment on that. Pat.

MR. AUGUSTINE: Mr. Chairman, at this late time I'm wondering if we have time to include that. Is it something that the public should have reviewed in the process when it was out for

public hearing or not? I just need some clarification on that, Mr. Chairman.

### **REVIEW DRAFT ADDENDUM I TO THE COASTAL SHARKS FMP FOR PUBLIC COMMENT**

CHAIRMAN DANIEL: Well, I'm trying to get an approved draft to go out to public hearing. It hasn't been out yet to the public. Noting that is a problem for some of the jurisdictions, we just wanted to lay it out for your consideration to include it. Chris will walk us through that issue as well as the addendum. My hope is to have a motion to except or reject this section on the two-hour soak time and then an ultimate acceptance of the draft addendum so that we can it out to public comment.

MR. AUGUSTINE: Thank you for that clarification.

MR. VONDERWEIDT: I would ask the board to refer to two documents for this presentation. The first document would be the Draft Addendum I for board review, which was on the CD, and then the second one, as Louis just mentioned, was handed out by staff. The document that was handed out was basically prepared so that it would be inserted exactly the way that it is into the document. It follows the same numbering format.

There is a statement of the problem and background, so essentially this would just be slipped in at the end of each section, and then there would be an Issue 4 instead of just three issues. That is the way it was set up so it would be as easy as possible to realize how it would work.

For an introduction there are three main issues in Addendum I. Issue Number 1 is to allow smooth dogfish fishermen to remove fins at sea. Issue Number 2 is to eliminate the smooth dogfish recreational possession limits, and then proposed by Dr. Daniel is to eliminate two-hour net checks for all sharks. I have put "proposed" in front of all the measures that relate to that just for clarity.

For a statement of the problem, I'm just going to go through one by one. Requiring to remain attached – and this is for the smooth dogfish fishery only. All 39 other species of sharks would not fall into this exemption. The fishery

is labor-intensive. They need high-quality meat and they need to dress the carcass and refrigerate quickly in order to have a fresh product. I guess that's why we're here.

The smooth dogfish recreational possession limits kind of is in here as a question. If the commercial quotas for smooth dogfish were removed and there is no trip limit or quota, is it fair and equitable to have controls on the recreational fishery as well. Then the proposed two-hour net checks, there is incidental catch of sharks in the mackerel and bluefish fishery, which set their nets overnight and they just catch a few sharks.

This requirement requires them to either stay with their nets all night or just discard the few sharks that they may catch rather than selling them, so it may increase dead discards without changing behavior much. There are also some enforcement issues with this. They were reviewed by the Law Enforcement Committee and they basically said that you have to sit on the net for two hours in order to enforce this, where somebody is probably going to see you and adjust their behavior, and it is hard to prove in a court of law as well.

That is just kind of some of the background. There is the statement of the problem, so for more background the smooth dogfish fishery is roughly 90 percent commercial. It kind of goes up and down year to year, but the average is around 90 percent. For finning and identification, the regulations right now read that you must have the tails and fins attached naturally to the carcass through landing.

It removes finning enforcement loopholes. It helps identification. I'm kind of just going through the considerations when this was developed and included in the plan. The exemption for smooth dogfish was discussed by the technical committee as to whether it might be okay to exempt that fishery because of the nature of the high volume and the fresh meat and all the things I said before.

However, after some discussion they didn't come forward with a recommendation because they felt that smooth dogfish could be confused with juvenile sandbar. They're both ridgeback species. Because this plan was in large part developed to protect sandbar sharks – we have placed them into a research-and-display class of

their own – the technical committee didn't come forward with that recommendation.

The recreational possession limits; there are possession limits for shore anglers and for vessel fishermen or vessel fishing. It is different because you're going to have people from – in federal waters there is only a regulation for vessels because nobody can cast three miles and catch a shark from shore in federal waters. So the two classes, there are shore angler possession limits and vessel fishing possession limits.

There is no assessment for smooth dogfish done, so the technical committee doesn't really know what level of abundance smooth dogfish is at. However, Atlantic sharpnose has a very similar life history. There was a rigorous analysis that was done to look at what recreational possession limits would be appropriate for Atlantic sharpnose based on their biology and their status, and that is in the back of Addendum I in the appendix if you want more information.

Then looking at the recommendations from the input groups, the advisory panel actually – there were two meetings. There was one at the end of '07, before the plan actually went out for public comment, when it was still being developed. You might remember how we had several iterations and we got input from the AP and TC in between each board meeting, and then we came back and discussed them.

Initially the advisory panel recommended one recreational shark, which is actually more restrictive than the current plan. This was a consensus statement as well. Then the second meeting, when they looked at what the draft public comment was, they said Option A, B, C, D, E – they supported either the regulations that are in place right now by board or to include just one shark per recreational angler.

So, right now it is one non-prohibited shark, which can be any shark, large coastal or pelagic, whatever, bonnethead, sharpnose or smooth dogfish, and in addition to that you can keep one bonnethead plus one sharpnose plus one smooth dogfish. The way that they're set up right now, potentially a recreational angler could keep a maximum of two smooth dogfish if they needed it.

For the bycatch reduction measures that were proposed to be included in this, the definition

reads, "Large-mesh gill nets defined as having a stretched mesh size greater than or equal to five inches must be shorter than 2.5 kilometers and nets must be checked every two hours." This was modeled back when the Public Information Document was developed, which was before my time.

One section of it was bycatch reduction measures to be modeled after federal regulations with a coordinated plan. We looked at the gill net requirements in federal waters, and this is what they are. They were designed to reduce bycatch of sea turtles and marine mammals. In the Federal Register – this is where the third part comes from – was that the majority of those interactions occurs in federal waters off the coast of Georgia and Florida and notice this actually prohibits gill nets – just some information for you.

I would also note – this is in the document – the Law Enforcement Committee was opposed to this because they didn't think it was enforceable. With kind of a small amount of manpower for a lot of kilometers and miles of water and shoreline to patrol, to ask a law enforcement officer to sit out and watch a boat for two hours just didn't seem possible to them. That is the background of why these issues are in the plan as they are.

Now looking at the actual management options in the draft addendum for board review, Option A would be status quo. Option B would be commercial fishermen may remove smooth dogfish head, fin, and tails, 95 to 5 percent carcass-to-fin ratio, consistent with the Shark Finning Prohibition Act. The regulations, as they stand right now – I believe it is from 2000 or 2002 – require a 95 percent to 5 percent carcass-to-fin ratio.

I looked into it and there has not been a specific analysis done for smooth dogfish fin-to-carcass ratio. There was a study that was done by Dr. Julie Neer and Dr. Enrique Cortes reviewing the 95-to-5 percent ration. However, I think they came up with 3.9 percent to 96 percent, but they only sampled six smooth dogfish in the entirety of the survey.

It wasn't really focused on smooth dogfish; so after looking at it, this is kind of the best guidance that we had was to stay consistent with

what is in place in federal waters through the Shark Finning Prohibition Act.

Issue Number 2, smooth dogfish recreational shore angler possession limits, Option A would be status quo. Option B would be to remove smooth dogfish possession limits for recreational anglers. This is just for the shore anglers because they're included separately, so we did two separate options. Issue 3 is the exact same thing; status quo is Option A and then Option B would be no possession limits.

Proposed Issue 4, bycatch reduction measures, Option is status quo, keep the two-hour net checks, do not change language in 4.3.1.0, bycatch reduction measures. Option B would be to strike the language from 4.3.1.0, and you can see up there it would just be removed. Are there any question?

CHAIRMAN DANIEL: Good job, Chris. Pete.

MR. PETER HIMCHAK: Mr. Chairman, we have a pattern of making decisions on smooth dogfish and then subsequently changing our minds or trying to do damage control with this item that has just come out for insertion into the Draft Public Hearing Document. The two-hour net check requirement, the technical committee and the law enforcement committee can't agree that it is enforceable.

