

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

**Crowne Plaza Hotel - Old Town  
Alexandria, Virginia  
August 9, 2012**

**Approved October 25, 2012**

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2. **Approval of proceedings of May 3, 2012 by consent** (Page 1).
3. **Move to accept Issue 1, Option A; Issue 2, Option B; Issue 3, Option B** (Page 3). Motion by Pat Augustine; second by Wilson Laney. Motion carried (Page 5).
4. **Move to amend the main motion to select Option B for Issue 1** (Page 4). Motion by Peter Himchak; second by Thomas O'Connell. Motion defeated (Page 5).
5. **Move to approve Addendum IV as modified today** (Page 5). Motion by Pat Augustine; second by Steven Train. Motion carried (Page 5).
6. **Motion to adjourn by consent** (Page 21).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Adam Nowalsky, NJ, proxy for Asm. Albano (LA)
Steve Train, ME (GA)	David Saveikis, DE (AA)
Doug Grout, NH (AA)	John Clark, DE, Administrative proxy
David Pierce, MA, proxy for P. Diodati (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Bill Adler, MA (GA)	Roy Miller, DE (GA)
Rep. Sarah Peake, MA (LA)	Tom O'Connell, MD (AA)
Bob Ballou, RI (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Rick Bellavance, RI, proxy for Rep. P. Martin (LA)	Bill Goldsborough, MD (GA)
Bill McElroy, RI (GA)	Jack Travelstead, VA (AA)
David Simpson, CT (AA)	Louis Daniel, NC (AA)
Lance Stewart, CT (GA)	Robert Boyles, SC (LA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Spud Woodward, GA (AA)
Pat Augustine, NY (GA)	Aaron Podey, FL (AA)
Tom Fote, NJ (GA)	Cathy Davenport, FL (GA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Wilson Laney, USFWS

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

### Ex-Officio Members

#### Staff

Bob Beal	Genny Nesslage
Toni Kerns	Danielle Chesky
Jeff Kipp	

#### Guests

Sean McKeon, NCFCA	Deborah Faulkner, NRDC
Peter Burns, NMFS	Hilary Goodwin, Shark Advocates Intl.
Lewis Gillingham, VMRC	Jack McGovern, NMFS
Dewey Hemilright, Kitty Hawk, NC	Laura Cimo, NMFS
Brent Winner, FLFWC	Cheri McCarty, NMFS
Laura Bankey, National Aquarium	Delisse Ortiz, NMFS
Beth Lowell, OCEANA	Iris Ho, HSUS
Brad Chase, MA DMF	Ralph Henry, HSUS
Elizabeth Burdick, EDF	Rebecca Regnery, HSUS
Sharon Lynn, US FWS	Angelo Villagomez, PEG
Rosemarie Gram, US FWS	Joshua Bowlen, Ofc. of Rep. W. Jones, NC
Chris McDonough, SC DNR	Janice Plante, Commercial Fisheries News

The Spiny Dogfish and Coastal Shark Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, August 9, 2012, and was called to order at 10:50 o'clock a.m. by Chairman David Simpson.

### **CALL TO ORDER**

CHAIRMAN DAVID SIMPSON: Welcome to the Shark Board.

### **APPROVAL OF AGENDA**

CHAIRMAN SIMPSON The first thing we have on our agenda is to approve the agenda. Are there any changes to it? Then without objection we will accept that.

### **APPROVAL OF PROCEEDINGS**

Approval of the proceedings from our last meeting in May; are there any issues with the proceedings? Seeing none, we will consider those approved.

### **PUBLIC COMMENT**

Is there any public comment on items that are not on the agenda? I don't see any hands up. Our next agenda item is the Spiny Dogfish Draft Addendum IV for final approval. Danielle is going to take us through a review of the options.

### **SPINY DOGFISH DRAFT ADDENDUM IV FOR FINAL APPROVAL**

MS. DANIELLE CHESKY: We've rolled all this into one presentation; so if it is all right with you, we'll go through and if there are questions after each section we can stop and take them. Up for final approval today is Draft Addendum IV for the Interstate Fishery Management Plan for Spiny Dogfish. We're going to go through the sections for you.

The first part is introduction. As a reminder in February 2012 the board initiated this addendum to do two things; primarily address potential allowance of rollover greater than 5 percent of the commercial allocation as well as update overfishing definitions consistent with technical committee recommendations.

The main reason the board was addressing these two areas; the current FMP allows up to 5

percent of uncaught quota to be rolled over if the stock is above the target biomass, which is the current situation. This was seen as a buffer to incentivize to not exceed the quota and thus that small amount of quota may not be lost and can be rolled over the next year and still caught.

Any overages, however, are still paid back. There was also discussion that there is the potential loss of access to the quota when federal waters close and the state has greater than 5 percent of the quota remaining. In terms of the overfishing definition, the quota has not been based on an overfishing definition as defined in the FMP.

The board has used F rebuilt until most recently. The Mid-Atlantic Fishery Management Council updated its definition of F threshold in 2009. Updating the commission definition would be consistent with the best available science, which is the technical committee's recommendation as you will hear. In terms of starting with an appropriate F rate, the monitoring committee and the technical committee used this level to initiate discussion of where the quota recommendation should be for the board; and so having that starting point be the same place for both the council and the commission would make it much more likely that the end result would be same as well.

As a reminder, the current commission overfishing definition includes both F threshold and F target and it has to do with the number of pups per female that recruit to the spawning stock biomass. This was adopted based on the 2002 Mid-Atlantic Council Dogfish FMP. The current Mid-Atlantic Fishery Management Council's overfishing definition that is proposed in Option B for updating F threshold was adopted in 2009 as part of Framework 2.

It is an F threshold only and gives Fmsy or a reasonable proxy thereof. The corresponding specific values of that are listed. The F threshold adopted by the council and the federal government is in between the commission's current F threshold and F target. Issue 1 in Addendum IV is the quota rollover. There are three options.

Option A is the status quo which currently is a 5 percent maximum rollover. Option B would continue to allow a 5 percent maximum quota rollover with potential higher rollovers allowed

through board action. Option C would prohibit all quota rollovers without board action. All three of these options prohibit rollovers if the stock biomass is below the target biomass.

Issue 2; Option A would maintain the current definition of F threshold, which is the one pup per female recruiting to the spawning stock biomass. Option B would adopt the current definition as included in the federal plan. Overfishing would be the F rate that exceeds F threshold. There is Option C there as well.

Fishing mortality target is Issue 3. Option A is the status quo, which is the 1.5 pups per female. Option B would allow the technical committee to make a recommendation to the board and allow the board the decision to set an F target based on that recommendation or not. This could account for scientific and management uncertainty. Again, it is not a requirement and would apply to a single season only. Are there any questions on the components of Addendum IV before we move on to public comment?

CHAIRMAN SIMPSON: No comments, okay, so go ahead with the summary of the public comments.

MS. CHESKY: There are three main comments received from public comment. One was from NOAA Fisheries and two additional comments. On Issue 1 we received comments from all three parties. NOAA Fisheries supported Option A, status quo. Overall NOAA opposed any sort of a rollover.

There are concerns that larger rollovers may increase the risk of overfishing and potentially an incentive to stockpile quota if anticipated decreases are coming. It would also be inconstant with the current council plan that has been enacted. The two additional comments that the commission received supported Option B, which would be the 5 percent rollover with exemptions through board action.

On Issues 2 and 3 we received comment from NOAA Fisheries. On Issue 2 they supported Option B, which would be the update F threshold consistent with the current federal definition. Again, this would allow greater flexibility to address stock changes that may come down and is consistent. On Issue 3 the NOAA Fisheries comment supported the technical committee's recommendations to have an F target, which

would be Option B. However, there were concerns noted in terms of the process to consider that uncertainty. That was all of our public comment that we received.

CHAIRMAN SIMPSON: Questions about the public comment? Yes, go ahead.

MR. THOMAS O'CONNELL: Just a question for NMFS if you don't know, Mr. Chairman; NMFS public comment mentioned that they are moving forward with Amendment 3 to address the inconsistencies in quota management. I was just trying to get an understanding of when they expect that ruling would be finalized.

MR. PETER BURNS: Mr. Chairman, for the record my name is Peter Burns. I am with the National Marine Fisheries Service, Northeast Region. It is my understanding that the Mid-Atlantic Fishery Management Council is going to be reviewing a draft document of Amendment 3 next week at the meeting.

That does include one of the provisions of that amendment would be to do away with the split season, the splitting of the quota during the year. That would just give a flat cap of a federal quota for the year and then it would be up to the states to divide that up. What they're looking at, if they approve the public hearing document next week, is then they will go out for public comment.

I'm not sure what council's intent is or what the timing would be, but I think they have another meeting in October so they could potentially finalize that amendment at that time and incorporate it into the plan. Then at that time NMFS would start its rule-making process with the intent to get these measures in place by the start of the next federal fishing year, which is May 1, 2013.

CHAIRMAN SIMPSON: Any other questions? Okay, technical committee report.

