

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

**Hyatt Regency Hotel
Newport, Rhode Island
November 5, 2009**

Approved February 2, 2010

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1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of May 6, 2009 by consent** (Page 1).
3. Motion to approve the 2008-2009 FMP Review and grant *de minimis* status to the states of Delaware, South Carolina, Georgia and Florida (Page 2). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 2).
4. **Motion to adjourn by consent** (Page 13).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Bill Goldsborough, MD (GA)
Doug Grout, NH (AA)	Tom O'Connell, MD (AA)
Paul Diodati, MA, (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
William Adler, MA (GA)	Louis Daniel, NC (AA)
Mark Gibson, RI (AA)	John Frampton, SC (AA)
David Simpson, CT	Malcolm Rhodes, SC (GA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Robert Boyles, SC (LA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Pat Augustine, NY (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)	Steve Meyers, NOAA
Bernie Pankowski, DE, Proxy for Sen. Venables (LA)	Margo Schulze-Haugen, NMFS
Roy Miller, DE (GA)	Wilson Laney, NMFS

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

Ex-Officio Members

John Tulik, Law Enforcement Committee

Staff

Vince O'Shea
Robert Beal

Christopher Vonderweidt
Kate Taylor

Guests

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in Brenton Hall of the Hyatt Regency Newport Hotel, Newport, Rhode Island, November 5, 2009, and was called to order at 11:15 o'clock a.m. by Chairman Louis Daniel.

CALL TO ORDER

CHAIRMAN LOUIS DANIEL: Good morning. Welcome to the Spiny Dogfish and Coastal Shark Management Board Meeting. I call this meeting to order and ask for you to direct your attention to our agenda. We have quite a few items to get through this morning.

APPROVAL OF AGENDA

The first thing is I need approval of our agenda. Does anybody have any other business that they want to attach or any changes or corrections to our agenda, suggested changes? Seeing none, then our agenda is approved.

APPROVAL OF PROCEEDINGS

Then our Proceedings from August 20th meeting; motion to approve by Mr. Augustine; second by Mr. Lapointe. Any opposition to that motion? Seeing none, that motion is approved.

PUBLIC COMMENT

Now is the time that we turn to the audience for public comments on items not on our agenda. I see no interest and nobody rushing to the table. We'll move on and I'll it over to Chris for the Spiny Dogfish Plan Review.

SPINY DOGFISH FISHERY MANAGEMENT PLAN REVIEW

MR. CHRISTOPHER M. VONDERWEIDT: This is a review of the May 2, 2008, through April 30, 2009, fishing season. Just one footnote; when the materials were included on the briefing CD, we had not received a report from Connecticut. Connecticut has submitted its report. The changes that were made to the FMP Review were not concerning Connecticut's

regulations, which we already knew were compliant with the FMP.

However, they have a fisheries-survey information which has been added to the report under the Monitoring Section. The stock status is not overfishing and not overfished. There was a spawning stock biomass update report from the New England Fishery Science Center, which I'm going to give a brief overview of as Agenda Item Number 6, so I'm not going to go into detail on that.

The information in the FMP Review does not include this report, which came out after the report had been completed. The 2008-2009 specifications; there was an 8 million pound quota with a 3,000 pound maximum possession limit. Addendum II, which we've sent through on a fast-track timeline, was applied retrospectively to that fishing season.

The division of quota under Addendum II was Maine through Connecticut received 58 percent of the quota, which is 4.64 million pounds. New York through Virginia received 26 percent, which is 2.08 million pounds, and North Carolina received 16 percent of the quota, which is about 1.3 million pounds.

Landings in 2008-2009, Massachusetts was the larger harvester with 3.5 million; Virginia was second at 2.3, if you round up; North Carolina was third with 1.4; and New Hampshire was a little bit behind with 827,100. Looking at the allocation of the landings, there is a provision in Addendum II that requires states to pay back or regions to pay back for overages in the fishing season.

The commercial landings were 4.613662 in the northern region, which was under the regional allocation, so there was no overage in the northern region. In the southern region, New York through Virginia, there was a 387,104 pound overage, and this was the result of some late reports and also an increase in fishing effort at the end of the fishing season, so that will have to be paid back in the 2009-2010 fishing season, which we're currently under. Then North Carolina had an overage of 141,000 pounds.

The biomedical harvest, the states are allotted a thousand dogfish for biomedical research. This is in Section 4.1.6 of the FMP. The only state that takes advantage of that or utilizes that

provision is Maine. They harvested 500 dogfish for the Mount Desert Island Biological Lab; 227 of those were females; 273 were males. There is more information on that in the actual report.

Then some of those were given to the DMR Aquarium, seven of those dogfish, from MDIBL. Four of those were female and three of them were male. State compliance; all states meet or exceed all the requirements of the FMP. Delaware, South Carolina, Georgia and Florida have requested *de minimis* status. All have commercial landings less than 1 percent, which is the requirement from the FMP. The actions for consideration would be to approve *de minimis* status for Delaware, South Carolina, Georgia and Florida and approve the 2008-2009 FMP Review.

CHAIRMAN DANIEL: Thank you, Chris. Any questions for Chris before we get to the motion on the FMP Review? Good job, Chris, thank you. Doug.

MR. DOUGLAS GROUT: Just a quick one, Chris; under other issues you said the difference between states and federal management allowing for the possibility that federal waters may remain open while state waters remain closed and that this might be under such scenarios if states that default to federal regulations would be out of compliance with the ASMFC FMP. Do you foresee any problems with this in the future where people are tied to federal regulations now that we're on the same path as far as quotas?