And yet you will incidentally catch a few sharks, which from what I understand they would be allowed to land, which suggests to me that they're not on the prohibited species list, because the plan, in our case, requires us to move 15 species to a prohibited species list. So, my question to the technical committee is how confident are they that an incidental catch of a few sharks in these overnight gill net fisheries are not the species – I mean, it is all relative. You catch a couple of prohibited ones and it is a big deal. I would like to hear the technical committee comment on that aspect of lifting the two-hour net-tending requirement.

CHAIRMAN DANIEL: Let me try to explain the best I can here. The issue with the overnight soaks, you may have prohibited species or you may not. I mean we're going to interact with prohibited species; the recreational guys are and the commercial guys will as well. You just can't retain them.

I mean if a man goes to his gill net the next morning and there is a prohibited species in the net he can't keep that fish, and hopefully he can release it alive; but if it is dead, it is just discarded. So, I don't think it will have an impact on prohibited species. This gear is going to still be in the water fishing.

The main issue that came up was if you come to your net in the morning and you haven't checked it every two hours and you've got a couple of blacktips or whatever in the net, technically you should just discard those fish if you haven't checked your net every two hours. The question in front of the board is do we want to amend that. From discussions that I've had, there seems to be agreement that this is necessary in federal waters and that they do check their gear regularly; whereas, there are a lot of fisheries in state waters that don't. Did you have a followup to that, Pete?

MR. HIMCHAK: I agree with what you're saying, Mr. Chairman, but again if you have a two-hour tending requirement, that prohibited species is much more likely to survive than if he sits in a gill net overnight and the net is not tended. What is the incidence of prohibited species in these gill net fisheries? What is the likelihood of encountering prohibited species? Do we have any information on this or are we just acknowledging that, well, we can't enforce this so we're just going to let it go?

DR. GREG SKOMAL: I will give that a shot. We don't really have a landings' breakdown or interaction breakdown available to us as far as on a species-specific in numbers' level, but we know from the life history of these animals that it is very dynamic seasonally, particularly in these inshore waters.

There could be quite high incidents of some of these animals based on their life history. If you get juvenile dusky sharks or at the very least sandbar sharks you could have high interaction rates. I don't have in front of me the numbers, and I don't even know if we have good estimates of dead discards or even interaction with these fisheries.

CHAIRMAN DANIEL: There is a lot of difficulty in identification. There are a lot of identification problems, but I hope we're not confusing the issue. These are for fisheries that are extant. They're going to occur. They're not

going to check their nets. That is not going to happen, the two-hour checks.

If you're fishing for king mackerel with a 6-1/2 gill net and you're setting overnight, you're not going to check your nets. You're going to have bycatch of sharks; do you retain them or not? That seems to be the major question.

MR. AUGUSTINE: Relative to this document, my concern is similar to what Pete's is in that are we putting this on the record to either – again, I think you just restated it – that they either can retain or not retain those dead sharks? Well, what does the protocol call for now? If you are legally fishing and you pull in a gill net and it has a species that you can retain, you retain it – you can't?

CHAIRMAN DANIEL: Well, what North Carolina has done – I can tell what we've done – we haven't implemented the two-hour check nor have we implemented any smooth dogfish rules in anticipation of this addendum. I don't know what I'm going to do in North Carolina. If we don't get this changed, it's going to be tough because right now, technically, in order for me to be in compliance with the plan I need to implement this at some point.

And then if you come to your net and there is a legal shark in the net but you haven't been checking it every two hours, technically you can't retain it. Now I have no idea how to enforce that and I don't think the enforcement committee would know unless they're sitting there watching them whole time. But technically if you've complemented the two-hour soak time and you have got overnight sets, you shouldn't be keeping those sharks if they're in the net.

MR. AUGUSTINE: Okay, so follow-on, this is more than a touchy feely piece that we're putting in here. It is going to be effective and helpful for North Carolina. How about the enforcement side of it? If the fisherman doesn't abide by the two-hour rule and he does take those sharks into the dock and gets inspected along the way, what is the status of that fisherman retaining those sharks? What is he liable to be faced with, fines, penalties, or is he okay?

CHAIRMAN DANIEL: No, if he comes in and the enforcement – I mean, I guess the only thing the enforcement man could do would be to ask him did he check his nets every two hours. If he

says no, then he is going to write him a ticket. If he says yes, I don't know how he could deal otherwise. John may have something to add to that.

MR. JOHN TULIK: I don't have much to add to that. They learn fast and the first wrong answer will be followed by a hundred right answers.

MR. AUGUSTINE: But just a follow-on – and I don't mean to belabor this and I don't mean to be funny about it, but in all actuality unless you give the guy a lie detector test or he doesn't pass the straight-face test, you don't know, so in that case it doesn't buy us anything. On the other hand, if those vessels had to have VMS, you could probably track as to when he went to that net or some such thing as that, but that becomes extremely complicated.

Again, how do you enforce it? It is just going to be difficult to support this, and yet we understand your dilemma in North Carolina. As it is right now, I think we're going a little difficult time supporting it. We need more information.

MR. ROY MILLER: Mr. Chairman, I'm having difficulty finding Issue 4 in the draft addendum so I can't confirm the wording, but I have two questions.

CHAIRMAN DANIEL: It was handed out, Roy. You should have a single piece of paper that starts at the top "2.1.1, Statement of the Problem".

MR. MILLER: I've got it. I see no seasonal restriction or seasonal guidance in this draft regulation; so presumably if Option A is adopted, this would apply year round; am I correct in that assumption?

CHAIRMAN DANIEL: Yes.

MR. MILLER: Which means it could affect our ocean striped bass fishery and our weakfish fishery as well; in other words, anyone setting nets for weakfish or striped bass would be required to check their nets every two hours under the assumption that most of our fishermen use nets greater than five inches mesh. Is it too early for a motion, Mr. Chairman?

CHAIRMAN DANIEL: No, sir.

MR. MILLER: I have one ready whenever you're ready.

CHAIRMAN DANIEL: I'm ready when you are.

MR. MILLER: **Then I would move acceptance of Options B with Issues 1 through 4.**

CHAIRMAN DANIEL: All right, I have a motion to approve all of the suggested changes, Option B, which would include removing the bag limits from recreational fishermen from shore and boat; to accept the proposed Option 4B to remove the two-hour attendance requirement; and the first one to allow the processing of smooth dogfish at sea. Motion by Mr. Miller; seconded by Mr. Johnson. Margo.

MS. MARGO B. SCHULZE-HAUGEN: So in the Public Information Document both options would be presented or the alternative Bs would be presented to the public?

CHAIRMAN DANIEL: We would have to ask the maker of the motion. I believe his motion was for those to be the preferred alternatives but that we would leave the status quo in the Public Information Document.

MR. MILLER: That is correct.

MR. DAVID SIMPSON: I guess just a question about the species ID or the way that – I mean I'm fine with taking this to hearing. We will get the comment on it, but in light of the comment that was made at the beginning, the idea of the finning and the possible confusion with species ID, I guess with sandbar sharks; is that what it was?

CHAIRMAN DANIEL: That is correct.

MR. SIMPSON: Is there any temporal/spatial distinction that would help provide some confidence that if we moved ahead with this we weren't going to see small sandbars getting landed?

CHAIRMAN DANIEL: I stand to be corrected, and that is fine if anybody can correct me if I'm wrong. I understand that the smooth dogfish fishery operates sort of concurrent with the end of the spiny dogfish fishery; and as such, it is cold. So I think the likelihood of encountering anything other than smooth dogfish would be fairly remote.

Now, I guess it would be possible to see them, but these guys know the difference between a smooth dogfish and a sandbar shark. From my understanding, you can distinguish just from the meat itself. Just the visual inspection of the meat, you can distinguish between a smooth dogfish and a sandbar shark. That's my understanding. Now, if that's incorrect we need to look into it in a little more detail, but that's my understanding of the issue there. Bob.

MR. ROBERT E. BEAL: With respect to the motion, I think the comment you made, Louis, about these being preferred alternatives doesn't match the wording that is up on the screen. We may want to have that resolved just so folks know exactly what they're considering voting on.

CHAIRMAN DANIEL: Roy, you're going to have to wordsmith that for your comfort level.