MS. CHESKY: The technical committee reviewed the Addendum IV options. On Issue 1, just as a note, the technical committee opposed rollovers in general; but among the Options A through C provided, the technical committee supported the status quo, Option A. The technical committee was concerned about potential negative biological impacts due to that

rollovers could increase significantly in a single year.

Especially with the projected spawning stock biomass decline, they considered this a risk-prone strategy. Additionally, this would have misalignment with the federal plan potentially as well as the potential for accountability measures to be triggered if rollovers caused landings to exceed the federal quota. Finally, the technical committee felt that there was potential for excessive rollovers as there is no cap listed for the exemptions.

On Issue 2 the technical committee supported Option B, which would be the update F threshold consistent with the federal plan. Again, this would provide for flexibility and implement the best available science. The technical committee noted that the board, if they wished, could add a peer-reviewed requirement for updates in the future. Finally, Issue 3, the technical committee supported Option B, which would allow them to review the best available science each year and potentially recommend an F target to the board, which the board would have the option to adopt or not. Again, this would provide flexibility and incorporate additional uncertainty. That was it for the technical committee presentation.

CHAIRMAN SIMPSON: Any questions on that report? David.

#### **DISCUSSION ON FINAL ACTION ON DRAFT ADDENDUM IV**

DR. DAVID PIERCE: Okay, just to make sure I understand the technical committee's recommendation on Issue 3; even though the federal government does not have an F target, it only goes with threshold, the technical committee is recommending that ASMFC adopt an F target?

MS. CHESKY: I was not at the technical committee meeting, but from my reading and discussion with folks, they're not recommending that the board adopt an F target but adopt the option to have an F target. That decision would still be made by the board each year whether or not to set an F target based upon the available science that the technical committee would review and make a recommendation to the board on whether or not an F target should be set and at what level. This would still allow the board to

set an F target or not set an F target, but it would retain that authority.

CHAIRMAN SIMPSON: Other questions? Okay, Danielle is also going to give us the AP Report.

MS. CHESKY: The advisory panel held a conference call. Eric Brazer from the Cape Cod Hook Fishermen's Association was the only individual on the call. On Issue 1, on the rollover, the advisory panel report supports Option B, which would be to allow the 5 percent rollover with additional exemptions through board action.

The AP noted that rollover is only allowed when the spawning stock biomass is above the target, so there is no threat of overfishing. Also, this would allow flexibility when scientifically justified to minimize year-end overages as well as underages in terms of allowing that flexibility for management.

On Issue 2 the advisory panel supported Option A, which would be the status quo F threshold. The advisory panel felt that Options B and C were not clearly distinguished from each other. In the concept of supporting alignment with the federal plan, there was certainly support, but there was insufficient information they felt to define what is a reasonable proxy or best available science and whether a peer review standard would be required.

Finally, on Issue 3 the advisory panel supported Option B, which would allow the technical committee to review the best available science and recommend to the board on the option of an F target. The advisory panel noted that this would support regular and frequent reviews of the science available on spiny dogfish as well as the advisory panel encouraged to have a transparent technical committee process. That was it.

CHAIRMAN SIMPSON: Any questions on the AP report? Go ahead.

MR. PATRICK AUGUSTINE: **If you're ready for a motion, Mr. Chairman, I would move that we accept the options and tell what they are to move forward to get a second on, so we can then go forward with the whole issue. I recommend we accept under Issue 1, quota rollover, Option A, status quo; Issue 2, fishing**

**mortality threshold, Option B as recommended; and Issue 3, fishing mortality target, Option B. I will stop with those, Mr. Chairman, if I can get a second.**

CHAIRMAN SIMPSON: So you're going to take all three on at once?

MR. AUGUSTINE: I think so, Mr. Chairman. I thought the advisory panel was very articulate in what they supported. There was only one exception to what the technical committee discussed and recommended, and I think the technical committee did an excellent job of defining why we should stick with quota rollover as being status quo. I think to be in accord with what the National Marine Fisheries Services and I believe the Mid-Atlantic Council are doing, it would be in order to do that. That is my rationale, Mr. Chairman.

CHAIRMAN SIMPSON: Okay, thanks, Pat. Is there a second to that motion? Motion seconded by Wilson. Pete, discussion on the motion?

MR. PETER HIMCHAK: **I would move to amend the motion to include under Issue 1, Option B, and keep the rest of the motion intact.**

CHAIRMAN SIMPSON: Okay, is there a second to that motion to amend; from Tom O'Connell. Discussion on the motion to amend from Tom.

MR. O'CONNELL: Just for my reasoning; I respect the perspectives of NMFS and the technical committee on the quota rollover option, but I think there is a safeguard in regards to only considering it when we're above the spawning stock biomass target. This would just provide the board with some flexibility.

Hopefully, NMFS would move forward with the alignment that will avoid having the issues that we may have had in Maryland last year. I think that this is just going to provide the board with flexibility. If the issue arises, we can look at what the issue is and what the biological impacts are and what the problems would be with misalignment, but I would hope the board would consider moving this forward.

DR. WILSON LANEY: Mr. Chairman, I'll vote against the motion to amend in order to support the technical committee's position on this and

just remind the board once again that one of the reasons I think the technical committee is trying to be precautionary here is that we do have that seven-year period of low to none recruitment that is going to be moving through the stock, and we're going to have to start reducing quotas. When you start allowing rollovers, you increase the issues that are associated with your going over your quota.

CHAIRMAN SIMPSON: Any other comments on this motion to amend? Okay, I'm not seeing any. Do you want to take a moment to caucus then on this motion to amend? This is a motion to amend the main motion to select Option B for Issue 1.

(Whereupon, a caucus was held.)

CHAIRMAN SIMPSON: Okay, are you ready for the question? All those in favor please raise your hand, 7 in favor; opposed, 9 opposed; any abstentions; any null votes. **The motion to amend fails. We are back to the main motion, which Issue 1, Option A; Issue 2, Option B; Issue 3, Option B. Anymore discussion on this? Louis.**

DR. LOUIS DANIEL: Would I be out of order making a motion to do an alternative to the 5 percent? Did we get any comments from the public comment on 10 percent?

CHAIRMAN SIMPSON: On the maximum quota rollover? Yes, please.

MS. CHESKY: We didn't get any specific comments on an additional percentage. The two comments that came from the public encouraged allowing as high of a quota as possible for spiny dogfish and encouraging to allow that rollover and the quota to not be lost; but there are no specific numbers on it.

CHAIRMAN SIMPSON: I'm looking now at the range that we took to public hearing, and Option A is not exceed 5; Option B is 5 percent maximum with exemptions through board action; and Option C is prohibited without board action. I'm not sure an explicit rollover in excess of 5 percent is in the range of what was taken for public comment, so I think it would be out of order.

DR. DANIEL: Okay, I was afraid of that.



CHAIRMAN SIMPSON: All right, so we're still on the main motion; is there any other comment on this? Then take a moment to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN SIMPSON: Ready for the question? All those in favor raise your hand, 15 in favor; any opposed, 1 opposed; any abstentions, none; any null votes, none. **The motion passes.** We don't have to vote on that again because it is the main motion. Danielle reminds me we do need another motion and that would be to approve the addendum as the final selections were made today. Pat.

MR. AUGUSTINE: Mr. Chairman, **I move to approve the addendum and move to the ISFMP for final approval as amended today.**

CHAIRMAN SIMPSON: The second part we don't need.

MR. AUGUSTINE: Okay, just do it to the ISFMP Board and approve.

CHAIRMAN SIMPSON: This board approves – once we approve it, it is done.

MR. AUGUSTINE: Okay, fine; move to approve.

CHAIRMAN SIMPSON: That motion was by Pat; second by Steve. Okay, are you ready for the question, then? The motion is move to approve the addendum as modified today; motion by Mr. Augustine; second by Mr. Train. All those in favor raise your hand, 15 in favor; opposed, 1 opposed; abstentions; null votes. **The motion passes.** There is nothing we need to discuss on the compliance component because there is nothing that require state regulation changes, so we're good there. David.

DR. PIERCE: Mr. Chairman, next on the agenda is the issue of quota overage for the fishing year 2011/2012. You all have in your binders or your disk a memo from me to the board, dated July 23<sup>rd</sup>, and it is a relatively short and succinct letter describing an unfortunate situation that has arisen, and that is we have unreported landings in Massachusetts for that fishing year of around 2.2 million pounds.

The memo describes how that came about and what the Division of Marine Fisheries has done to correct the situation. As noted in that memo, during that past fishing year we had a non-permitted transportation company in Massachusetts that purchased a very significant amount of spiny dogfish directly from fishermen.

That product was then shipped and sold to a Massachusetts permitted processor. The transportation company was operating without state or federal permits, so none of the fish got into SAFIS. Obviously, our agency takes very seriously this sort of offense. Frankly, our agency spends quite a bit of time tracking landings and determining the extent to which our actual landings are accounted for.

Through good investigative work done by our statistics program, they uncovered this rather significant overage, which we're reporting to the board, and, of course, it has been reported to the National Marine Fisheries Service. Under Massachusetts regulations it is the responsibility of the primary buyer and not the secondary buyer to report purchases.