MR. VONDERWEIDT: Well, that's hard to answer to. If I knew what the quotas were going to be and also there is a Mid-Atlantic Amendment 3 which is proposing changes to the federal management where they might go with some kind of overall quota where ASMFC would allocate it amongst the states or they might go with some kind regional allocation which would be line with our plan, and that would also require the federal quota to be larger, so I don't think there is a strong possibility for it. We're keeping an eye on it and talking to states.

Like New Jersey is one state that I don't think would be able to close under ASMFC if federal was still open, but we're keeping the communication open and trying to head that off, you know, if it becomes an issue for those states. There are a lot of unknowns there.

CHAIRMAN DANIEL: Anything else for Chris? Pete.

MR. PETER HIMCHAK: To that point, yes, I had brought this up early on when we went with the regional quotas, but upon further review of our existing regulations we believe the ability to close state waters. We are linked to the federal regulations. We can close state waters, we believe.

CHAIRMAN DANIEL: Anything else? Pat.

MR. PATRICK AUGUSTINE: Are you ready for a motion, Mr. Chairman?

CHAIRMAN DANIEL: Yes, please.

MR. AUGUSTINE: **I move to approve the 2008-2009 FMP Review and grant *de minimis* status to the states of Delaware, South Carolina, Georgia and Florida.**

CHAIRMAN DANIEL: A motion by Pat Augustine; seconded by Bill Adler. Any discussion on the motion? Seeing none, is there any objection to the motion? Any abstentions or null votes? **Seeing none, the motion carries unanimously.** Chris, you're up again.

2009-2010 SPINY DOGFISH FISHERY UPDATE

MR. VONDERWEIDT: I'm just going to give a brief update of the 2009-2010 Spiny Dogfish Fishery, which is the fishery that we're under right now. The specifications were a 12 million pound quota. Fifty-eight percent was for the northern states of Maine through Connecticut; 26 percent for the southern region, New York through Virginia; 16 percent North Carolina, and it has been adjusted for 2008-2009 overages.

We sent out a memo at the beginning of the fishing season with non-adjusted landings or preliminary landings. They have since been finalized so these are what we think are the final numbers. I don't think that they would change. The 2009 adjusted quotas; there is no overage in the northern region, so the 58 percent comes out to 6.96 million pounds for Maine through Connecticut.

The southern region had a 387,100 pound overage so their adjusted quota has decreased

slightly and it's 2.7 million, and then North Carolina's quota was slightly decreased by 141,000 pounds, so these are the final numbers and we are going to monitor based on these numbers. The landings; the northern region was closed this year on September 27, 2009; southern landings as of – I queried the yesterday – are 218,282 pounds, and I don't North Carolina has landed any dogfish yet. They migrate south as it gets colder, so I don't think they've moved in. That concludes the update.

CHAIRMAN DANIEL: Thank you, Chris. Any questions on where we are for this year? All right, seeing none, we'll move on to the Spawning Stock Biomass Update.

**NORTHEAST FISHERIES SCIENCE
CENTER 2009 SPINY DOGFISH
SPAWNING STOCK BIOMASS
UPDATE**

MR. VONDERWEIDT: There is one thing that I really want to highlight in this. This is intended to be a brief update of spiny dogfish spawning stock biomass. This is just snapshot because people are very interested to hear what the SSB numbers are as they become available. This update was available the week of October 18th, which was I think the last day that we could send materials out on the briefing CD. Some of the numbers in the report, because the New England Science Center is in such tight deadlines, some of them have been just typos, kind of corrected.

There is some calibration or scaling between the Mid-Atlantic and the ASMFC reference points, so that has kind of been smoothed out.

Then the final update will available for the February meeting and hopefully we'll get Paul Rago or Cathy Sosobee or somebody else who is more familiar with the stock assessment than myself to give you that update. This is just real brief. Another reason why this was delayed was that there is a new fishery science vessel, I think the acronym they use now, that replaced the Albatross, the Bigelow, so we waited for the calibration between the two vessels to get conducted and be reviewed, and that was around late September or early October.

The technical committee waited until last Thursday because, as you know, we always hold joint meetings between the Mid-Atlantic Monitoring Committee and ASMFC Technical Committee to at least try and have complementary recommendations come out of those groups or consider the same issue.

We had sensitivity to their process which includes the Science and Statistical Committee review the report, so the report came out on the 18th. They needed two weeks to look it over, and then we needed a little bit of time after the SSC met. They met Tuesday of last week and then the TC and Monitoring Committee met on Thursday.

The point is that the complete update and the recommendation will be coming in February. We're not looking to set quotas and possession limits today. After seeing the full report, we'll do that in February. This is an update using the 2009 Spring Survey data. This is directly from Paul Rago's presentation for a lot of this information. The calibration and coefficient of average weight per tow was equal to 1.044.

This is good news because it's nearly equivalent between the different boats, and it suggests little difference in size selectivity. The model relies heavily on size selectivity, so if you're harvesting smaller dogfish you're going to have – your biomass reference points should be lower in response. The way the model is set up right now is for harvesting larger dogfish.

A quick overview – and, again, these are directly from Paul Rago's bullet points. The dogfish abundance remains at high levels, consistent with the last four years. There is evidence of strong recruitment in 2009. Discards have been declining. They're about equal to total landings, but they continue to decline. That is what the trend has been for the last four year.