MR. MILLER: I don't recall saying that; however, my recollection was I moved to accept Options B for Issues 1 through 4. In other words, for each of those four issues outlined for us, I moved to accept the Option B Component of that.

CHAIRMAN DANIEL: I think "accept" means have them in the document because we have to take this out to public hearing. My clarification to Margo was the four Options B were our preferred alternatives, but that we would include the status quo option for all four alternatives to take out to public comment. That is my understanding with heads nodding in the affirmative around the table.

DR. SKOMAL: Just in regard to the identification issue, to the trained eye you could tell the difference between the log of a smooth dogfish from almost any other of these sharks, but to an untrained eye it is that easy. If you want to get around and play games and sell baby sandbars as smooth dogfish, it is entirely possible.

I have got a quick analysis of landings data here, and we have got landings of smooth dogfish throughout the year almost along the east coast; obviously, a little later in the season up north, but there is overlap between the two species as well. I know in our sampling down in Delaware Bay we get both of them, so keep that in mind.

MR. LOUIS GILLINGHAM: Could Chris qualify for me – I know this Option B that will be advertised removes the recreational bag limit for smooth dogfish, but it does also eliminate the processing at-sea restriction?

MR. VONDERWEIDT: Yes, that's right, it would essentially remove the possession limit for recreational shore; and then recreational vessel fishermen, that is 2; allow the fins to be processed at sea, that's three; and then remove the two-hour check, that is four.

CHAIRMAN DANIEL: Those are the four Bs in the motion.

DR. LANEY: Mr. Chairman, there is some confusion on my part, still, about the use of the verb "accept", and I would ask the maker of the motion if it is what he really is saying. Somebody else already asked this question. I think that you just want those designated, Roy, as the preferred option?

MR. MILLER: That is correct, Wilson.

MR. HIMCHAK: Mr. Chairman, just for clarification, Issue 4 is the bycatch reduction measures; is that not correct?

CHAIRMAN DANIEL: Correct.

MR. HIMCHAK: It is not listed as Issue 4 so when you say Issues 1 through 4, this new one which says Issue 3 is – I'm just trying to remove some confusion here.

CHAIRMAN DANIEL: Right, and we've called it four for convenience because it is the fourth issue.

MR. HIMCHAK: Okay, but it labeled as Issue 3 in the motion.

CHAIRMAN DANIEL: There is a 1 and 2A and B and then there is a 3, but the issues are as Chris laid them out there; finning, the two recreational possessions, and the bycatch reduction devises; those are the three primary issues.

MS. SCHULZE-HAUGEN: I just wanted to make a point that going with Preferred Alternative 2 eliminates the fins-on requirement and may be sending the wrong message. That is not necessarily something the Fisheries Service

can support since it is inconsistent with Shark Plan as well as at least one statute and possibly another.

CHAIRMAN DANIEL: Understood.

DR. LANEY: Mr. Chairman, I think the Fish and Wildlife Service finds itself in the position as the National Marine Fisheries Service on that point; and also because of the point that Dr. Skomal made about the inability of the vast majority of folks to distinguish between processed meat from smooth dogfish and other species.

CHAIRMAN DANIEL: I guess I feel compelled to say isn't that the case for everything; how do you distinguish between a processed summer flounder and a southern flounder. I mean it is still difficult.

MR. AUGUSTINE: Mr. Chairman, back to our chairman of the technical committee, you indicated to the trained eye you could tell the difference between a smooth and a sandbar, and why would it not be appropriate to tell us what that is. What we're looking at is if this goes off to the public and let's assume the public comes back and says Option B, there is no recreational fishery; and without that identification, a person is out there fishing out of a vessel, recreational vessel, decides to keep one of these and they call it a sandbar shark and it qualifies for the length and so on; so, is there some definitive fin size, shape or something to distinguish one from the other?

DR. SKOMAL: With the fins and head and tail out or just processed or –

MR. AUGUSTINE: No, I'm talking about on the recreational side. If we were to allow recreational to keep it; that's one of the options that we're going out with; what is the identifier for a recreational person to tell the difference between a smooth and a sandbar?

DR. SKOMAL: Very distinctive fin size, tail shape and head and face, eyes, teeth from a mile away.

MR. AUGUSTINE: Well, that reiterates your point, Dr. Daniel. In my mind if we were to go with recreational folks being able to keep one of these, including shore-bound people, there are very distinct markings to tell one from the other.

I was concerned because looking at this, it just indicates that there will be no possession or basically fishing for recreational shore-bound anglers or vessel fishermen.

They indeed do fish in waters where you will catch smooth and/or sandbar. So, again, you indicate there is difference, so that information should be in this document somewhere indicated there is a distinct difference. If the public gets out there and sees this, the first thing they will say is why can we not consider a possession limit for recreational when there is a distinct difference? Now, to prevent them from fishing for them because of the status of the stock, that is one thing, but here it appears to be arbitrary that we're saying if you're a shore-bound guy or a recreational fisherman, you will not be able to retain.

CHAIRMAN DANIEL: No, no, let me clarify. That's not what we're doing here. The concern that came up at the last meeting by I believe it was Delaware was a concern that we only had basically a one-fish bag limit on smooth dogfish with no commercial restrictions on the numbers at all. The feeling was – and, you know, daggone smooth dogfish have been a pain from the start, but we said, well, then, if there is no restriction on the commercial harvest, what we need to do is consider an addendum to make no restriction on the recreational harvest.

So right now we've got a one-fish bag limit; unless you're a statistician you can have two. What this motion would do would be to take off any creel limit on the recreational fishermen until such time that we have a stock assessment where we may end up having to come back and do something on smooth dogfish.

But essentially what we're trying to do right now is essentially keep the smooth dogfish in the management plan, but basically take off the regulations associated with smooth dogfish because we don't have the data to support them. I think that's a fair characterization. Dave.

DR. DAVID PIERCE: I certainly recall the lengthy discussion we had at our last board meeting about Issue Number 1, about the smooth dogfish finning and identification. As a matter of fact, I was sympathetic to the issues raised by North Carolina specifically, and I made the motion basically on your behalf and it passed, so here we have it in the document.

Of course, I'm quite aware of the concerns expressed by Dr. Skomal representing the technical committee as to the possibility that there might be a problem with sandbars. I suspect that when we bring this to public hearing – if we adopt it as it is and bring it to public hearing, then we will get those comments, and then we will be in a position to make an informed decision regarding what we should do with Issue Number 1.

And we will have the benefit of some additional comment from the technical committee that I assume will put some more time into this, and, of course, the industry advisors will provide more information as well. Certainly, we have the position already expressed by the Ocean Conservancy, the Pew Environmental Group, the Humane Society, International, the Animal Welfare Institute and Oceana, and I'm sure the list will go on once we go to public hearing and discuss this issue. I am sure of that.

So, I support including Options A and B in this document, let's get some public comment. However, I do agree that it is unwise for us to state that Issue 1 has a preferred option. I don't mind having a preferred option for Issues 2, 3 and 4. That seems sensible and justified, but I'm uneasy with our sending a preferred option for Number 1.

I would just move to revise the motion and move to designate Option B for Issues 2 through 4 as the preferred options in Addendum Number 1 to the Coastal Sharks FMP for public comment. Then state no preference is being stated for Issue 1.

CHAIRMAN DANIEL: Before I ask for a second is that an acceptable friendly amendment, Mr. Miller? It just removes a preference from Option 1.

MR. MILLER: That's acceptable to me. I don't know about the seconder of the motion, though.

MR. JOHNSON: Well, as I look around and people are starting to smile, if we can at least get it out there for public comment, absolutely. As you heard Ernie Bowden speak about how the fishery is prosecuted, it is essential to have this; but I see what Dave is saying, too, we don't want the onerous of being out of what we say is correct either, but we hope the public will support it knowing that that's the way the fishery is prosecuted.

CHAIRMAN DANIEL: All right, so it is just a friendly amendment; thank you, Dr. Pierce.