Now, to deal with the fact we had this reporting problem, we have made changes so now fishermen must record the permit number of the dealer they sell their landings to on their trip-level reporting form as Massachusetts has trip-level reporting now. We have had it for a few years, and that would be done as opposed to putting just the dealer's name down; and then wholesale truck dealers acting as primary buyers are prohibited from buying quota-managed species.

We've taken action; we discovered the overage; we have reported it; we have corrected the situation. We had excellent cooperation from the processor involved; all the processors actually who were quite concerned about the problem and the unreported landings. They have been very serious, of course, in terms of reporting properly, so this caught them by surprise, too.

This matter is under investigation, so I really can't provide too many more details because the investigation is not yet completed. Earlier on today I discussed with the Chair what the consequence of this overage is relative to the quota that we're working under now; what about the federal quota; does this overage get deducted from the federal quota.

The Chair, working with staff has investigated this, so I look forward to your conclusion, Mr. Chairman, as to what now will result as a consequence of this unreported landings and the overage of 2 million pounds approximately that gets added on to the other overage that we were already aware of that was not specific to Massachusetts. It was just additional overage.

CHAIRMAN SIMPSON: Thanks, David. It is a very good summary and the letter you provided us was great I thought in detail and response from the Commonwealth was spot-on. It was great that you were able to detect it and bring it to our attention and correct the issues. I think there are a couple of things here I'm probably going to go back home and make sure we've got in place to prevent the same sort of thing. Any questions for Dr. Pierce on this?

The situation is that after talking with our federal counterparts that the federal plan does not require payback at this point in the fishing year where this occurred. However, Addendum III to the ASMFC plan does require a payback in the subsequent year. It is specific to that. This is the subsequent year. It will be paid back by the region.

Where we stand now is that in this fishing year the overall quota is 33 million pounds, quite high. The northern region is 58 percent of that, so 20 or 22 million pounds, something like that, and the landings to date in the northern region are about 5.9 million pounds. Most of the product as far as I'm aware flows through processors in Massachusetts, so they have a pretty good sense of what is out there, too.

That sense is that landings are lagging behind, so taking it out this year should not be a painful process. Even though we're midyear, there is still, I think, sufficient time to advise the fishing community of the change and it shouldn't cause any terrible problems. The good thing is it will keep us on – you know, it will maintain consistency for next year between federal and state quotas.

When I started looking into this, I thought, oh, geez, we're going to – after we did all this work to get on the same page, we're going to have a disconnect again, but if we take care of this year that goes away. Is there any discussion on this? Pat.

MR. AUGUSTINE: Again, it does bring an economic issue to the table because now we have one of the parties to our region had the benefit of 2 million pounds. I don't care if it is a hundred million pounds or ten pounds. We've tried to keep on balance here. The real question is how do the other members of the region deal with it?

Do we just accept the fact because we've got a very large quota and it can be absorbed without any major penalty? The fact remains that one of our sister participants does have an advantage of 2 million pounds of whatever, whether it is a penny a pound or ten cents a pound or a dollar a pound. I think that is the greater issue.

I thought we had a white paper that talked about possible penalties, were they money or were they numbers of fish, a couple of years ago. Didn't we have a white paper that addressed that where a state inadvertently or on purpose went over a quota? Did we just drop into a crack somewhere or should we be talking about that in this particular issue?

I am not throwing stones at Massachusetts. It was something they had no control over. They found it and they reported it. I thank them for doing that and bringing it to our attention. I thought we had something in place that we could deal with that. Can you help me with that, Mr. Chairman?

CHAIRMAN SIMPSON: I'm not familiar with the white paper, but the allocation is to the region level. It is a regional allocation and it needs to be dealt with as a region. We have regional management I believe in other species. Even if it is not formal, we informally do it, and the region owns it. Scup recreational allocation is regional and we don't at the end of the year look to see whose number was higher or lower; it's the region. There is no further scrutiny if the region goes over; that then we figure out who in particular owns it. There is nothing like that.

MR. AUGUSTINE: Follow up, Mr. Chairman, so assume that inadvertently this occurs again for the next two or three years in a row, so I guess the other members of the region just turn the other cheek and let it go at that? Do you follow what I'm saying? I do know that Massachusetts has taken some very, very strong steps to try to assure this doesn't happen again, but it is something I think we have to keep on the table

and not let it just say, oh, we've got the fish, whether it is spiny dogfish or what.

What if it happened to be striped bass and rockfish? Look at what the Chesapeake people went through, Tom O'Connell and his group. Look at what the net result was there. Again, it is an issue for all species of fish. In this case we want to get rid of those spiny dogfish, but the reality is there is a disconnect of 2 million pounds. Whether we look at this in the future or not or just say it is okay, I think that is the issue I'm talking about. If no one else wants to raise it, so be it; I'm an old guy and it is what it is, and I just make noise, but I do think it is something to consider.

MR. BURNS: Mr. Chairman, just a point of clarification. Even though the federal plan right now does not require any overages to be paid back, that won't come into effect until this fishing year; so any overages in 2012 would be taken off the 2013 quota. But the one thing to keep in mind is that the monitoring committee is going to be looking at any kind of overages that take place and they're going to be using that when they're trying to work out what the quota will be for the following year. So even though that is not going to be a hit off whatever quota they come up with, it is still going to be part of the mix when they're coming up with the quotas.

CHAIRMAN SIMPSON: Right, the total landings are accounted for and used in the updated assessment and that will roll into quota. I don't think we need to entertain that any further.

MR. DOUGLAS GROUT: Well, the way I look at it from my neighboring state to the south, I think they have addressed the issue and they've taken strong step. If these 2 million pounds had been landed and report legally, it would have meant that the quota would have been taken quicker. We would have shut down maybe a couple of weeks earlier.

CHAIRMAN SIMPSON: Any other comments on this subject? I don't think we need to – Jim, go ahead.

MR. JIM ARMSTRONG: Jim Armstrong, Mid-Atlantic Council staff; Chair of the Dogfish Monitoring Committee. We will consider this a source of management uncertainty; so it wouldn't be a pound-for-pound thing or anything

in recommending a quota for the following year, but it would be a source of information about how good a grasp we have on control of landings.

CHAIRMAN SIMPSON: Right, thanks. Okay, the next agenda item then is the technical committee review of New Jersey's Smooth Dogfish Request, and Brent is going to handle that for us.

### **TECHNICAL COMMITTEE REVIEW OF NEW JERSEY'S SMOOTH DOGFISH REQUEST**

MR. BRENT WINNER: I would like to begin by just running a quick background of the smooth dog fishery. It is a high-volume fishery, primarily concentrated in the northeast Atlantic states. It is driven by a meat product which is marketed to Europe and, of course, fins are a big part of this fishery as well.

In reaction to our recent Coastal Shark FMP, back in 2008 the fishery expressed concern that maintaining a quality product for their shipping would require at-sea processing and removal of fins. They also had mentioned that the 5 percent fin-to-carcass ratio was inappropriate for their fishery or at least for that species.

In lieu of that, the technical committee and, of course, the board finally passed Addendum I in 2009 related to our Shark FMP which provided a limited exemption for smooth dog fishery only. March through June they were allowed to remove all fins and then July through February the dorsal fin must remain attached.

That is primarily if you look at the graph in the lower right hand – this is data from North Carolina – it is basically due to temporal and spatial overlap of those species and when the main core of the fishery is active. At that time, also, the addendum reaffirmed the 5 percent fin-to-carcass ratio, which was in line with the Shark Fin Prohibition Act which was passed in 2000.

The request that we received in March of 2012 was New Jersey would like removal of all fins and processing at sea year round. The technical committee met in early June. We saw basically this request was tied to two main issues related to the Shark FMP. One is shark identification and then, of course, prohibition of finning.

In relation to species identification, the primary concern is the overlap between juvenile sandbar sharks, large coastal, heavily impacted in recent decades, with the smooth dogs. Over some discussion in the committee, we believe that there are means to tell these two apart even if the fins are removed properly.

The smooth dogfish; the second dorsal, which is D-2, is nearly the same size as the first dorsal, as you can see in the picture, and also the second dorsal is much larger than the anal fin. In relation to a juvenile sandbar, which is located in the bottom right, typical for most carcarinids, the first dorsal is much larger than the second dorsal, and the anal and second dorsal are similar sizes.

So even if those fins are removed, if their supporting structures are in place, you could identify these at the dock between the species, which would prevent landings of large coastals. With that said, proper shark identification and training would need to be implemented by all states through law enforcement to make sure that you aren't getting sandbar pups landed.

The technical committee strongly opposes any at-sea processing if the fin/carcass ratio is set too high; the fear here being is that an inflated carcass/weight ratio may open loopholes for finning of other species, especially large coastals. In relation to that issue, the existing Coastal Shark FMP and the Shark Finning Prohibition Act of 2000 have established the 5 percent fin-to-carcass weight rate ratio for all species. The smooth dogfish fishery stated that 5 percent is too low for that species.