All the projections suggest that the population biomass will oscillate as the recruitment deficit is paid back, and this is about a five-year period of significantly low recruitment that started around 1997; and as the numbers go up, that's going to have to be paid back around 2014. You know, these are far forward projections so it might change a little bit.

The population should continue to increase for about five years and then decline. The

magnitude of the oscillation will be dampened by the magnitude of the fishing mortality rate. What do the numbers say? The swept-area biomass estimate fell from 657,400 metric tons – and this is male and female dogfish – to 557,900 metric tons in 2009, so it's down a little bit.

The three-year moving average – and remember the model will take 2009, 2008, 2007; take the average of that to get the SSB number. It fell from 194,616 metric tons in 2008 to 163,256 metric tons in 2009. This is below the target spawning stock biomass of 167,000 metric tons, but it is well above the threshold of 83,500 metric tons. The 2008 fishing mortality rate, you probably remember last year in Delaware the board voted to set the fishing mortality rate at Frebuild equals 0.11, which was the equivalent of a 12 million pound quota for this fishing year.

That was pretty much achieved. The F equaled 0.11, and this is well below the target for a threshold fishing mortality rate, and so the spawning stock biomass graphically, that looks – you can see the increase in 2007 and then it dipped slightly below the target there on the right-hand side, and the red diamond line, that's the threshold, so it's well above that.

To just give an update of the TC and Monitoring Committee Joint Meeting this last Thursday, the spawning stock biomass was presented to both groups. The Monitoring Committee is constrained by the SSC, and the SSC has set the overfishing limit equal to the acceptable biological catch, which is equal to Frebuild equals 0.11.

It's interesting to note that there is no target biomass in the Mid-Atlantic Fishery Management Council's plan, so even though the biomass is increased to a level that was suggested as the target, NMFS had not approved a target, so the SSC could not declare the stock overfished. There is no metric to declare – or rebuild, excuse me. There is no metric to declare the stock rebuilt.

There is a framework that's going through right now, which would update the reference points everytime there is a new assessment with the best available science. Through the discussions of the meeting, the Technical Committee and Monitoring Committee were both generally comfortable with F equals 0.11. They're going to go back – and currently Paul and Cathy are

working on some analysis of discards and Canadian catch.

And you'll remember, you've probably seen this so many times, the overfishing limit is just stock size times the target fishing mortality rate, so that is how you get to 0.11. The ABC is the scientific uncertainty. There didn't feel that there was any scientific uncertainty, so now they're looking at what the management uncertainty would be, which would come from the discards and the Canadian catch analysis. As I said before, the discards have been decreasing.

We're going to reconvene next Friday on a conference call, and the technical committee will likely have its final recommendations. The range of quota that would come out of this is going to be somewhere from a 10 to 13 million pound recommendation, depending on how heavily they weigh the discards and Canadian catch.

They agreed to go with a 3,000 pound possession limit. Again, we're not setting specifications but just to kind of give you a general idea of what is likely to be recommended by the TC and Monitoring Committee at the next meeting. Coming up in January is going to be a new benchmark stock assessment for spiny dogfish. The data workshop was completed in 2009 during the summer.

The assessment and review workshop will be held January 25th in Woods Hole. It is going to be a more complex model, and it's going to address some questions and update some of the parameter questions about survivorship of the pups, the selectivity of the fishery and all that, so it should answer some questions and give some new information that everybody is hoping to hear.

CHAIRMAN DANIEL: Thank you, Chris. Questions for Chris about the update? Red.

MR. RED MUNDEN: I just wanted to add a couple of things to the information that Chris just presented to you. The Joint New England/Mid-Atlantic Council Spiny Dogfish Committee will meet during November and consider the recommendations from the SSC and the Technical and Monitoring Committee.

The Mid-Atlantic Council will be setting the quota and trip limit for spiny dogfish for the

upcoming fishing year at our meeting the first week in December. As I understand it, the New England Council will then make a recommendation for trip limits and quota at their meeting following the Mid-Atlantic Council meeting.

CHAIRMAN DANIEL: Thank you, Red. Anything else on the update? Bill Adler.

MR. WILLIAM A. ADLER: They're going to set the quota you said between 10 and 13 million. Now, a couple of slides ago you had – what was that quota? That was the 12 and it was split up the three ways. Is that for this year or was that for last year and what is this 10 to 13 million going to do; adjust that?

MR. VONDERWEIDT: The 12 million pounds is for the 2009-2010 fishing season that we're in right now. That's the one that I showed with the overages and the paybacks. This will be the recommendations for the May 1, 2010, through April 2011 fishing season, so this won't start until May 1, 2010. The range under F equals 0.11, depending on how discards and Canadian catch are handled, are between a 10 to 13 million pound quota for the TC and Monitoring Committee.

CHAIRMAN DANIEL: So there is a chance we'll see a decrease in our allowable harvest for the 2010-2011 season if it's not maintained to at least the 12 million. Hopefully, we'll get the 13 million if we can justify it. Anything else before I move on?

UPDATE ON STATE COMPLIANCE WITH THE SHARK FISHERY MANAGEMENT PLAN

All right, we need to do the update on state compliance with the Shark Fishery Management Plan. The way I'd like to handle this, I think we've got North Carolina, Delaware – what were the three states you sent me, Bob?

MR. VONDERWEIDT: Delaware and Maryland and North Carolina and South Carolina.