MR. SIMPSON: Okay, I would offer a further perfection of the motion to avoid the confusion that just happened a second ago with Issue 3, and that would be to reword Option B under the recreational vessel possession limit to say Option B would read, "Remove the possession limit for smooth dogfish in the recreational fishery". There was confusion about whether we were saying there would be no possession limit or removing the existing possession limit; so if we could do that, I think it would help the public comment.

CHAIRMAN DANIEL: The key word being "existing"; "remove the existing bag limits". Is everybody okay with that as just a perfection? Okay, next I've got Bill Adler.

MR. WILLIAM A. ADLER: Option B of Issue 4, first of all, what is it; and, secondly, where did the two-hour thing go away; did it go away or is it still there or what? I'm a little confused here.

CHAIRMAN DANIEL: The federal plan has a two-hour check requirement in federal waters. The issue paper that was put around was to remove that two-hour check requirement; so that if somebody goes out and sets a gill net and soaks it overnight, comes back the next morning, hasn't checked his nets every two hours and he has got a couple of large coastal sharks in there, if this is approved through the addendum, that man would be allowed to retain those sharks and sell them.

Otherwise, if we keep this rule in place, the incidental harvest of sharks in gill nets that have soaked overnight would be illegal, and those fish would have to be discarded. Right now the plan says you must implement the two-hour check provision in coastal waters. This is an attempt to remove that provision in state waters only. It will stay in the federal waters. From what I understand, in federal waters it's necessary and it's not a burden, and they check their gear regularly; not so in state waters.

MR. ADLER: Okay, and also all of the proposals will include apparently the first option in every one, which is the status quo?

CHAIRMAN DANIEL: Correct. Tom Fote.

MR. THOMAS FOTE: I am new to this plan because I haven't been around for a while. I'm still trying to get a grasp on the finning thing. I listened to what we're saying because you basically have to clean the fish and you've got to bring them in and you've got to do that. What are they doing in federal waters, because in federal waters they cannot – from what I understand they cannot do finning, so how do they process these fish in federal waters differently than they process them in state waters? Can somebody explain that to me?

MR. JOHNSON: Tom, I don't know what they do in New Jersey or wherever, but this fishery is prosecuted at the sea buoy, at the inlet, around the beach. It is not in federal waters typically. I guess they don't prosecute it there because they can't – the only way to do it is to haul the fish and get the meat that is a sellable commodity back to the fish house is to catch them nearshore, process them and get them back, so that's where it's done on our beach. Now, I can't speak for the rest of the states, which Louis governs that.

CHAIRMAN DANIEL: And Chris makes a good point, too, they're not under any fishery management plan, either. There is no management authority by NMFS or HMS in federal waters, I don't think. Margo, you can correct me.

MS. SCHULZE-HAUGEN: The Shark Finning Prohibition Act is all federal waters or any shark within it. Yes, it is not currently in our plan, but it is in Amendment 3 that we're considering including it, but that statute applies to all sharks in federal waters.

CHAIRMAN DANIEL: Even smooth dogfish?

MS. SCHULZE-HAUGEN: Correct.

CHAIRMAN DANIEL: So Option B would be consistent, though, with the 95/5 provision, because you still have to have – and make sure that is clear. I mean, you can't just go out there and have a basketful of fins. You've got to have the carcasses to go along with them at a rate of 95 body and 5 percent fin, which is consistent with the Shark Finning Prohibition Act. Wilson.

DR. LANEY: Greg, at the last technical committee meeting I attended we had, if memory serves me correctly, a pretty good discussion

about the possibility of a smooth dogfish assessment being conducted. Can you enlighten us as to what, if any, additional discussion has taken place with regard to the possibility of conducting an assessment on smooth dogfish and what the timing might be?

DR. SKOMAL: Well, Wilson, I wish I could enlighten you, but we've kind of come to a dead end. Maybe Margo wants to chime in here with what is happening at the federal level, but actually we had some of our guys in Massachusetts start to at least begin to mine some of the data sets out there and see what is available and get some preliminary indices, but we didn't pursue it much beyond that.

Then we had Mike Frisk from New York who was beginning to look at the data, but we stopped hearing from him. That's where we are, unfortunately. Ideally, as you imagine, the technical committee would like to have an assessment or at least initiate one.

DR. LANEY: If and when an assessment is initiated, we do have smooth dogfish data from the Cooperative Winter Tagging Cruise. We don't have a whole lot, but we'd be happy to share what we have.

MR. VONDERWEIDT: I had the pleasure of running into Mike Frisk when I was doing the winter flounder public hearings. I spoke with him briefly about a smooth dogfish assessment, and he is pushing forward with it. He is still developing it. I don't know all the nuances or anything like that.

It is far from completion, but I think that one of the things that is holding it back is there has been no task by anybody – certainly not the Spiny Dogfish Board – to do an assessment and resources haven't been channeled to Mike Frisk. The discussions from the technical committee was just kind of people who are interested in sharks trying to do an assessment on their own, and I think he is still working on that and making some progress.

CHAIRMAN DANIEL: All right, any further discussion on the motion? Pete.

MR. HIMCHAK: Mr. Chairman, on the motion, I can't support the motion as written. I would prefer that we have a preference for Option B on

Issues 2 and 3 and have no preference on Issues 1 and 4. That is where I'm coming from.

CHAIRMAN DANIEL: Any further discussion on the motion? Seeing none, let's take 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: All right, everybody ready? I'm going to read the motion: **Move to designate Option B for Issues 2, 3 and 4 as the preferred options in Draft Addendum I to the Coastal Sharks FMP for public comments; no preference stated for Issue 1. Motion by Mr. Miller; seconded by Mr. Johnson.**

All those in favor of the motion raise your right hand, 9; all those opposed, 2; abstentions, 3; null votes. **The motion carries.** The next item on the agenda is for a review of state regulations for the Coastal Sharks Fishery Management Plan, and Chris will run us through those issues.

### **PRT REVIEW OF STATE REGULATIONS FOR THE COASTAL SHARKS FISHERY MANAGEMENT PLAN**

MR. VONDERWEIDT: Right now staff is passing out the plan review team review of the state compliance report. I'm going to go through this, but there are tables in the back. If you want to look, there is kind of a checklist. Just to go through the timeline, the board approved the FMP in August of 2008, which requires plans to be implemented by January 1 of this year.

At the last two meetings states expressed the need for delayed implementation. After discussing it at the winter meeting, the states agreed to submit regulations by April 1, 2009. We went ahead and reviewed proposals in April 2009. There are three people on the plan review team, and, unfortunately, their vacations kind of coincided with when the regulations were handed in, and so that is why it was delayed until the end of April.

There were lot of revisions and e-mails going around, but in general five states have not submitted regulations. At this point the states who have submitted regulations have submitted proposed regulations which will require final

review once implemented. The plan review team would like to look at all the plans once they're in place. The plan review team is going to have to reconvene. It would be best for us if we could minimize the number of meetings and calls and have all the proposals in by a certain date, giving us a few months to look at them before the board meeting.

I would also remind the board that the FMP requires the technical committee to review – as well as the plan review team to review all de minimis proposals; and being that we're still missing proposals from five states, the technical committee has not gotten together to review the de minimis proposals.

Then these reviews will go to the board for consideration and the final vote, but it requires the review by the technical committee. Again, we would like to minimize the number of meetings and calls. The technical committee is going to have to review Addendum I; so if a state is planning on submitting a de minimis proposal but they have not at this point, it would be efficient if they could get the report in so the technical committee could not only review Addendum I but could also review the de minimis requests.

This is a very busy technical committee and it is hard to get everybody together at one time even on a conference call. I have some general comments from the plan review team. This report is only as good as the information that was provided to the plan review team. This plan has 22 requirements. It includes 40 species in the plan, recreational and commercial, so that is a very significant amount of regulations.

We were not able to find regulations or figure out how they lined up, and so this review kind of follows the format that the plan review team was unable to find this. We asked that states submit all the regulations and then include some language to tie the regulations to the sections of the FMP so that we could logically follow it.