Unfortunately, there are no robust estimates that exist for smooth dogs. Cortes and Neer in 2006 published a brief paper where only on an N of 6 we had the 3.5 percent fin-to-carcass rate ratio, which is lower than the 5 percent that is existing. Some subsequent data from trip tickets – and this is commercial fishery-dependent landings – it ranges from 9.8 to 10.4 percent.

The pending Shark Conservation Act is proposing around a 12 percent, so you can see there is a certain amount of variability between these different estimates and none of them are really solid. The technical committee basically recommends that this be dealt with a proper scientific study. We met again via phone call in July and Massachusetts, New Jersey, North

Carolina and South Carolina have all agreed to, on their own, participate in this.

The most important is, of course, that standardized methodology between the states so we come up with a really solid estimate. Some of the methodologies that we're going to standardize is how to cut the fins. There is a consideration variation between states, even between fish houses within a state; also how to clean the carcass can greatly affect the overall fin-to-carcass rate ratio.

Which fins are included in the set needs to also be documented and determine at least standardize for the study and then we can adjust on the other end. Some states don't harvest the second dorsal; some do. Some will harvest the tail, and it is still suspect whether that is included in the actual fin ratio.

Additional parameters that we'll record will be fish length, total length, sex, total weight, area of capture so we can properly model this. The ratios will be calculated on individual fish and not entire landings as has been reported in some of the memos by North Carolina. Then we can actually model the variability across several different parameters and have a really good solid estimate.

We estimate this will take about three to six months to pull this together since it is summer right now and the landings are fairly low. The technical committee does see the processing of smooth dogs is a feasible means as long as we have adequate training of law enforcement and we set an appropriate fin-to-carcass rate ratio based upon this pending study, which we will think will take about three to six months. Thank you.

CHAIRMAN SIMPSON: Great, thanks, Brent. Are there any questions for Brent? Pete.

MR. HIMCHAK: Just a point of clarification, Mr. Chairman; it is called the New Jersey Proposal because the idea originated from about 20 gill netters out of Barneget Light. They essentially asked the question is it feasible to remove the first dorsal fin after July 1<sup>st</sup>. This would apply to the entire smooth dogfish fishery on the Atlantic coast.

I think the technical committee has done an excellent job in setting the terms under which

this could proceed through an addendum in the future. We have a lot of work to do and they have a pretty good plan. When the initial petition for this removal of the first dorsal came up in March of 2012, I brought it up at the May board meeting.

It is not a simple issue just based on identification but to do the ratio is critical because we don't want loopholes to bring in other shark fins. If it's the pleasure of the chairman, I would suggest that – and maybe I'm precluding some questions here or maybe I'm out of turn, but I would suggest holding off on any addendum on the first dorsal removal until the technical committee has the data to tell us that, yes, we can put it in the addendum.

Then we could have it in place for 2013. We're talking about removal of that fin July 1<sup>st</sup>, so we have plenty time, let them do the right study and then we'll bring it up again probably at the winter meeting.

CHAIRMAN SIMPSON: All right, great, Pete; I think that makes sense. Any other comments or questions about the review that was provided? Toni.

MS. TONI KERNS: If you want to have an addendum approved before July 1<sup>st</sup>, you would need it approved at the May meeting. You may need to start your draft prior to the February – you'd have to approve a document for the February meeting for public comment; just to make sure that is clear.

CHAIRMAN SIMPSON: Right, could we have the information from the technical committee by the annual meeting and initiate an addendum then, potentially?

MR. WINNER: What date is that?

MS. KERNS: The week of October 22<sup>nd</sup>.

MR. WINNER: I'd have to get back to the states that are actually participating in the study. We want to make sure that we have sufficient numbers of sharks from all the different states, and we're still in the process of just standardizing the methodology so our efforts are not in vain.

MS. CHESKY: If it would be possible, Mr. Chairman, we could potentially be working on

the draft addendum after the technical committee has analyzed the data and have something available for the board at the February meeting potentially. That would provide you with a draft to look over at February. We would just probably be bugging a few states for some plan development team members who might actually be some of the survey folks, if that would be all right with the board.

CHAIRMAN SIMPSON: That sounds like a plan to me. Any other questions or comments?

DR. DANIEL: I support what the New Jersey Proposal is attempting to do here. It just boggles my mind that there is this identification problem. That just doesn't exist in my opinion. We ask duck hunters to distinguish between a hen bluebill and a hen redhead at six o'clock in the morning, and in hand our professional law enforcement and fishermen can't distinguish between shark species that are as different as a juvenile sandbar and a smooth dogfish.

I think we're wasting a lot of time. I'm also very discouraged by the comment that there is not good information out there on this. I don't know that much about biology, but I can't imagine a smooth dogfish changes his fin-to-carcass ratio as he swims from South Carolina to North Carolina. Now, maybe if we're finning them, there would be a problem.

We've got the data so I would say go ahead and move forward with this. If the new information that I guess we are going to waste our time doing is going to show the same thing, maybe I'll be shown wrong at the annual meeting. I just can't imagine that – we had a guy that cuts probably more smooth dogfish than anybody in the country come in and do these cuts. The consistency there is critical. But that is why you saw that range that you saw, you're not going to see a lot of the differences.

CHAIRMAN SIMPSON: Thanks, Louis. Anything else on this agenda item? Okay, our next agenda item is to discuss the State Shark Fin Possession Prohibition Bills, and Rebecca is going to get us started on that.

## **DISCUSSION OF THE STATE SHARK FIN POSSESSION PROHIBITION BILLS**

MS. REBECCA REGNERY: I just wanted to thank everyone for giving this opportunity to talk about State Shark Fin Bans and to clarify their intent and the goals and what they will do and what they won't do. I'm with the Humane Society International. I'm the deputy director of wildlife for Humane Society International.

We are the international branch of the Humane Society of the United States. I'm here because shark finning is a global problem and not a U.S. problem. As you know, shark finning is banned in the U.S. but still happens in many other parts of the world. I would like to start by clarifying something that is very important.

This legislation is not about management or enforcement of U.S. Fisheries. It is not about banning or enforcing our shark finning ban in the U.S. We believe that the ban in the U.S. is strong and we thank you for your help with that and your work in the Atlantic States to ban shark finning.

It's about the U.S. market for processed shark fins and how that helps fuel the global demand for shark fins and drive the practice of shark finning abroad. It is impossible to determine the origin of a shark fin by looking at a fin that has been processed and is being sold in the United States. It could be from a shark that has been finned or overfished or from a threatened species. All of that is perfectly legal to sell in east coast states right now.

The legislation that has been proposed in some of the east coast states and it has passed in some of the west coast states prohibits the sale of a detached or processed fin. It has no impact on the sale of legally harvested shark meat. It only prohibits the sale of detached fins that are sold separately.

Some background on this; I think we're starting from a common ground. From what I heard on the call that I was on last week, everybody in the room is against shark finning and everyone realizes that it is a serious problem. The U.S., as you know, banned shark finning in 2000 and strengthened the ban in 2001.

HSUS and HSI and others have worked for years on shark finning around the world. Still many countries haven't banned shark finning. Where shark finning is banned, a lot of the bans are weak and difficult to enforce. Just one example in Costa Rica, Costa Rica was one of the first countries to ban shark finning. They first banned shark finning using a ratio.

They saw there was a lot of cheating; there was a lot of finning going on in spite of that ban. Then they passed a ban calling for fins to be landed attached to the sharks. What they saw next was sharks coming in literally with hundreds of fins tied to them; well, the fins are attached. Then they said, okay, fins have to be naturally attached. It took a while for them to get that really strongly enforced.

Now what they're seeing is that fins are being landed in Nicaragua and trucked into Costa Rica because the shark finners are established in Costa Rica. They have the infrastructure there, so they're still getting around that ban. As you know, there are strong incentives to fin sharks; I don't have to explain to you why.

In most parts of the world there are little if any consequences for finning sharks. In 2010 a forward-thinking state senator in Hawaii introduced a ban on the sale, possession and trade of shark fins in Hawaii. We helped worked with that once it was introduced. To be honest with you, I didn't think it had a good chance of being adopted, but there was so much support from local groups and local communities that it was adopted.

Since then there has been a groundswell of support for similar legislation in the U.S. and Canada and even in China. This legislation is supported by a wide variety of non-profits, legislators and the public. We all share the same concerns and the same goal of no longer willing to play any role in providing a market for shark fins.

Most of the public doesn't want to participate in the shark fin trade due to welfare as well as conservation concerns. A 2011 poll found that 76 percent of California voters of all types supported the ban on shark fin sale and trade. This map is taken from data from the Hong Kong showing that wherever fins are obtained, most of them are shipped to Asia for processing, and most of those are shipped to Hong Kong.

Over 95 percent of U.S. shark fin imports come from Hong Kong and China. Hong Kong imports unprocessed shark fins from over 80 countries. Processing shark fin is a long, complicated and labor-intensive process. As far as I know – and correct me if you know differently, but I don't think we have any shark fin processing plants in the U.S.