CHAIRMAN DANIEL: Delaware, Maryland, South Carolina and North Carolina are fully compliant with the FMP. What I'd like to do is –

I guess the best way to handle this would be to go around the table and have each state give us an update on where they are in complying with the Shark Fishery Management Plan and we will start with our host state of Rhode Island.

MR. MARK GIBSON: Okay, our complying regulations are queued up for public hearing this month on the 12th. They would then go before our Marine Fisheries Council the first Monday of the month in December; and upon recommendation from that body to the director, it would probably be implemented sometime in mid-December.

CHAIRMAN DANIEL: Thank you very much. Any questions for Rhode Island? Massachusetts.

MR. PAUL DIODATI: I sent a text to our headquarters earlier, at the start of the meeting, and I'm still waiting for a response. I'm not even sure of what elements we might be out of compliance with at this point. We may be fully compliant for all I know. I'm waiting for a response right now.

MR. DAVID SIMPSON: The shark regulations are a part of a large package that we have not yet started on. We're hopefully going to do that in the next month or so. However, we're able to remain in compliance through declaration authority that we have; so if the federal or state plan requires us to close or set a specific trip limit, we can do that and we have been.

MR. JAMES GILMORE: We've assembled our regulatory package and that has been completed. Next Tuesday, November 10th, we're going to present it to our Marine Advisory Council, which is required by state law. After that the package will then be put out for public notice, which is also required under our rules. We anticipate without any problems that we will have them in effect prior to the February ASMFC meeting.

MR. HIMCHAK: Our regulatory proposal was prepared prior to the development of Addendum I, and it still hasn't moved. It was to have been published this past Tuesday, but as you know – well, it came to a grinding halt three weeks before election day, and it's unlikely to be published. We will require a 60-day comment period after the thing is published. We may be looking for some leverage from the board to get our regulations moved along and adopted early in 2010.

MS. JESSICA McCRAWLEY: We have been out to public workshop and we have to take this to our commission for rulemaking two times; a draft rule stage and a final public hearing. We've passed the draft rule stage. We'll go to final public hearing in early December, and we think that these regulations, if passed by our commission, would be effective January 1, 2010. Another thing I wanted to note is that Florida is passing this for the Atlantic coast and the Gulf coast.

MR. WOODWARD: We have completed rulemaking through DNR Board, and we believe that brings compliance. What we have is some confusion over how our actions relate back to the plan, so we've just got to work with staff and the team to clarify that. We're pretty sure we've got everything in place. It's just a matter of clarity now.

CHAIRMAN DANIEL: Thank you, Spud. I believe South Carolina is good and North Carolina. Virginia is not here. Maryland is good; Delaware, likewise. Maine and New Hampshire are left.

MR. LAPOINTE: I'm in a similar situation with Paul. I'm checking with my staff on where we are and we'll let you know when I find out.

MR. GROUT: New Hampshire has completed its regulatory process. The four rules that the commission asked to put in place for *de minimis* status will be in place January 1, 2010.

MR. DIODATI: All of our regulations went into effect last Friday and our website could be referenced by Chris to check to see if there is anything missing.

CHAIRMAN DANIEL: Thank you very much. All right, anything else on this item? Mike.

MR. MIKE JOHNSON: Mr. Chairman, on the trip limit, the technical committee – and the whole discussion has been 3,000 pounds on the dogs. This is just to go on record for discussion and consideration in the future. It should have been taken up probably at the councils and before now, but somehow or another it fell through the cracks.

The industry, because it is not a very valuable fishery, the fishery is prosecuted – when they bring the fish to shore, they brought in in 2,000

pound totes. In North Carolina the industry was asking in the future would it be possible that trip limit to 4,000 pounds because that's two totes of fish instead of a tote and a half. The fish aren't worth an awful lot and it saves them on the fuel. We have a hard TAC

With our monitoring system in place, we can monitor that so it's really no difference in the amount of fish taken. I don't know if we can take any kind of action on that or do anything at this level, but it certainly makes good sense to be able to do it that way, to prosecute the fishery that way.

MR. AUGUSTINE: To that point, it would seem that we should raise the issue at the council level because they have lead responsibility, and I think it's a good point. It would make it a lot easier for fishermen to do their job and that is what we should look at. Thank you, Mr. Chairman.

CHAIRMAN DANIEL: Well, if our folks on the Mid-Atlantic Council would carry that torch for us, I think we'd certainly appreciate it. We'll make those points as well if it's something folks agree to. It does make sense as far as the value of the fish and have it being able to save fuel. If we're managing on a hard TAC, we can close it. I don't know what the ramifications might be, but then if we get success at the Mid-Atlantic, then we could perhaps initiate an addendum to deal with various other minor components of this plan. Pat.

MR. AUGUSTINE: To that point, Mr. Chairman, maybe if we agree with it as a possible thing that the Mid-Atlantic should look at, maybe a letter from our board or from the commission to the Mid-Atlantic to show be on the record to show that there has been – a concern about this has been voiced and we agree to disagree, but we really want them to look at it. It would be more official. I think between Red and myself and some others who feel comfortable about doing that, we could do it at the council meeting, also, but why not make it a legitimate legal document.

MR. MUNDEN: As chairman of the Joint Spiny Dogfish Committee for the Mid-Atlantic Council and the New England Council, I will make sure that's on the agenda for our joint meeting in a couple of weeks. Mr. Chairman, that would be

for 2010-2011 fishing season because the trip limit is already set for this fishing year.