There were a few reports that listed the state code and it didn't actually line up with the regulation. There was just a regulation submitted. They were for all the suite of species for gill nets or for one thing, so it was extremely difficult to go through and find everything and extremely time consuming.

In this report, on the front page – and this is actually taken from the Maryland report, which was very easy to follow, and we would ask that the five states that still need to submit reports and the states that need to submit final reports would put it in the format of the section of the FMP on the left, the state code next to that, regulatory language and the explanation of how the regulatory language ties in to the code and the FMP because it is a lot easier for us because we can find it.

We don't want to review and say a state does not meet these requirements because we just couldn't find it based on what we got. So to go from state to state, north to south, Maine has not submitted regulations. New Hampshire submitted a de minimis request. The board might remember at the winter meeting we discussed New Hampshire's de minimis request.

Originally it just included requiring the fins and the tails to remain attached in all fisheries because they don't catch very many sharks in New Hampshire. The plan review team asked for a few additional things, recreationally permitted species, prohibited and research species groups, quota specifications and dealer permits. We asked for these because we judge de minimis based on the definition – I believe it is in the Charter or it might be the guidance document for technical committees, but either way it is defined as not undermining the conservation value or goals of the plan.

So that's how the plan review team reviewed this; and once those were included, we felt that we could endorse New Hampshire's request as not undermining the goals or conservation value of the plan. New Hampshire submitted a second de minimis proposal, and I guess it was more of a letter because they were asking if they submit these will it be enough.

I don't know if they've actually submitted those regulations, but the new proposal suggests including all those regulations that the plan review team asked for. The one thing it doesn't include is the head to remain attached for the recreational fishery, and the plan review team would like to see that included because it helps identification for recreational anglers who aren't always as familiar as the commercial fishermen. That is New Hampshire.

Moving south, Massachusetts has not submitted regulations. Rhode Island has not submitted regulations. Connecticut submitted what they called the breakdown requirements of the Shark FMP and pieces the northeastern states will likely need to come into compliance with the plan, and it was basically I think what Connecticut was planning on implementing, but they want to see how all this plays out.

We couldn't find where the species groups were listed. They did mention like small coastal, large coastal, pelagic, you know, prohibited, but as far as the actual species groups with the names and everything, it wasn't in there. From what we can tell, it meets or exceeds all requirements if the final regulations by Connecticut are the same as what is in what they submitted. There was no proposed implementation date.

Moving south to New York, we have not received regulations. New Jersey submitted a proposal on May 4<sup>th</sup>; a proposal which includes regulations that were submitted I believe to the New Jersey Register, which will be implemented 60 days after that, so that is kind of the timeline, 60 days from May 4<sup>th</sup>.

We couldn't find anywhere in the report where blacknose were included. We saw the other small coastal species, large coastal species, pelagic, prohibited, research, but we couldn't find blacknose. We also couldn't find a commercial season, and commercial season is an interesting one because a lot of states didn't implement specifically a commercial season, which is just that the commercial fishing season runs from January 1 through December 31<sup>st</sup> of a fishing year.

What a lot of states did was they can open and close the fishery when they need to when a federal quota is landed. I would leave that up to board interpretation as to whether or not that is compliant. They meet or exceed all the other requirements of the fishery's management plan. We would just note that the seasonal closure to protect sandbar sharks begins on May 15<sup>th</sup>.

If those states, which includes New Jersey – they're the most northern state – end the closure, it is going to undermine the conservation value of the plan for 2009 or there is going to be a likely bycatch of sandbar sharks, which are severely depleted. They're a research-only fishery right now. And that is New Jersey.

Moving south to Delaware, they did not submit regulations. However, the seasonal closure begins May 15<sup>th</sup>. Delaware Bay is definitely a hot spot for nursing and pupping sandbars, so the occurrence of sandbar in the large coastal shark fishery is likely, and so we like to see regulations in place by May 15<sup>th</sup> for the conservation value of the plan.

Moving south to Maryland, their regulations were effective March 19, 2009. These are final regulations. They did not specifically put in a commercial fishing year. They put in opening and closing the fishery; we noted that. They meet or exceed all other requirements of the fishery's management plan.

Moving south to Virginia, they submitted a report September 29, 2008. They asked for delayed implementation of their regulations. The regulations that we looked at did not include the commercial fishing year, as I've said for the other states. It granted an exemption for smooth dogfish, and so I think they're waiting to see what the board does before implementing those.

They meet or exceed all other requirements of the FMP. The plan review team could not find an implementation date. They would also note that the seasonal closure, Virginia is the southern most state under the seasonal closure, and that begins May 15<sup>th</sup>; so the same thing, it might undermine the conservation value of the plan for 2009.

North Carolina submitted regulations that were in place on or before October 4, 2008. What this basically was is that they had a lot of the regulations already in place, and they needed a few more to become compliant with plan. They were implemented October 4<sup>th</sup>. They did not implement smooth dogfish regulations, and they did not implement bycatch reduction measures, which are included in Draft Addendum I. I think they were also waiting to see how this all played out. They meet or exceed all other requirements of the fishery's management plan.

South Carolina's regulations become effective July 1, 2009. We couldn't find smooth dogfish in the plan, but they meet or exceed all the other requirements of the FMP. Georgia, the proposed implementation goal is May through July 2009. We couldn't find where the plan included recreational gear, commercial fishing year, dealer permits or bycatch reduction measures,

but they meet or exceed all other requirements of the fishery's management plan.

Last but not least is Florida; they submitted a suite of options with preferred options; almost like a mini-draft FMP. What they said is that they need to go through public workshops, draft rulemaking and public hearings before they can implement these regulations. What their goal is January of 2010. There is a list of options, but the preferred options that are listed meet or exceed all requirements of the fishery's management plan. This concludes the PRT Review.

MR. HIMCHAK: Mr. Chairman, just a comment for Chris; yes, I wish our implementation date was 60 days after May 4<sup>th</sup>. What we were trying to do is get the publication date in the New Jersey Register of May the 4<sup>th</sup>. We didn't make it. The 60 days is the comment period, so we still have to prepare an adoption document after 60 days. We're targeting the May 18<sup>th</sup> publication date. I just wanted to clarify that. It is not as ambitious as we're going to have this thing implemented 60 days after May 4<sup>th</sup>.

DR. PIERCE: Chris correctly indicated that there is no report yet submitted to ASMFC on this plan. We're about one month behind the deadline that was provided regarding getting the proposed regulations to the staff. We just missed it. Regulations are being finalized right now. We're not going to request de minimis. We're going to be I think in complete compliance with the ISFMP.

That will be obvious once the regulations are submitted, but first and foremost we have to get them approved by the internal mechanisms that we all work with in different states. I also run the regulations by our Marine Fisheries Commission, our state commission. So, the way I see it, after talking to my staff, we'll be bringing our regulations before our Marine Fisheries Commission about May 15.

We will be, of course, submitting a report about that time to ASMFC, so you'll see what we are going to do. It is very likely that we'll have public hearings sometime early July, maybe mid-July, and then there will be an implementation of those rules and regulations by the fall, I suspect. So, we're on track; sorry about the delay.

But as Chris indicated 22 requirements, 40 species, recreational fishery, commercial fishery; it has been a very difficult task for all of us. Thanks go out to Chris in particular for the assistance that he has given our staff to try to figure out what indeed needs to be done. I think we're just about there.

MR. TERRY STOCKWELL: Mr. Chair, sorry about the delay in the submission of our plan. Maine will be submitting a de minimis request as soon as possible.

MR. MILLER: If I could provide a quick verbal update to the Delaware Proposal, Delaware went to public hearing last week. Our department secretary may sign off on our new shark regulations as early as May 15<sup>th</sup>, which would allow us to implement them by June 11<sup>th</sup>. I will expeditiously send you those draft regulations.

We were hesitating somewhat with regard to smooth dogfish. We included the original smooth dogfish requirements from the amendment in our draft regulations, but based on what we've learned earlier this afternoon, I may strike the smooth dogfish provisions and submit all the other provisions for final action by the department secretary. Thank you.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, just an update for the committee; I was outside the room getting an update. Our South Carolina Senate Committee today approved our Atlantic Sharpnose, striking the provisions of our state law that differ from the federal regulations on Atlantic Sharpnose. The next step is to the Senate floor. Provided there are no amendments that will be the same bill that was passed by the House.