I don't think anyone would be particularly keen on opening one here for a variety of reasons, including the public backlash. Also the processing method uses a lot of chemicals, which I think would probably be illegal here, I'm not sure about that, but it has caused problems with worker health safety in China.

In the U.S. and everywhere, really, we are importing processed shark fins. At the present we have no way of telling where the fin came from before it was shipped to Asia for processing and then shipped to the U.S. or anywhere else for consumption. It could come from sharks that were overfished, finned, from threatened species; we don't know.

We don't have any way to determine the origin of fins that are being sold. DNA tests can determine the species but not where it was caught or where it was finned. DNA costs, of course, aren't free and have to be done in a lab that specializes in DNA testing. Just for example, I brought a snack if anyone is getting hungry – just kidding – a can of shark fin soup that was sold in Nevada. It doesn't say where I was from.

It says it was processed in Malaysia. All it says in the ingredients, among other things, is shark's fin. If we look at the Atlantic state exports, looking at data from Atlantic states, only 1 percent of total shark product exports by dollar value are fins. These are exported to China and Hong Kong. On the right you see the same figures by weight.

Imports, 76 percent by dollar value are shark fins, and 21 percent by weight are processed shark fins in the Atlantic states. We all know about the proposed rule for the Shark Conservation Act and that it includes a provision for the U.S. to promote shark conservation and finning bans abroad. One of the goals of these regulations is to ensure that the U.S. import market for shark fin does not encourage unsustainable shark fishing or finning.

However, I have a few points on why this doesn't quite do enough, and I'll go through them quickly. We can discuss them more later. First of all, this only applies to fishing activities in waters beyond any national jurisdiction; in other words, the high seas. Shark fishing and finning is common within coastal waters.

I'm sure you know that a lot of the species of sharks that are more common in fin trade such as hammerheads are generally caught in coastal waters. Regulations specify that other countries must have measures that are comparable to those in the U.S. Our finning ban does not require that all sharks are landed with fins attached.

We have an exception for smooth dogfish fins to be removed at sea. Now, I don't think that smooth dogfish are being finned. That would be irrational since the smooth dogfish meat is valuable and why would anyone throw it away? But, when we're calling for comparable measures in other countries, this gives other countries a big loophole to allow them to continue finning sharks. They can claim the same thing and there is no way for us to dispute it.

The rule would only categorize and restrict products from countries practicing unsustainable fishing practices. Most of the fins imported from the U.S. are from China and were exported to China, so we have no way of telling from the imports from China where those fins were caught; if it was from sharks that were finned; if it was from sharks that were overfished.

Of course, for us, the Humane Society and for a lot of the public unsustainability is only part of the problem. Finning is objectionable on animal welfare grounds as well. To conclude, I'm confident that working together we could find a way to accomplish our goal in a mutually satisfactory way. Our goal isn't to affect the U.S. Fisheries.

We have been able to work on the west coast with the states and with the Department of Natural Resources or Fish and Game on to ensure that these bills do not affect the fishing industry. States are better equipped to know the market and to know how to address the market in that state and address the fisheries to prevent sale of fins from finned or overfished sharks without affecting our fisheries.

I don't see this as an insurmountable goal. I don't see us as being in direct opposition on this. It is not the goal that we're conflicting on; it's only the method. I hope that we can work together to find a way to accomplish the goal without a negative impact on the fishing industry in our states. Thank you.

CHAIRMAN SIMPSON: Great, thank you, Rebecca; thanks for coming today and sharing this with us. The second part of this agenda item is to allow or to hear from Dewey Hemilright from North Carolina. Dewey is a Coastal Shark AP member and I wanted to offer him a chance to provide us some insights on this issue as well.

MR. DEWEY HEMILRIGHT: Thank you, Mr. Chairman. My name is Dewey Hemilright. I'm a commercial fisherman from North Carolina. I thank you all for allowing me the time to come up here to speak about this. Also, I had some comments on the technical committee paper, and I would just like to address a few things and bear with me, please.

Shark fins have different ratios, and I'm talking about the technical committee's preliminary paper. I used to shark fish for about 14 or 15 years and now I haven't done it in the last three years because of the regulations and stuff like that. Here in the U.S. the fisheries have been where you start out with a 5 percent fin-to-carcass ratio.

That was based on a study done in 1993; large coastal sharks; aboard a research cruise where they did 15 or 20 sharks of different sizes and they put them together and they come out with a ratio. On sandbar sharks they had a high of 6.1 percent and they come out and said we'll say 5 percent.

Well, what got me interested in not only that but in the shark fin ratio things is a few years ago a fellow fisherman got charged with finning sharks because his percentages was over 5 percent. And so I'm like, well, darn, my fin ratios are over 5 percent, and I said I can't handle a \$10,000 fine. So, I went with the state of North Carolina and I researched all the information that was there.

There was some information from Mr. Winner where he had done some studies on sharks, sandbars, carcass in them and stuff. There was other reports out there just beside the 12 – I think a total of different people had something like 37

sandbars that had done. I went and approached my state and said, hey, look here – but there was no pictures that I had seen to look at these studies that come up with these ratios.

So I went to my state and asked Mr. Daniel, you know, can we get a biologist here and we take some sandbar sharks that we catch and we'll clean them like we process them, but we will do it at the dock. It won't be on a boat. We will process them, take pictures, you know, fin weights, lay everything out so you can see, you know, and to come up with what the idea is.

And something about with the fin weights; you can leave a little bit of meat on a fin and it puts your weight way up, and that doesn't mean that you finned a shark. I think over a few weeks I did – well, in cooperation with my state, we did 32 sandbars or 31. It has been a few years so it is kind of mixed me up on the time schedule there.

But we did them and we took pictures, laid them all out. It was time-consuming and stuff like that. There were some ratios from like anywhere from like 5.9 percent, 6.9, and 7 percent. What that showed me – and when we looked at it, it was mainly sandbars we did – well, just sandbars; there might have been a few blacknoses; we did three or four.

It showed how by leaving a little bit of fin on the meat, your ratio goes up if you clean the carcass a little bit different, but I understand you have to have some type of legal mechanism to give you an idea of what a fin ratio is so you can – for enforcement purposes. I understood that. So, that being said there, it showed that 5 percent that they come up with for sandbar sharks was – well, it had a lot of variability there up to a certain point.

Continuing on to the smooth dog issue, about the fin ratios, in the Shark Conservation Act, if that would have went through as written, it would have meant that we couldn't have processed – well, the National Marine Fisheries had something that was going to be where we would have to not clean the shark and – well, not process it all the way and throw half our fins over because it would be on a smooth dog fin, it's over 5 percent, so we would have had to throw half the fins over.



So, when that Conservation Act come up and I looked at it, I was like, man, we're going to have to throw half the fins over, you know. So I went to the state of North Carolina and we got our trip ticket data. We looked at that data and it shows here in the memo, you know, it was like around 10 percent.

Well, it clearly showed, you know, well, they said, well, you know, that could have been something else mixed because it appears that the – you know, it wasn't all observed together. So then I went and got some fish sent down from a dealer in New York and went with one of my state people so they could show the credibility of it.

I think they cleaned about – I didn't do it; another fisherman did about 15 sharks and it was right in line with that. So, as this Conservation Act – and I'm hurrying up – as this Conservation Act is going on, I start getting calls from Pew Charitable Trust and different ones about, hey, you know, what can we do about this – well, first of all, I went to my senator.

I ain't used to that kind of stuff but I went down and I said, hey, look here, if this goes through, it is going to hurt us. Cleaning a smooth dog is labor-intensive. It is important to North Carolina. We catch the most and then Virginia is next and different things, so it is important to us economically; small boats, labor-intensive. We ain't trying to make no loopholes.

And so I went to him and I said, hey, look, you know, what can be done here because the science our state has – our fishermen has – and not only that, when you had passed the Atlantic States a couple of years ago, I said we have all this information and what can we do here? So he put a hold on the bill.

I start getting calls from Pew, Costa Rica. I knew something was going on if I'm getting all these calls. I'm just a fisherman in North Carolina. You know, what can we do here and I said, well, there is nothing else we can do; the line is in the sand. We need to be able to process these sharks and do his stuff.

At the eleventh hour – and I'm hurrying up – the eleventh hour the author of the bill, Senator Kerry, attached it to a groundfish bill, and then all of a sudden we really started getting some phone calls, because he was holding up the

groundfish bill for Canada and the northeast; and we said, hey, wait a second, all we want to do was our science through my state fishermen and whatever else is showing that this is what it is; we want to be able to exist.

You know, we'll have to throw the sharks over and the fins over and not process. You know, it is labor-intensive; you just can't clean up a shark, you come to the dock, unload, and hang out and at midnight and redo the things. It don't work that way, people. And so at the eleventh hour negotiations, however they work, it's like, well, suppose we just exempt North Carolina and Virginia. And I'm like, well, I ain't signing off on that; that ain't right, you know, just sit there and just get two states.