CHAIRMAN DANIEL: Correct.

MR. GROUT: Just to give the other position here, we've had – particularly over in Massachusetts the processors have actually been asking for a smaller trip limit because they want things to be spread out more. I think Massachusetts may have actually accommodated this with a smaller trip limit up in the state of Massachusetts for the summer and then into the fall.

CHAIRMAN DANIEL: Well, perhaps just having the flexibility to implement various – I mean, since we're on a hard quota – at least in North Carolina we've got a specific 16 percent that we can manage. Maybe it could be to provide the flexibility and the regions can use it if they deem fit or not. That may be a reasonable solution to it.

MR. VONDERWEIDT: The Monitoring Committee and Technical Committee are holding a conference call November 13th at ten o'clock; so if between now and then you wanted to talk to the members that are from your state, they're going to make that final decision.

CHAIRMAN DANIEL: Yes, and circumstances may change in Massachusetts and they may want to have that flexibility down the road, but they may not want to use it now. Maybe that can be worked out. Anything else on state compliance with the fishery management plan? If not, let's break for lunch. Mike.

MR. JOHNSON: What was that date, Chris?

MR. VONDERWEIDT: November 13th at ten o'clock in the morning.

CHAIRMAN DANIEL: All right, we'll recess and come back.

(Whereupon, a recess was taken.)

CHAIRMAN DANIEL: It looks like most folks are finishing up their lunch, so why don't we reconvene and finish our business from the Spiny Dogfish Board. I'm going to kind of backtrack a little bit. First, Jessica had some additional information for her compliance report that I wanted to have her share with the group.

MS. McCAWLEY: I just wanted to let everybody know that when we went out to public workshop on the compliance report, that we heard a lot of public comment about lemon shark vulnerability, and so we are also going through rulemaking at this time to prohibit all harvest of lemon sharks in the state waters of Florida because we believe that there are some sites in Southeast Florida where sharks are returning from the Carolinas, Bahamas, and the Marquesas to spawn. This could be a significant source of the pups for lots of different areas. This is based on the work of Dr. Samuel Groober. Based on this public comment, we are now moving forward with the prohibition of lemon sharks in state waters.

MR. ROY MILLER: Mr. Chairman, would you review for me or for all of us what compliance deadlines are with regard to the Coastal Shark Plan?

CHAIRMAN DANIEL: Originally it was January 1, 2009, and it's November 2009.

MR. MILLER: Mr. Chairman, if I may follow up, it occurs to me – I certainly don't want to cast aspersions on the ability of other states to implement regulations or go through their legislative process. A handful of states have come into compliance with this plan while neighboring states continue to fish, for instance, on perhaps sandbar sharks, other shared resources and shared bodies of water. It just seems to me we sort of glossed over this compliance issue, Mr. Chairman. I just wanted to bring it to the attention of the board that it is something we shouldn't ignore. Thank you.

MR. LAPOINTE: Mr. Chairman, I got a note from Terry that said we are going to have a hearing on the winter flounder regulations and the shark regulations within the next couple of weeks.

CHAIRMAN DANIEL: Well, back to Roy's point, it is a difficult issue. In North Carolina I struggled with whether to comply or not, knowing that other states hadn't, but for the good of the order I went ahead, and I as much as I disagreed with some of the stuff in it, I went ahead and implemented those things. It is tough, but I know a lot of states have difficult rows to hoe to get their regulations in place, as we discussed the other day about South Carolina's issues with their legislature. Paul.

MR. DIODATI: Mr. Chairman, can some clarify if the federal rules stop at the territorial waters or do the federal shark rules actually go to the beach?

CHAIRMAN DANIEL: The EEZ; my understanding is the federal plan measures are in the EEZ and that we have complemented them in state waters. Karyl is going to clarify.

MS. KARYL K. BREWSTER-GEISZ: Yes, they apply in the EEZ, but they also apply to any federal permit holders fishing in state waters as well.

CHAIRMAN DANIEL: Thank you for that clarification; I had forgotten about that. Roy.

MR. MILLER: Mr. Chairman, I'm wondering where we're going to go with the compliance determinations with regard to the shark plan and what guarantees we have that the states will come into full compliance with this plan and by when. The reason I'm concerned is it has precedence for other species.

We agonized long and hard the other day over weakfish compliance deadline, whether we could meet it, what process we would have to go through to recognize the state's inability to meet a May 1st, for instance, compliance deadline for weakfish. Is everyone content to just let sharks slide? I raise these issues, Mr. Chairman. Thank you.

MR. ROBERT E. BEAL: Well, I think this board has actually already set up the course of action where at the winter meeting next year, about three months from now, the board will review compliance, and at that point they'll initiate non-compliance findings or potentially initiate non-compliance findings for states.

I think as part of the extension – as you mentioned, Mr. Chairman, the original date was January 1, 2009, and now it's 2010. As part of that extension discussion, the board said we really need it about 2010, and in February of 2010 we're going to look at where everybody is and possibly initiate the non-compliance process at that point.

CHAIRMAN DANIEL: Thank you, Bob, I think that satisfies me so we'll move forward. It sounded like to me, going around the table, that most of us are going to be in compliance by the

winter meeting of 2010. All right, anything else on that item?