Provided no gubernatorial vetoes we should be in good shape by July 1. As far as the smooth dogfish go, you all know it has been our objective in South Carolina – and I can't believe I'm saying this being from South Carolina, but our objective is always to be compliant with the federal plan, history notwithstanding. The smooth dogfish have been such an insignificant portion of our fishery that we just have never felt the need to legislate that. That's kind of the story that we've got.

MR. JACK TRAVELSTEAD: The Virginia regulations were adopted in February just as they were submitted to ASMFC. They were effective

March 1<sup>st</sup>. They do not include the description of the commercial fishing year. They also do not include the smooth dogfish provisions pending the outcome of the addendum that we just forwarded to public comment. The May 15<sup>th</sup> closure is included in those, and, of course, is part of the regulations; just to bring you up to date. I believe we sent an electronic copy of the adopted regulation to the staff.

CHAIRMAN DANIEL: Well, just as an update from North Carolina, we are in compliance with everything except what is going through the addendum right now. Whatever the ultimate decision is in the addendum, we will implement whatever the board decides on those three items.

MR. GROUT: Mr. Chairman, how would you like to handle New Hampshire's de minimis request?

CHAIRMAN DANIEL: Yes, we need technical review of all the de minimis requests and then we will take that up at the August board meeting, if that is satisfactory.

MR. GROUT: I saw that there was actually two suggestions that the PRT had for New Hampshire to again amend our de minimis request, and one is to add silky sharks to the list of recreationally prohibited species. If you folks don't mind, we'll include them in the prohibited by everybody since they don't exist up there. We will just include them all in so nobody can take those phantom fish.

If you feel it is truly necessary for the conservation, I'll be glad to add the wording of prohibiting the heading of sharks in the recreational fishery, although I will again remind the board and the PRT that in ten years there have been no fish – none of these species harvested in New Hampshire waters or even caught by recreational fishermen.

Again, it will be a paper exercise that I can add into that. What I was hoping to get at some point before moving forward with these rules is say a conditional approval of de minimis conditioned upon us putting in place these rules that we have outlined in the de minimis request, so that when I go, I go once and it isn't coming back and, oh, we want to add one more thing to this. Is that a possibility? I can wait until August if you want, but I could also start moving forward if I had a conditional approval now. It's up to the board.

CHAIRMAN DANIEL: Is there any objection to New Hampshire's request from the board to get moving on this? Carry on. Anything else on the PRT report? We just need to get moving and get these, especially for protecting the sandbars and closing – I don't know if the federal quota is going to be caught, but we certainly need to be prepared to close the fishery if we get the notice since I think we have all agreed to do that. The agenda says action; I think it does. I'm just wondering if we need to take any further action. It says action on the agenda, so do we need to take any action or are we in the clear?

## **DISCUSSION OF IMPLEMENTATION DATE FOR STATE REGULATIONS**

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I think the situation you're in is when you approved the plan you approved the 1 January 2009 implementation date. At the winter meeting we found that there were reports of states having difficulty meeting that date. The discussion was to see what progress the states made and then consider at the spring meeting what action the board might do. The dilemma you're in I think is a balance between giving the states the flexibility to get this done and getting it done.

CHAIRMAN DANIEL: Well, I know I was able to do in 48 hours through proclamation authority, but I realize that is not the case for the majority. It sounds like to me, from the discussions around the table, that everyone is making a good-faith effort to get these rules and regulations in place.

We have had a little snafu with the smooth dogfish issues that we need to get resolved before we can all be completely compliant with every single component of the plan. I'm comfortable with moving forward the way we are and having another update in August and hopefully everybody will be much further along if not fully in compliance by then.

It would also be my hope that by the August meeting we will have resolution to the smooth dogfish and the two-hour check; and those of us that have not implement those rules yet will be able to go ahead and get those in place as well. Certainly by the annual meeting, it would be my expectation that we would all be fully compliant and let the chips fall for those that haven't at the annual meeting. Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, Mr. Chairman, another question you could consider asking is if there is anything that the board might be able to do at this meeting to send a signal that would be helpful to the states to help them push this along within their process; in other words, a possible action in August or at the annual meeting, if they think they need that ammunition. That might be a question you might ask.

CHAIRMAN DANIEL: Well, I think for those folks that have to go through a process, if you can't get it done in 11 months from the due date, that would be grounds to be found out of compliance, I would think. I think that is the message that this board can send to the states is that those not compliance with the plan by the annual meeting will be considered for non-compliance. Ritchie.

MR. G. RITCHIE WHITE: Do you need a motion to put that into place or is that just understood?

CHAIRMAN DANIEL: Well, I would prefer it because we do have a plan that says we're going to be in compliance by January 1, 2000. I think if we have a motion to that effect, I think that would solidify our position on that and give us some coverage to the fact that we're not in compliance with our plan right now. None of us are, I don't think. Maybe there might be one or two states, but I don't think any of us are fully compliant with the plan. Pete.

MR. HIMCHAK: Mr. Chairman, I think any letter of support helps. I know our Marine Fisheries Council has been writing letters to speed up the regulatory review of our regulations. Again, if they heightened the issue of non-compliance – we're familiar with that since we went through with tautog recently – it won't hurt, believe me. I would appreciate it, and we would tell the ASMFC essentially who to direct the letter to in order to get the legal support to get our regulations moving. Thank you.

MR. SIMPSON: I think at least from Connecticut's perspective it would be better if we deferred this requirement to the next winter's meeting – by the annual meeting. Through our regular process, we at least wouldn't be able to do it; and something as large and cumbersome as this I hate to bring to my commissioner and ask

her to do that through declaration authority. It is one thing to set a new trip limit for summer flounder, but it's another thing to do the 20 by 40 matrix for species we don't catch. I don't think I could swing that one.

CHAIRMAN DANIEL: Well, if we're going to do anything we need a motion to do it. Vince.

EXECUTIVE DIRECTOR O'SHEA: With regard to the idea of a letter, my reaction is that we send letters regarding non-compliance to states in very specific situations based on board action. Since I've been here we haven't, that I know, sent a letter without transmitting a board finding of non-compliance.

In some cases the boards have said if you don't enact this by this date you will be found out of compliance, and we have included that in a letter, but it's very specific action by a board. I would just point that out to an idea that what I thought I heard was saying it would be helpful if I wrote a letter that said somewhere down the road the board might find you out of compliance if you don't do this. I don't know that I've ever done that.

CHAIRMAN DANIEL: I really don't like that idea. My recommendation, if you asked, would be for simply the board to take that action and then you've got until a date certain, be it the annual meeting or the winter meeting of 2010 in order to do it. David.

**DR. PIERCE: I would move that states that have not implemented regulations consistent with the Fishery's Management Plan for Atlantic Coastal Sharks by the ASMFC Winter Meeting 2010 will be found out of compliance.**

CHAIRMAN DANIEL: 2010?

DR. PIERCE: Yes, 2010.

CHAIRMAN DANIEL: Okay, I have a motion from Dr. Pierce; is there a second? Seconded by Mr. Simpson. Discussion on the motion? Margo.

MS. SCHULZE-HAUGEN: When exactly is the winter meeting?

CHAIRMAN DANIEL: February 2010. Mark.

MR. MARK GIBSON: Thank you, David, for trying to get us some additional time here. I hope it will help in Rhode Island's case. Frankly, no amount of pressure, letter writing, or motions or anything is going to change what is happening in the Marine Section. There is simply a lack of bodies and pressure coming down from the top at this time is like squeezing a balloon, something else is just going to fall off the other side, winter flounder or whatever. I appreciate the extra time, but we'll see what happens.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, you have a motion up here; and before you vote on it, I would just confirm with Chris, and then you can decide where you want to deal with this issue, but in order for us to enable you all to make that decision at the winter meeting that they hadn't complied, you will need reports from the states so that the plan review team, Chris, can look at them.