I said everybody needs this because the science is pretty much the same all up and down the coast. And so, you know, I said I ain't going to pick two states. New Jersey and everybody else up and down the coast need this. So I gave the thing and said, you know, the fin rate might be 11 percent. It ain't trying to cause a loophole of being 1 percent.

Most times when you catch smooth dogs, you're not catching other species of sharks along with it, generally; not that you might not, but you generally are not. So, the crowd gets together, whoever negotiates and talks this stuff over, you know, and it is like, well, about this? I says is this what it says, you know, because I don't know all that stuff, but I knew what we needed.

And so the eleventh hour they gave us the exemption; they gave it all up and down the coast the exemption and that allows us to continue fishing and the method we have been fishing and not to cause no loopholes; clean the shark, process it; here is your fin ratios; and exemption was from zero to 50 miles, from Maine to Florida.

A lot of the other states down south don't have much smooth dogs and a lot of states up north don't have much smooth dogs. But it allows us to continue working in our jobs, and it is important to our communities and to other fishermen. And so as far as the smooth dog issue, the percentages, I think that the technical committee can look at doing some stuff, take some pictures, clean some other sharks, and I think you're going to come in line with that, looking at what the ratio is, 10 or 11 percent.

If it's 11 percent, that's fine; if 12 percent is too high, but don't go penalizing somebody because he cut a little too much off or something different. When you put them fins in a basket, it is like putting a hundred pennies in a basket; and then you can put a couple of fifty cent pieces; and you rub your hands through there and you see that.

And so it is important; we've got to have these fisheries that we just, you know – and it ain't trying to create loopholes. We need these fisheries and sustainability. Addressing to the Humane Society and their language in some of these bills and different things, what got me interested – well, not interested but when I read the language from New Jersey, I got to reading that language and I'm sitting there like where in the heck did they come up with this stuff from, you know, because it was almost like Ripley's Believe It Or Not saying that the blacktip shark is 93 percent decline or 99 – I might not have got my numbers right, but it was astronomical high.

If you're wanting to come somewhere – and I don't know who wrote the language all up and down the coast in this stuff, but come with face value with facts; because as fishermen we don't have the opportunity to come before boards like this to address you because most times we're fishing.

A lot times you might not have that fishery in your state, but it's still important to other states. So, I understand the language that it's written. I do believe a lot of it is to harm to the U.S. fishermen. It's hard for the U.S. fishermen to have any control on what is happening in Taiwan, wherever else, the fin trade and everything else. To make a long story short, don't put the U.S. fishermen out of business and our stuff.

You have been proactive in a lot of things you've done here in the Atlantic States by allowing the processes at sea and doing things. There are other things that can be worked on as far as like we haven't had an advisory panel meeting in a few years looking over this technical committee stuff on fins.

That would help a lot, because all this language of Ripley's Believe It Or Not that is out there, you know, we don't need that stuff for fishing. I appreciate your time, but there is a lot more knowledge that is out there as far as the shark

fins and ratios, but it ain't to create loopholes for the fishermen to do something different.

I mean, I couldn't handle no \$10,000 fine for something. Ain't none of us all perfect but don't be penalizing us. That is how that Shark Conservation Act got written for the smooth dogfish fishery, and it is what it is. If anybody has got any questions, I'll be more than glad to answer them, and I appreciate you allowing me to speak. Thank you.

CHAIRMAN SIMPSON: Thanks, Dewey; we appreciate your taking the time to come up and provide your insights. We have got a couple of minutes for questions and then we'll break for lunch. Pat.

MR. AUGUSTINE: I participated in the HMS Advisory Panel when the issue came up about the 5 percent, and Dewey was right on target. It was during that period of time when one of your fishermen had been nailed with this \$10,000 fine. Again, through his efforts it appears that we're moving in the right direction and hopefully the technical committee will look at the actual weight of those.

But my point I would like to spend is on this report that we just listened to and the presentation by our guest. It just seems to me that there was a lot of, excuse the expression, innuendo and my opinion statements in that. One of the statements was it is not a U.S. problem, and yet the efforts of either the Humane Society and other groups is to go ahead and make it a U.S. problem by banning the sale or possession of shark fins in the United States.

I may stand corrected, but I don't think I will be, at ICCAT there had been an overt movement to have all member countries' participants abide by and live with a no-finning ban. All the regional fishery management commissions around the world, international, there is movement in that direction. Yet we've heard some statements that allegedly are true that lead us to believe that we have to ban finning for whatever the purposes are.

In my humble opinion this is another attack on the U.S. economy and commercial fishing. I'm an advocate of species protection and I'm an advocate of making sure that our fisheries are going to be sustainable forever. My biggest concern is that here is another movement to

eliminate or ban products that are legally being harvested in the U.S.

The way it sounds is that we do have numbers of fishermen that are finning, and I think that is a false statement. We have not seen any proof of that. In listening to commercial shark fishermen for the last eight or nine years on the advisory panel for HMS that that is not the issue, it is not the truth, and yet we've having an overall umbrella statement being fed to us. Right or wrong, I sure would like to see the proof of that.

Again, before we buy into all of the innuendo and statements that allegedly are true, I think we have got to look real hard at what we accept in this presentation that was made. As you know, I am very outspoken. I believe fair is fair and right is right. In this case I believe that there is misinformation just as we have with sturgeon in our humble opinion, and I think we've got to address head-on and make sure that there is protection both for recreational and commercial fishermen and our economics.

I love that can that you have there. I see it with every product out there that you want. I love mackerel and it comes from Indonesia and Taiwan and wherever, and you have no idea when it was even produced, but I like it, and so there we are. Thank you, Mr. Chairman, for allowing me the time.

CHAIRMAN SIMPSON: Okay, now I'm exhausted and hungry, but I appreciated some of your comments. I will take two more –

MR. HIMCHAK: I will be brief.

CHAIRMAN SIMPSON: Yes, and I had Louis, and we are a little bit late for lunch. If there are a number of questions or comments, we can break for lunch and come back if there is enough interest in doing that. Is that the pleasure? Then let's break for lunch now and we'll come back and we'll take up the questions and comments.

(Whereupon, a recess was taken.)

CHAIRMAN SIMPSON: Okay, I think we'll get started again. Where we left off was comments and discussion of the fin possession prohibition bills, and I believe I had Pete Himchak up.

MR. HIMCHAK: I am encouraged that between the conference call we had and the presentation today I think a number of the state representatives have a clear understanding of the background behind why the bills are being introduced in the states. I would request of the Humane Society or any other group that wants to sponsor a bill to make the clear distinction in the bill that widespread finning at sea claims are not being done by domestic fishermen.

I would also request that in any bill that is introduced that any documentation or references or data or statements of fact be referenced because the burden comes down to the agency where the numbers came from and what the credibility is. So, that's a plus and we can take this and go to our – we can comment now on our bills in our own states and say it is not targeted at – our fishermen are okay. They're not the culprits here.

Where do we go from here? It seems like an import/export problem. In New Jersey all sharks taken in federal or state waters, federal permit or in state waters have to be sold to a federally permitted dealer. So they come into the dealer with fins naturally attached. The fins get cut off and then they get marketed. I wonder why they have to go to Hong Kong. Can't our domestic fins satisfy the domestic markets and then keep the imports – from what I could understand it was like a lot of them are going to Hong Kong and then being processed and coming back to us.

Well, that doesn't help us. Why can't we market these things domestically and then you could have a paper trail with the federally permitted shark dealers that accompany the fins with the logistics to be figured out. How do you handle the imports? That I find troubling. Those are my comments.

CHAIRMAN SIMPSON: Thanks, Pete; I think that is helpful. Louis.

DR. DANIEL: I'll be quick. I do appreciate the discussion. I don't feel that the data is borne out from the Law Enforcement Committee is my main point. In North Carolina I had my staff go back and look at any kind of violations of the finning rules in our state, and I think over the last ten years we had one warning because they couldn't match every single fin up to every

carcass on one boat. This was like five or six years ago.

So it's really not the issue with our domestic folks and I'm sure most of the states could go back and make that same claim. I do agree that none of us promote or support any kind of finning activities where anything is wasted, and that is one of the things that I was concerned about most about the legislation was then you would be taking these valuable fins, fins that are valuable to the fishermen, and throwing them in the trashcan or throwing them overboard and wasting that product.

Part of our responsibility as well as managing the resources; I mean, don't we want to maximize the value of that natural resource that we're taking out of the water and killing? That raised my concern. The last thing I would say, Mr. Chairman, just for clarification, I was going to introduce Dewey. I didn't have a chance to but I would also let you all know that Dewey is also a newly appointed Mid-Atlantic Council member for the state of North Carolina. A lot of you will see him around that table, and so we're glad to have him.

CHAIRMAN SIMPSON: Well, that is great to hear; welcome to the club. Tom O'Connell.

MR. O'CONNELL: The presentation today and the conversation we had at the meeting last week I think have been very beneficial. I think it is something that we should try to continue fostering because I don't think this issue is going to go away at the state level. I think we have learned a lot on both sides of the discussions.