DISCUSSION ON THE SMOOTH DOGFISH PROCESSING AT SEA

If not, I'll move into a discussion on the smooth dogfish processing at sea. This is not intended to take a lot of time. I just wanted to give you all an update on where we are on the issue with Senator Kerry's letter. He was a little miffed with us for doing what he thought was contrary to his bill for the Shark Protection Act. We have been in contact with Senator Kerry's staff, and there have been some moves by some of the senators in our jurisdiction that are trying to get smooth dogfish exempted from the Shark Protection Act. I think that's moving forward.

Now whether it passes or not, we'll have to wait and see, but for the all reasons that we argued for allowing processing at sea, those arguments have been made to the staff of Senator Kerry. At this time, we're sort of in a holding pattern to see what the federal bill does; and if it exempts smooth dogfish, then what we may want to do is come back and make some modifications through an addendum, perhaps, to deal with that issue.

We could possibly deal with the trip limit issue, and we could possibly deal with the carcass-to-fin ratio. That just bothers me that we have a technical committee that said that 95/5 was inappropriate for smooth dogfish, but yet it's still in our plan. At some point I think we need to address that issue, and we may be able to lump all those issues into one addendum down the road. That's really all I had for that agenda item. Bill.

MR. ADLER: Mr. Chairman, I thought we had a discussion the last time about the finning thing, and it was explained why they should be allowed and the argument against it. I thought we came to some decision that if they allowed finning during a certain time it would be okay, and then at another time of the year they wouldn't allow it. Do you remember something about that?

DR. DANIEL: Yes, we covered the processing at-sea issue with a seasonal allowance that allowed processing at sea, but the plan still says that there has to be a 95-to-5 carcass-to-fin ratio, which we know is not correct for smooth

dogfish, and so at some point we're going to need to deal with that.

In North Carolina we did not implement that measure in state waters because it is not right, so we're not holding them to a specific carcass-to-fin ratio other than to say they better have fins to go with their carcasses. We're not allowing finning. That's kind of where we are with it. I think it's an issue for Virginia. We are the two primary states that prosecute this fishery at least right now. Pat.

MR. AUGUSTINE: Mr. Chairman, the issue was extensively discussed at the HMS Advisory Panel, and we had commercial fishermen in attendance who reported the difficulty they were going to have to process these things. However, the HMS held its position that it says 95-to-5, and I'm not sure that there is going to be any other significant changes.

I would suggest that we may ask Karyl with HMS what they're doing, if anything else, above and beyond where we are. I think the last HMS Advisory Panel Meeting I attended, there absolutely was not going to be anything else done at that point in time it was being discussed, but the 95/5 rule was going to be held. HMS did agree to follow our guidelines that we had created in ASMFC, and I believe they're going to be embedded in the overall plan. You might want clarification from them, if you would, Mr. Chairman.

DR. DANIEL: Karyl, are you prepared to address that?

MS. BREWSTER-GEISZ: I can try. The 5 percent issue is in the statute; it's part of Magnuson. Therefore, HMS cannot change that in federal waters. I believe I heard Pat indicate that at the HMS AP we agreed to follow ASMFC guidelines. That is incorrect. We didn't make any decisions at the AP. We just listened to comments and we are still in the reviewing comments' stage for Amendment 3.

MR. AUGUSTINE: Mr. Chairman, I wish they would take this under serious consideration.

MR. JOHNSON: I think we all understood that it was a serious problem. I'm not saying from the technical committee that it was anything they did wrong. We just used numbers that we've used for years since then. I know North Carolina

went out and studied it, actually cut fish, weighed fins, and the technical committee agreed that, yes, this is the right size.

It sounds like to me, sitting around here, that, okay, this group says we're going to keep it this way and this group says we're going to keep it this way, and every group knows it's the wrong number. I guess my question is how can we use this body to move forward to get this number corrected? Is it a letter that goes to – I don't know who does it. If it's a statute, is it a letter that goes to the legislature? I

don't know, but I would think if we all agree that it's wrong – and if I'm mistaken in looking at the body language, please correct me – if we all agree it's the wrong number, then we should maybe – if nobody else is moving forward, which it sounds like what Pat is saying, maybe we should try to do something to help move it out of the gate and get the science corrected. I'm not saying anybody is making mistakes today, but the science I think has been corrected.

MR. AUGUSTINE: The difficulty of what we're trying to do – as Karyl has said this is a part of the Magnuson-Stevens Act, and the only way that's going to get it changed is to address the Magnuson-Stevens Rule. It's there; it's cast in concrete. It would just seem to me that as long as we continue to work closely with HMS – even though they haven't made a final decision that they aren't considering what ASMFC is doing, there is still a possibility because it's a joint effort.

You've got federal waters and state waters, so we should be able to come up with this agreement that we had put together based on the technical committee. I would hope, Mr. Chairman, that we end up staying very close with the HMS folks on this to see if we cannot have them include our concern for fish in state waters and landings accordingly.

You know, the problem with them, as I understand it, they're a very delicate fish, and the processing or capturing these things in 90 to a hundred degrees temperature; and as soon as they're caught, my understanding is they cut them up and do whatever they do to them, but they ice them down.

Then the intensity of labor required to get back to the dock and do the second step is not only a

problem, but to get rid of the discard material creates another problem at the dock and at the marinas. I just think we have to push forward with our concern with the downside of doing what we're being forced to do and not give up until they're either bent or agree to what we're doing. Thank you, Mr. Chairman.