At some point you need to be thinking of sequencing a due date for those reports so that you will be in a position to decide. If this motion doesn't pass, then I suppose it is a moot question. If it does pass, then you're going to have to – I would suggest you identify a date and let everybody know that.

CHAIRMAN DANIEL: Well, the addendum we should hopefully – barring any unforeseen circumstances, we should have the addendum approved at the August meeting, and then we will be clear on what we need to do on smooth dogfish and the two-hour check. If this board is going to meet at the annual meeting, it might be appropriate to have just a quick update on where everybody is at the annual meeting and what your timeline is and hopefully many more of us will be fully compliant with the plan and have a much better feel from the states that are having legislative difficulties and will be able to give us a better sense for their position. Is that fair? Any further discussion on the motion? Jack.

MR. TRAVELSTEAD: Does the requirement that a state's regulations define the commercial fishing year that several of the states apparently didn't do; does that constitute lack of compliance?

CHAIRMAN DANIEL: Thank you for bringing that up; that's a good question. I can give my opinion or you can give yours. I think we did – I'm sure we did because Chris would have

indicated we didn't. My feeling is that as long as you're closing when the – you know, agree to close when the feds close. It's a calendar year fishing year that closes when the feds close.

I mean, that was the meat of the whole plan. If you don't have it, I don't think that's a problem, personally, but the board may feel differently. Does anyone feel differently about implementing the fishing year, January 1 through December 31<sup>st</sup>? I see no concerns, so thank you for bringing that to our attention. Okay, do we need to caucus? All those in favor of the motion raise your right hand; opposed; abstentions, 2; null votes, none. The motion passes 13 to 2.

Mr. Munden, how about a summary of the Spiny Dogfish Joint Committee Recommendations and Mid-Atlantic Council Actions.

#### **SUMMARY OF THE SPINY DOGFISH JOINT COMMITTEE RECOMMENDATIONS AND MID-ATLANTIC COUNCIL ACTIONS**

MR. RED MUNDEN: As most of you probably know, spiny dogfish in federal waters are managed jointly by the Mid-Atlantic and the New England Fisheries Management Council. The Mid-Atlantic Council is the lead council for spiny dogfish management and consequently is responsible for developing the fisheries management plan and any amendments to the plan.

For the past nine years I have served as the chairman of the Mid-Atlantic Spiny Dogfish Committee probably because no one else was interested in that chairmanship. It carries with it the responsibility for chairing the Joint New England and Mid-Atlantic Joint Committee for Spiny Dogfish.

When we were developing the fisheries management plan for spiny dogfish back in the late nineties, several items were not included in the FMP primarily because the projected rebuilding time period for spiny dogfish was 18 to 22 years. We all know what has happened to the spiny dogfish stock in the past several years, and we now realize that some housekeeping items need to be addressed relative to the fisheries management plan.

I discussed this with representatives from New England as well as the Mid-Atlantic staff, and we decided to call a meeting of the joint committee to see if indeed we felt that we had enough interest to move forward with an amendment to the fisheries management plan. The joint committee met and identified several items that they would ask both councils to act on, and I asked for time on the agenda today so that I could brief this board on the actions that are being proposed by both the Mid-Atlantic and the New England Council.

At our meeting on April 15<sup>th</sup>, our being the Mid-Atlantic Council, the Mid-Atlantic Council moved to amend the Spiny Dogfish FMP. That would be Amendment 2 to the Fishery's Management Plan. That motion was approved by the Mid-Atlantic Council. The council also looked at the development of a Spiny Dogfish Scoping Document, and the council approved six items that would be in the scoping document for public comment.

The first one was to add a research set-aside provision to the Fishery's Management plan with no limit on the amount of quota that could be available for a research set-aside or up to 3 percent of the total which is consistent with our other fisheries management plans. The council use research set-asides to make funding available for research on various species.

The way that process works, up to 3 percent of the spiny dogfish quota say for summer flounder can be available for research set-asides. A member of the industry or a member of the academic community can submit proposals to have someone go out and catch those fish, they sell the fish, and then that money is used to support research either by, as I said, industry or the academic community.

The second thing that we vote include in the Spiny Dogfish Scoping Document is a look at the current quota allocation scheme and to look at alternatives. Currently the federal plans specify that 58 percent of the quota is allocated to the harvest period May 1 through October 31<sup>st</sup> and 42 percent allocated to the period from November 1 through the end of April.

As we all know, the Atlantic States Marine Fisheries Commission Board has taken a different approach to allocating quota, and so the joint committee as well as the Mid-Atlantic

Council felt like that we should look at other alternatives other than the seasonal allocation of quota that is currently in place.

A third option that we would like to have in the Spiny Dogfish Scoping Document would be an allowance for specifying dogfish quota and/or trip limits by sex. When the plan was approved back in 2000, the federal quota was set at 4 million pounds. The Secretary of Commerce made an additional half-million pounds available for a male-only fishery.

Our industry advisors had indicated that you really couldn't target males only because sometimes the fish schooled in schools that were predominantly males, other times they were predominantly females and oftentimes they were all mixed up. By the way, no one participated in that fishery that the Secretary of Commerce allowed for to my knowledge. If anyone did participate in it, it was on a very small scale.

But since 2000 individuals have come before the councils and they have asked that they be allowed to prosecute a male-only fishery. One of the arguments is that the male-to-female sex ratio of spiny dogfish is skewed in favor of males. The normal distribution will be two males to every female, and the most recent stock assessment indicated that there were four males for every female. The fishermen argue that they could target the males and help to balance the sex ratio.

The fourth item that we intend to go forward with is for inclusion of the smooth dogfish stock in the Spiny Dogfish Fishery Management Plan. This was discussed back in the late nineties when we were developing the fishery management plan. We did not have any data on smooth dogfish. We do not have any data today. I don't believe there is an assessment that has been done.

However, 98 percent of the smooth dogfish are landed in the Mid-Atlantic area of jurisdiction. Basically, it is the same fishermen using the same gear, fishing the same waters. It's at a different time of the year. It is the same processors in many cases handling a smooth dogfish, so our council and the joint committee felt like that there was strong justification for asking that smooth dogfish be managed through an amendment to the Spiny Dogfish FMP.

When we were developing the fishery management plan back in 2000, we recommended that it be an open access fishery. Anyone who wanted a smooth dogfish permit could get one, and it still is an open access fishery. The joint committee and the Mid-Atlantic Council feels that we need to restrict the number of participants in the dogfish fishery.

I think the Atlantic States Marine Fisheries Commission allocation of spiny dogfish over the past couple of years, on a state-by-state basis and now on a regional basis, shows that there is a lot more harvest power out there than needed to take the quota that is available and will available in the foreseeable future.

The last item that would be included in the Spiny Dogfish Scoping Document would be to include the recreational spiny dogfish fishery in the FMP with no specific management measures. They would be developed at a later point in time, and it could be developed during this amendment depending on public comments, of course.

Currently the Fishery Management Plan for Spiny Dogfish is silent relative to the recreational fishery. The Mid-Atlantic Council agreed to go forward with all of these items, all six items in the Spiny Dogfish Scoping Document. They then passed a motion for the Mid-Atlantic Council staff to draft a letter to the Secretary of Commerce requesting management authority for smooth dogfish.

That letter was sent from the Mid-Atlantic Council to the Secretary of Commerce on April 22<sup>nd</sup>. Mr. Chairman, that is the summary of the Mid-Atlantic Council activities. Some of the New England representatives may want to speak to whether or not the New England Council has taken official action relative to going forward with the amendment to the fishery management plan.

It is my understanding that the chairman of the Mid-Atlantic Council indicated that this would not require a specific action on the part of that council because the Mid-Atlantic is the lead council. When it was brought to the attention of the council by joint committee representatives, it was not a scheduled item on the agenda. That, Mr. Chairman, concludes my report.

CHAIRMAN DANIEL: Thank you, Red. Dr. Pierce.