I was happy to hear about the proposed NMFS rule on IUU fishing last week, and I think that is going to go a long ways. We heard today that the Humane Society still thinks there are some weaknesses of that ruling, particularly with implementation of imports from countries that may be banned, and hopefully NMFS is aware of that and can work toward responding to that.

As we leave today's meeting, I hope this conversation doesn't end and I would encourage the Humane Society and perhaps you as Chair and Danielle and I would volunteer myself to maybe look at the information presented today a little more carefully, identify any areas that may need some further discussion and continue

discussing that as we move forward with a common goal in mind. Thanks.

CHAIRMAN SIMPSON: I think that is a great idea, Tom, and I know it is a welcome idea with Rebecca because we have discussed similar. If there are one or two others that would like to join us the group that have a real interest, we would like to get those names and we will make sure that we continue the discussions. Tom Fote.

MR. THOMAS FOTE: I've got a question for both of them. Dewey, in your presentation, what I really was trying to figure out is when you bring in a load of sharks, what percentage of your income from that load is made up of the fins?

MR. HEMILRIGHT: It used to for large coastal sharks, I would say probably 60 percent of it would be for the fin and the other half for the meat together you'd be somewhere around a dollar – average a dollar twenty-five a pound thereabouts with the fin and thing. For the smooth dogs, your fins – your meat can be up to like fifty to eighty to a dollar a pound for the meat and a couple dollars a pound for the fins.

They're called chips, you know, because you have different levels of fin grades. Basically right now there is not a whole bunch. You know, as far as on the east coast we would harvest a lot of sandbars but the only sandbar fishery now is in a research fishery that is predominantly 90 percent done in Florida, the east coast and west coast of Florida. It is predominantly there.

MR. FOTE: A followup; Dewey, that meant that if you weren't allowed to land the fins at port and making the trip out there, then it really cuts down the value of that trip and does it make it profitable or not? That is what I'm looking at. If you start doing things that basically impact a commercial fisherman, even though you say you're not coming out, if you stop them from landing the fins, how much is that going to hurt your business and is going to allow you to go into a business of harvesting shark if maybe the fins were paying for the gas prices and the maintenance of the boat; that is what I'm trying to figure out.

MR. HEMILRIGHT: There is no doubt that the importance of it is all of it; but to have laws on the books that tell you that you've got to throw

half your money over, it is not right, but it is all important because nowadays with the price of bait, fuel, everything, every little bit helps without a doubt.

MR. FOTE: I heard you from the Humane Society tell me that you're not trying to impact fishermen. I was on the conference call the other day on Wednesday. My name is Tom Fote from New Jersey. Basically I got an e-mail just before I came here from a bunch of marinas that said the Humane Society was trying to get these marinas to sign on to prevent shark finning.

But when they read the fine print, because a bunch of them signed on, it was for not landing of sharks; so it basically would put every recreational fisherman that wanted to land a shark and every commercial fisherman to land a shark out of business. I don't know which side I'm listening to because I hear the Humane Society – you're saying they're not trying put out – and yet on the other side they are.

I'm dealing with this – I also represent hunters and I basically understand the Humane Society is not something on different ends of a pole for a long time. But when I look at this issue, you're saying one thing and yet I'm hearing other things from the marinas that were basically signing on to the program until they read the fine print. Would you answer that question through the Chair?

CHAIRMAN SIMPSON: Rebecca, did you want to respond?

MS. REGNERY: Yes, you're talking about our Shark-Free Marina Campaign. A little disclaimer; I don't work on that, so I don't know as much about that as I should because I work internationally. But from what I understand about that campaign, they work with marinas to – there are two levels. There are shark-free marinas and there are shark-friendly marinas.

Shark-free marinas, no sharks are landed, and my understanding is that they work with marinas that are primarily working with recreational fishermen and the recreational fishermen agree on that, that they are catch-and-release recreational fishermen. Shark friendly allows some landings of sharks.

I'm not positive about this, but I think that they allow landings of sharks that are in better shape. Honestly, I'm not sure how they do that, but I

don't think that is targeting – well, I'm sure that is targeted at recreational fishermen and not commercial fishermen. And with the recreational fishermen in those marinas on board, I hadn't heard that there was confusion. If you Google Shark-Free Marina and look at the website, I think it is pretty clear what they're doing, but again I don't work on that. I apologize for my answer not being completely complete.

MR. FOTE: Yes, but you can understand my difficulty because a lot of party and charterboats that work out of there do shark trips; so now you're forcing them to go to another marina. Basically that is a concern. There is nothing wrong with recreational people because we follow – I look at what is going on and remember 20 years ago when recreational anglers actually asked for quotas on every individual shark, asked for a minimum size to protect sharks.

That was put into law and the only ones that ever got the law put on them was the recreational sector. We are down to one shark and a lot of those people like to eat shark and they bring them in for their own consumption. So to basically do a campaign, a lot of my people – I represent a lot of fishing clubs – are looking at the Humane Society as promoting an anti-fishing recreational fishing thing.

So when you look at the shark thing going on there, it just confuses the matter and it makes it difficult for us to say you're not doing it. Now, the other problem here is when they came and introduced and bill I was in the state house that day. I basically tried to talk to the people, and two of the people there, two of the women there were very interested in discussing this.

The one person says, "No, this is not our agenda. Our agenda is to ban shark catches". I mean, this the confusion that is going on and they're walking around the state house. Now, I'll be meeting with a bunch legislators next week and discussing this very issue. I think your mixed message and the way you're handling this does not allow for a lot of trust from us because then we see, well, now it is going to be fins and then it is going to be sharks and you're going to move in that whole direction. You have confused the issue on a bunch of us.

MS. REGNERY: I have to tell you that in New Jersey we weren't leading that effort. We didn't write that bill. I apologize for that but I'm pretty sure that wasn't us. We are trying to collaborate with our other coalition partners on that, and I will relay that to them and try to get us all on the same page.

CHAIRMAN SIMPSON: All right, thanks, Rebecca. I'm looking at the time and we're about one o'clock. The South Atlantic Board is supposed to start at 1:15; so maybe another five or seven minutes on this and we'll try to wrap up. Wilson.

DR. LANEY: Mr. Chairman, my question was similar to Tom's but I'll try and ask it in a different way so maybe I can understand this fully. There seemed to be conflicting statements in the materials that were provided to us and also in Rebecca's presentation. I'm hearing on the one hand that these state shark fin possession and prohibition bills will not appreciably affect U.S. Fisheries at all.

On the other hand our own Law Enforcement Committee says that to prohibit the possession of fins altogether would likely require shutting down the taking of sharks altogether as it would be impractical for fishermen and wasteful to disposal of the fins. Rebecca or anybody else; am I missing something here? Are these state bills somehow exempting legally landed fins or legally taken fins from U.S. Fisheries? Those would be legal as opposed to imported fins or maybe I'm missing something somewhere.

MS. REGNERY: Thank you for that. We start with bills that don't exempt legally taken fins. We're trying to close the market in the state for fins so what we're trying to do is not have any fins sold in the state because it is impossible to determine when the fins are in soup, if they were taken from legally harvested sharks.

But having said that, on the west coast we worked closely with the Department of Natural Resources or Fish and Game – they're called different things in different states – and the fishing industry. I apologize that apparently I can tell from this conversation and from the one last week that we haven't done as good a job on the east coast states and I'm hoping that we can correct that and have further dialogue on how we can address the concerns here.

MS. KARYL BREWSTER-GEISZ: I have a couple of questions for you, Rebecca. I guess I would like to start with a statement. Under the international plan of action for sharks, there is a statement that – and we have implemented this through our own national plan of action – that we try to encourage full use of the shark, so that would include the meat and the fins.

Federally that is what we try to do. The Shark Conservation Act I believe in your presentation you mentioned that it is just on the high seas. That is incorrect; it will be applicable in the EEZ as well, so that is not the high seas, but that also requires full utilization of the shark by requiring the meat and the fin to be landed.

I think there have been a lot of questions federally and it sounds like on the state level of what the state fin bans are trying to do because the way you read them it is banning possession of the fin where federal law requires the fin be landed with the shark, so that requires possession of a fin. There is a lot of question about that which seems to go against your statement that it wouldn't affect U.S. fishermen because I see the two being very contrary.

The other thing is a lot of bills do not distinguish sharks from other elasmobranches, so it could end up impacting other fisheries such as skate fisheries. Then my last statement would just be if the issue that you're trying to address really is the imports of processed fins, that maybe that word "processed" needs to be place in the bills and defined.

I have not looked into whether there are any shark processing plants in the U.S. so I don't know if there would be any impacts, but that would be one way to at least help the bills get more toward the imports of fins and would still potentially allow our shark fishermen to land the fins and for the dealers to then export, and so you would still have at least in the U.S. full utilization.

MS. REGNERY: As far as encouraging full use of the shark, again this only applies to a detached fin. I know the only shark fishery here where that is a big issue with is the smooth dogfish. You can have a fin, you can sell a fin as long as it's attached. When the shark meat is exported to another country or even to another state that doesn't have one of these bans, you can then cut the fin off and use it.