DR. DANIEL: From my understanding – Karyl, correct me if I'm wrong here – the finning rules are in a Finning Act, a Shark Finning Act or something like that, and what the Kerry Bill would do is require all sharks to be landed intact, which eliminates the finning ratio issue, because then there is no at-sea processing of any shark.

That resolves the 95/5 issue with the Kerry Bill. What we're trying to do is get smooth dogfish exempted from the Kerry Bill, which would allow the processing at sea, and at that point we will need to have the fin ratios changed. Smooth dogfish I guess would be the only shark that would fall under a fin-to-carcass ratio because everything else has to be landed in the round. I think that's right. Karyl.

MS. BREWSTER-GEISZ: Both the Shark Finning Prohibition Act and the current still-at-the-senate Shark Conservation Act amended Magnuson, so that's the link to Magnuson there. I believe the Shark Conservation Act not only requires the fins be attached but also maintains the 5 percent ratio.

DR. DANIEL: That is not good. Bill.

MR. ADLER: Mr. Chairman, I'm actually still sort of on that, but there was a document from the Mid-Atlantic Council that was in our material. Over on Page 3 they talk about F1 for the smooth dogfish, and this particular thing would effectively cede management of the existing smooth dogfish fishery to the Atlantic States Marine Fisheries Commission. Could someone just briefly explain is this actually in the works, that it could in fact – NMFS would give up the smooth dogfish and let the ASMFC manage it; is that what I'm reading there?

DR. DANIEL: I think that's what the Mid-Atlantic Council requested, but from my understanding NMFS has made the decision to manage smooth dogfish or least go out to public hearings on various alternatives to manage smooth dogfish. Their position is that HMS should manage smooth dogfish along with the

ASMFC. That's my understanding of their position.

We've made our positions clear and I think the Mid-Atlantic has as well with Chairman Robins' comments. I think what we can do – and this kind of bleeds into the next agenda item. There are various issues I think associated with Amendment 3 and also with the new large coastal shark and small coastal shark specifications that we may want to comment on as a board or as a commission; one being smooth dogfish and at least trying to correct the fin-to-carcass ratio on smooth dogfish.

It concerns me a lot that the 95/5 is in the Shark Protection Act. You know, the guys come in and they process their sharks now at the dock, and so we know that a lot of these sharks don't have a 95-to-5 fin ration; so when they put it on their federal logbooks or on their trip tickets, they're going to be in violation.

If they go back into the Trip Ticket Program and see somebody has got a hundred pounds of fins and a thousand pounds of sharks, it could be legitimate if it's a shark with big fins, but they're going to be in violation and potentially prosecuted for that, so that's troubling. I'm going to turn it over here to Chris for a minute just to let him sort of summarize Amendment 3, but we've also got notice that the specifications for large coastal sharks and small coastal sharks has been announced.

I think for the good of the order we need to support NMFS on their proposal. What they've done is come in and recommended a delay in the harvest to give all of us a fair and equal opportunity to harvest large coastal sharks. Instead of a January 1 start date that results in the Mid-Atlantic and North Carolina losing an opportunity, they've recommended starting large coastal shark fishery next year on July 15th, which is a great help and a very positive move on their part; likewise in the small coastal shark fishery to give everybody equal access.

Amendment 3 has some issues in it that are going to be difficult for us with the small coastal sharks. We may need to have some discussion on the blacknose issue because what that is going to do is – I think the preferred alternative is to cut the small coastal shark quota, which includes sharpnose sharks, bonnetheads, finetooths and blacknose, from around 550 metric tons down to

50 metric tons to protect blacknose sharks, which is going to result in very quick closures if the fishery starts January 1, and we're going to all lose our small coastal fishery with that drastic of a reduction.

It's a very easy fish to distinguish between others. It has got a black nose and none of the other small coastals have a black nose, and so fishermen can return those to sea. They've also proposed a closure to the gill net fishery from South Carolina southward, which is something that I know Georgia has been working for as long as I've known Georgia.

DISCUSSION OF HMS AMENDMENT 3

There are going to be some huge reductions just because of the gill net closure, so I don't know that we need to be as restrictive on blacknose, but that's going to impact a lot of us. I don't know how far north the small coastals go, but certainly North Carolina and Virginia stand to completely lose the small coastal fishery. Those are kind of some of the issues that we have here. Chris can help us with any other Amendment 3 issues, but if we want to take an opportunity to comment to NMFS I think this is our opportunity now. Pat.

MR. AUGUSTINE: To that point, Mr. Chairman, I'm chairman of the Highly Migratory Species for the Mid-Atlantic. In the last month and a half or so we had a joint meeting with the smooth dogfish and spiny dogfish, which was Red Munden representing his committee, and agreed that it would be advisable for our chairman, Rick Robins, to write a letter to HMS.

We did agree that although the decision was made, it would have been nice for the council to have had the responsibility of managing that, but at the end of the day we agreed that in view of the fact that a letter went to the Secretary of Commerce back to Rick, then from Balsinger back to Rick, I guess, and then to Alan Risenhoover, and the decision was made that it is considered a marine species of fish; therefore, it's going to reside under the Highly Migratory Species control, responsibility – I think pretty much up and down the line we agreed with all the recommendations.

Although there was some gnashing of teeth relative to the quotas you talked about, Mr. Chairman, but pretty much in line with where status of those stocks are, it was agreed we would support all of those positions. I do think it would be very appropriate for us to go on the record, agree or disagree.