DR. PIERCE: Red, thank you for that update as to where the Mid-Atlantic Council is right now with spiny dogfish and smooth dogfish. My preference always has been that dogfish be managed by ASMFC and that the federal government take a minor role, but I guess that's not going to work out as I would hope.

Regarding including smooth dogfish in the Spiny Dogfish FMP, it has been a while since I've looked at the catch information for smooth dogfish. This suggests to me that the majority of smooth dogfish is caught in the EEZ and not in state waters; is that true?

MR. MUNDEN: Mr. Chairman, we have Jim Armstrong here who is our staff person with the Mid-Atlantic Council who handles spiny dogfish, but information that has just come available indicates that I believe the majority of the smooth dogfish were taken in state waters.

DR. PIERCE: If that is the case – it has been really a long time I've thought about this one – if the majority of a fishery takes place in state waters, then what is the basis for there being a council management plan for that species? That is my question. I assume that council staff has already worked on this and there is justification for doing it. I didn't think there was, but I could stand to be educated by Jim.

MR. JIM ARMSTRONG: We're not too far down the road on this, but the landing of smooth dogfish in state jurisdictional versus federal waters sort of varies latitudinally. They tend to be caught more nearshore as you go further north. North Carolina catches more smooth dogfish than any other state; and the extent to which they enter into EEZ to harvest smooth dogfish is greater than states north of there.

DR. PIERCE: Okay, it's greater, but, again, I just wonder about the percentages. Time will tell, of course, as you provide the data base and look at the data base, but that will be a key element of the decision-making for the council, how much is in state waters versus the EEZ. I hope most of it is in state waters so that there is no need for a federal plan.

I think we can handle smooth dogfish fairly well through state regulations and through what we have already done here this afternoon and, of course, what will happen eventually after public hearings and we adopt the addendum. The other

question is the recreational spiny dogfish fishery – this always makes me laugh – I guess I still don't appreciate the fact that there is a recreational fishery for spiny dogfish; that recreational fishermen purposely go out to catch spiny dogfish.

If that is the case I guess we're in real trouble. I just thought, especially from listening to all the comments from recreational fishermen, that they just can't get away from them because they're biting the hook, they're taking the bait, they're a plague in the ocean, et cetera, et cetera. Is there really a need to move forward with this strategy that will eventually end up because of the Magnuson Act, the MSA, and our having to allocate specific amounts of dogfish to the recreational fishermen? It just seems so unnecessary. I take it there is good logic for actually bringing this forward in a scoping document to seek further comment?

MR. ARMSTRONG: Well, in 2007 recreational removals comprised 7 percent of total removals.

DR. PIERCE: Those were removals but was that just bycatch they couldn't avoid?

MR. ARMSTRONG: Right, 800-some metric tons of discards, less than 40 metric tons of landings.

DR. PIERCE: Okay, so that means, therefore, that because of the Magnuson Reauthorization, this discard, this unavoidable catch of dogfish is going to bite the recreational fishermen on the rear end, and now they're going to have to be regulated in such a way to control that bycatch that they try to avoid. It is going to be a good one.

MR. AUGUSTINE: To that point, we have to regulate the recreational because our regulations are so strict in all the other species of fish in our waters now that our partyboat and charterboat people are actually targeting spiny dogfish; and those with food fish licenses are supplying the fish and chips – the fish part to restaurants locally, and that's a fact.

So, there are partyboat and charterboat captains who go out and tell their crew that they're on spiny dogfish; and if we incidentally catch anything else that is legal, we'll keep that, too. By and large, these guys are making all-day trips fishing for spiny dogfish. They will catch cod

fish now and again and haddock and so on. So, yes, we have to regulate these guys; we have got to control everything in the state of New York, including dogfish.

CHAIRMAN DANIEL: Well, I can say off of North Carolina where the dogfish have now moved in and become so prevalent nearshore south of Hatteras that in many of the areas that were traditional black sea bass fishing areas in the February, March, April timeframe, all there is in those nearshore locations now are dogfish.

A lot of the smaller boats that can't get offshore to get out of the dogfish are actually going out there and taking their kids to go catch sharks. We're seeing that, too. Now how many they keep, I don't have my recreational statistics, but I do know that they're going out and playing with them, anyway. Anything else on Red's report?

MR. MUNDEN: Mr. Chairman, to Dr. Pierce's question, the three New England representatives on the joint committee recommended that dogfish be included in the FMP; so it wasn't the southern contingent; it was the northern New England guys.

CHAIRMAN DANIEL: Well, all I'll say as the chairman of this group is just note the scrape we have been in with joint plans with spiny dogfish and the potential for that same problem with smooth dogfish. If as Dr. Pierce said, and I believe as well, the majority of the smooth dogfish are taken in state waters, it would certainly be my preference for this group to manage that resource as opposed to the councils or HMS, personally. Anything further on the Mid-Atlantic's current actions on spiny dogfish and smooth dogfish? Seeing none, the last item on our agenda is other business. Wilson.

## OTHER BUSINESS

DR. LANEY: Thank you, Mr. Chairman, just a brief update for those who didn't hear the Cooperative Winter Tagging Cruise Update during the Striped Bass Board – and I will focus on spiny dogfish. We did catch 2,602 spiny dogfish, which is actually a decrease in comparison to what we normally catch.

This year, for the first time ever, because Dr. Roger Ruleson at East Carolina got some funding from the North Carolina Sea Grant

Program, we implanted 50 of the larger dogfish with radio transmitters, and those were all released north of Cape Hatteras. Dr. Ruleson and his grad students have a listening fence now in place offshore south of Cape Hatteras.

We're hoping to pick up some of those fish when they encounter that listening fence. The fence has already been encountering fish of other species tagged by other investigators. I know they've picked up I believe striped bass, Atlantic sturgeon and bluefish thus far. Dr. Duane Fox at Delaware State University is working hard to try and coordinate with all of the other investigators who are putting radio transmitters out on the east coast now and who are operating listening fences up and down the coast to exchange data so that we hopefully will get a much clearer picture of what all these animals are doing when they're moving back and forth along the coast. If you have any specific questions I'd be happy to answer those later.

CHAIRMAN DANIEL: Any questions for Wilson? Good reports again this year, Wilson; sorry you couldn't find the stripers. All right, Roy, you had an item of other business?

MR. MILLER: Mr. Chairman, I do have a quick informational item, if I may, if we're not constrained for time. I received a letter from a person named Justin Miller, no relation, requesting a collecting permit from the state of Delaware to take up to 25 sand tiger sharks from the Delaware Bay for a public aquarium in Taiwan.

I haven't seen one of these applications in a few years. This particular person applying for the permit apparently is a private collector, hired, I guess, or working on contract for this aquarium in Taiwan. He made some assertions about pending federal permits. Perhaps Margo would have some advice for me after the meeting or would care to share something.

But, anyway, personally I considered 25 an excessive number of sand tiger sharks since this is both a federally and state-protected species. My inclination is to deny the permit application, but I am only bringing this up to see if any other states have received a similar permit application like New Jersey or anyone else from this particular person. Terry, you have? Were you inclined to grant that particular person the items he sought?

MR. TERRY STOCKWELL: No.

MR. MILLER: If Margo has an update for me, I would appreciate the status of this person's federal permit.

MS.SCHULZE-HAUGEN: You're right, they did submit a permit request to us as well. We're still reviewing it. In checking with some of our folks as well, 25 sand tigers seemed like a lot to us. I had thought they also submitted a request to Florida, and I thought Florida was not inclined to issue it. I could stand to be updated myself there.

CHAIRMAN DANIEL: We've had a couple of those requests, Roy; and if it is a prohibited species, I deny it. They're just going to have to do something with an allowable species.

MR. MILLER: That's my inclination, but if anyone had any alternative suggestions, I'm willing to listen.

### ADJOURN

CHAIRMAN DANIEL: All right, if anybody else has any advice for Roy, certainly see him after the meeting. Is there anything else to come before the Spiny Dogfish and Coastal Sharks Board? If not, we stand adjourned.

(Whereupon, the meeting was adjourned at 3:30 o'clock p.m., May 6, 2009.)