But, what we're really trying to get at – thank you, by the way. When I read the Shark Conservation Act, it sounded to me like it was only in the high seas. It said something about not in coastal waters. I misread that, I believe, and I'll talk to you about that.

MS. BREWSTER-GEISZ: There is a section that deals completely with the high seas, but the Shark Conservation Act that deals with shark finning is within the EEZ and on the high seas.

MS. REGNERY: So if they're finning within the EEZ of say Nicaragua, the U.S. can certify Nicaragua and prevent imports?

MS. BREWSTER-GEISZ: No, the Shark Conservation Act would only deal with U.S. federal fishermen.

MS. REGNERY: Okay, so that's what I meant about coastal waters outside of the U.S. As far as not distinguishing sharks from other elasmobranchs, that is where we would like to work state by state. The states that we have worked in so far haven't had big fisheries or any fisheries as far as I know for skates or rays. In the east coast where they do, that's why we would like to work on a state-by-state basis and figure out how we need to tweak the language.

MS. BREWSTER-GEISZ: I'm trying to understand your first point with the full utilization. If I understand, you are envisioning this as fishermen landing the shark with the fins attached and selling and then exporting the shark with the fins attached, so there would be no ability for a dealer to remove the fins, export the fins and sell the meat to a local market; is that correct?

MS. REGNERY: If they were to remove the fins as written – and again we're happy to tweak it as necessary – but as written if they were selling the meat domestically, they would have to remove the fins and render them.

MR. BRIAN CULHANE: I think I can claim a certain degree of responsibility for tying the board up with this. When I came back to the senate in January, this legislation had been introduced in New York. Some of the people have questioned what would be allowed and what would not be allowed.

The original bill that I saw when I came to New York said no person shall possess, sell, offer for sale, trade or distribute a shark fin. My obvious concern there was that the language said "no person shall possess", which to me meant that if a recreational fisherman caught a shark or a commercial fisherman caught a shark, if the shark has a fin on it, he possesses a fin.

Now, the New York legislation then went through several iterations before the end of the session, putting in exemptions for commercial fish and recreational licensed fishermen. But, obviously that was my concern that led me start to talking to some of the other states and saying has anybody come to you in your state with this, and I found out New Jersey, Maryland and several of other states had bills introduced.

My concern then was that the way we were being approached was on a state-by-state basis, and I didn't feel as if we do our best work when we all go off in different directions. I certainly didn't want to do something that would disadvantage New York fishermen when Massachusetts with their dogfish fishery didn't even have any legislation along these lines.

Certainly in today's climate I wasn't about to support anything that would have disadvantaged our fishermen. Eventually we got the language similar to what was just discussed that they could landed, processed, but then the fins would have to be disposed of and that was where the session ended. The bill never came for a vote in the senate.

Just to wrap it up, we have a discussion last week about this, the IUU proposed rule, and I thought that there was talk of a letter being sent, and I just kind of lost track of that and I was wondering what the status of the letter and support was.

MS. CHESKY: Brian, I think I can address that. The policy board did agree yesterday to send a letter, and we will be getting Bob's signature on the draft that everyone saw and that will be submitted tonight to NOAA. Thank you for the support in that.

MR. ROY MILLER: Mr. Chairman, if I could offer some advice to Rebecca; in the Delaware Legislature a shark bill nearly passed. It passed one of the chambers of the general assembly and ran out of time to get before second one, but it

came very close to passing. The language in that bill was very sparse and it would have banned possession and sale of shark fins; some of the very things that we're talking about today.

In other words, no domestic commercial fisherman that legally landed a shark could have sold the fins and maybe even a recreational fisherman couldn't have possessed a shark without fins on it. What I'm suggesting to Rebecca is the next time around, since this particular bill did not make it through the general assembly before the general assembly recessed on July 1<sup>st</sup>, that she and the Humane Society or any other organization work with the Division of Fish and Wildlife to help craft a bill that accomplishes the objectives without inadvertently hurting legal domestic commercial fishing and fishermen. Thank you.

CHAIRMAN SIMPSON: That's great, Roy, thanks. Tom, in 30 seconds and we'll try not to impinge on the South Atlantic Board's time.

MR. FOTE: On the recreational side, sometimes when a guy comes back with a shark after they cleaned it, they cut off the tail and keep the tail for some reason they want a trophy and they want to bring it home. If this bill had passed, he would have been illegally doing something that really is allowed with any other species that we do, whether we basically harvest a deer or whether we harvest any other legally harvested animal in the state.

That was one of my other concerns here because the guy would wind up – and, you know, trying to inform regular fishermen that they can't do something is very difficult because we can't get them to do the right rules on stripped bass or black sea bass or anything else. This is going to be so minute and all of a sudden he is facing an extreme fine for something that was not intended and it would not protect the shark because the shark was already dead.

CHAIRMAN SIMPSON: All right, thanks, Tom. We have one comment from the audience. I think you will be our closer.

MR. JOHN WHITESIDE: Good afternoon. My name is John Whiteside and I am general counsel to the Sustainable Fisheries Association, but my comments reflect the position of many, many individuals, from harvesters, processors and

other ancillary businesses that have a real stake in this.

I want to state, first of all, that all of my clients staunchly oppose illegal shark finning and support the Magnuson-Stevens Act and other legislation tied to the Shark Finning Prohibition Act of 2000 and the Shark Conservation Act of 2010. The shark finning legislation in California is a ban on the possession of shark fins, including shark fins that are legally caught.

It only exclusively really affects people of Chinese origin. The law is crafted in a way that violates the equal protection clause. Secondly, the shark fin possession bans not only in California but in other states where they either have been enacted, Illinois and others, or where they're trying to be enacted as in Delaware, New Jersey, New York, it was a possession ban.

The model bill that the Humane Society is floating to these state legislators starts from a position of all elasmobranchs so all skates, rays, sharks, whether they are under a federal or state management plan, this would ban the possession of those. Really, what this comes down to is that if you have a commercial fisherman who has a permit lands a spiny dogfish in let's say Chatham, Massachusetts, and that goes to a New Bedford processor, and then the processor takes the fins and he is shipping them to Hong Kong, but it goes through LAX on the way; while they're sitting on the tarmac in LAX about to go out, a food inspector sees it, that is illegal possession of those fins even though it was from a legal fishery.

This is just a blatant attack and looking to undermine your authority under the states and the authority of the federal government to manage fisheries in a responsible, comprehensive way. This is absolutely reckless and irresponsible. They are taking your statutory power and pulling it away from you. We strongly urge you to take a stance against this.

This means much more than just the ecological damage that this will have because at some point fishermen like the gentleman who spoke earlier will say that, yes, if 60 percent of it is fins and my clients who process spiny dogfish aren't going to have the money in it. It is not worth it to do the work and not be able to sell the fins. If it is illegal to possess them, we're not going to be in the business of spiny dogfish. If that



happens, what is the biomass going to do? In 2008 the commercial quota was 8 million pounds. It is up over 35 million pounds. This is a biomass that is exploding. You talk to any commercial fisherman who is out there, what do they see, dogfish and skate in the northeast.

If these possession bans are left unregulated and unchecked and they go on throughout the country; that is all you're going to see. Dr. Rothschild mentioned this last summer. We have an ecosystem which is rapidly approaching being dominated by small sharks and rays. These bans are just one way to ensure that is the place for no recreational fishing and furthering inhibiting the rebounding and rebuilding of choke species like Gulf of Maine cod and haddock.

I'll wrap up quickly. I've often heard – and I'm not sure of the actual cite, and as an attorney I should be giving you that, but anecdotally that for every job on the water there is eight more on land. I represent processors; I represent gear, fuel, ice, trucking, packaging, rubber recyclers. These bills will put all of those nine of those people out of work, hundreds and hundreds of boats on the east coast and all of the ancillary businesses that are tied to them on shore and their families and who they shop with and how they buy things. Everyone gets impacted by this.

This may seem like a very small, minor issue and something that, gee, it's really not a big deal. This is an enormous deal and it is something that we, the Sustainable Fisheries Association, passionately urge you to act now to oppose this environmental and economic threat. This is a gun being pointed at all of us. All of the fishing communities that have already been beset by economic hardship over the last few years; we can't take one more hit.

We ask you to act in two ways. One, we ask the commission to file an amicus brief supporting the plaintiffs in federal court in Chinatown Neighborhood Association, et al, versus the State of California that is seeking to overturn that state ban in California. Secondly, we urge the commission to contact your individual state legislators and repel any proposed shark fin possession bans and repeal the shark fin bans that have already been enacted for the reasons I've stated. Thank you very much.

## ADJOURNMENT

CHAIRMAN SIMPSON: Thanks, John; a strong way to finish. I think we've had a good discussion on this and Tom's suggestion of continuing to speak with the Humane Society International is good one and we will plan to do that. With that, if there is no other business before the Shark Board, we will adjourn.

(Whereupon, the meeting was adjourned at 1:15 o'clock p.m., August 9, 2012.)