Within our letter we also move forward the information we had provided here from ASMFC that ASMFC should be a partner because of the in-state waters and offshore waters. And if indeed it went to become a council stock that was being managed, it would be a slam dunk, whatever the feds said on that, that's what you get, because at the end of the day the councils can be trumped each and everytime by the regional administrator, and all you can do is complain and moan and write letters.

I think anything we can do as a body to put together a letter of concern stating the fact that you mentioned, Mr. Chairman, about the impact on some of our states and the various fisheries that they're going to be working with, and then agree to those things that we do agree with I think is being supportive of what we're trying to do in terms of managing the decline of sharks. Thank you.

CHAIRMAN DANIEL: Thank you, Pat. Anything else from anybody on this issue? Mike.

MR. JOHNSON: I had one question for Karyl. You mentioned like in the smooth dogs we're going to process them in state waters, but you said a federal permit carrier still has to abide by the rules inside the EEZ if he is a permit holder?

MS. BREWSTER-GEISZ: That is correct, if he has a federal permit, he needs to abide by the federal regulations even in state waters unless the state has more restrictive regulations.

MR. JOHNSON: Okay, I'm glad you told me because that's scary. I mean not from your part but for us allowing guys to fish, I didn't know that. You know what to do, Louis.

DR. DANIEL: Well, the guys know because they know in order to fish in state waters, if they're a permit holder, they've got to give up their federal permit in order to fish in state waters. The fishermen should know that if they're a federal permit holder, that they can't

violate the terms of the permit or else they risk losing their permits.

MR. JOHNSON: Thank you; I forgot that part, your right.

DR. DANIEL: What is your pleasure? Do you have anymore to add? We don't really have a report together. I told Chris we would handle it this way.

MR. VONDERWEIDT: I'll just point out kind of the overlap between Amendment 3 and ASMFC regulations. There is a PowerPoint presentation that was included on the CD. Karyl came here at our last meeting and gave an overview of this, so I just included it for discussion. I believe public comment period closed September 25th for this document.

The areas that overlap would be the accountability measures. They are precautionary; they close at 80 percent. The blacknose quotas would be significantly reduced. The preferred alternative would be a new small coastal shark quota of 57 metric tons with a blacknose quota of 15 metric tons. This is a reduction from a 454 metric ton small coastal shark quota in 2009. I think they were trying to achieve a 78 percent reduction in fishing mortality.

As Louis mentioned, gill nets would be closed off the coast of Florida, Georgia and South Carolina. Recreational fishermen would be prohibited from landing blacknose. Smooth dogfish, the fins would remain attached under the preferred alternative. There would be a quota for smooth dogfish, which would be the average landings from the last two years plus one standard deviation upward. I think that's it.

CHAIRMAN DANIEL: Those are some pretty significant impacts to the state fisheries. The Small Coastal Shark Fishery starts in January, and 57 metric tons of – I mean, that's been a stock that we haven't caught anywhere close to the quota since the quota was implemented. We have been giving back to that stock for as long as I've followed sharks, and now we're looking at reducing it from – I think it's about 550 down to 50 metric tons for black nose.

The likelihood is that those fish will all be caught in the southern part of the range by the end of January, and there will be no fishery

probably north of Florida. Well, seeing no interest in pursuing any comments on these issues, is there any other business to come before the Shark Board?

MR. AUGUSTINE: Point of clarification, Mr. Chairman. Are we going to write a letter; we are going to take a position on those things that we agree with or don't agree with?

CHAIRMAN DANIEL: I'm not getting a sense from the board that they would like to send a letter.

MR. AUGUSTINE: Do you need a motion, Mr. Chairman? I just think it's just not in order for us not to respond to it. It's going to have a very negative impact. Being right, wrong or indifferent is not the issue here. You have a document in front of you that we have an opportunity to respond to. We know it's going to have a negative effect on some of our states.

We could just say, well, that's okay and let it go at that. We could voice our concerns. I do know there are parts of that Amendment 3 that are good that we should be supporting. I think to have our name on the record would be appropriate. We don't have to; we can do it as individuals, I suppose, but I would expect someone will respond to that.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, my understanding is the public comment period has already closed on this. On the commission side, when the public comment period closes and we receive communications after that, our general practice is to disregard it.

CHAIRMAN DANIEL: I guess I'm wondering if we're public or partners. My understanding of the whole process is that we're partners and not public. That's just my impression of where we are.

MR. AUGUSTINE: Mr. Chairman, I would ask HMS whether or not they would accept it. If they won't accept it, then it's a dead issue.

CHAIRMAN DANIEL: Will you accept it, Karyl?

MS. BREWSTER-GEISZ: We don't ignore any comments, but I do want to point out we've received comments from many states. When we presented here in August, we received comments

and thoughts from everybody around the table at that time, and we also received comments from the South Atlantic and Mid-Atlantic Councils.

CHAIRMAN DANIEL: Well, do we need a letter to support the specifications? I don't think anybody objects. I hope there is general consensus around the table that we support the specifications as they have been released recently with delaying the opening to provide more equity in the quotas coastwide. Does anybody object to the specifications as presented? I guess if that satisfies as a consensus from the board to support NMFS, would it help to have a letter or does that suffice?

MS. BREWSTER-GEISZ: A letter definitely helps.

ADJOURNMENT

CHAIRMAN DANIEL: Okay, is there any objection to sending a letter to NMFS supporting the quota specifications for 2010? Seeing none, so ordered. All right, anything else to come before this board? Seeing none, thank you very much, we're adjourned.