

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
BUSINESS MEETING

May 22, 2002
Swissotel Washington, The Watergate
Washington, D. C.

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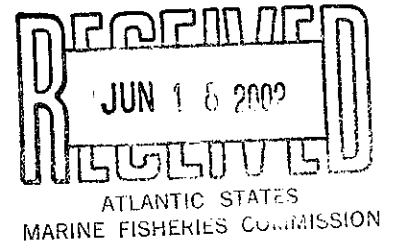
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The Atlantic States Marine Fisheries Commission convened in the Monticello Room, The Swissotel, The Watergate, Washington, D.C., on Wednesday, May 22, 2002, and was called to order at 5:16 o'clock, p.m., by Chairman Susan Shipman.

CHAIRMAN SUSAN SHIPMAN: Okay, we're going to convene the business meeting of the Atlantic States Marine Fisheries Commission, the spring meeting.

With everyone's agreement, we're going to suspend with calling of the roll, but I would note that we do have a quorum of all the member states present. We will be passing around a roster so please do sign in.

Everyone should have received the agenda. We have one printed out that has been distributed. Does anyone have anything to add to this agenda? Is there any objection to approval by consensus? Seeing no objection, the agenda is approved.

The one item I would note under other business, I think we had a motion from the Horseshoe Crab Board with regard to finding and we may need to take that up, so we would add that under other business.

Okay, without objection we'll approve the agenda. Public comment, I'd like to ask if there's anyone from the public that would like to make comments.

Okay, seeing none we will go into recommendations from the Policy Board with regard to non-compliance findings, and we have motions to put on the board.

On behalf of the Policy Board. I recommend to the commission that it find the Commonwealth of Massachusetts out of compliance with Addendum II to Amendment 3 to the American Lobster Fishery Management Plan if it has failed to implement and enforce the required gauge size increase of 1/32 inch for Massachusetts waters of Area II and the Outer Cape Cod by July 1, 2002.

This increase in gauge size is required to ensure that the egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource.

In order to come back into compliance, the Commonwealth must fully implement and enforce the required gauge size increase for its waters in Area II and the Outer Cape Cod.

That doesn't require a second. I'd ask if there's any discussion on the motion. I would ask if anyone wants to caucus. Okay, seeing no desire to do that, again, we will be voting by delegation and the delegations will each cast one vote.

All those in favor of the motion, signify by raising your right hand; all those opposed by like sign; any null votes; any abstentions; one abstention. Okay, the motion carries 13 in favor, 1 abstention. Thank you very much.

We'll move to the next motion. On behalf of the ISFMP Policy Board, I recommend to the commission that it find the State of New York out of compliance with Addendum I to Amendment 3 to the American Lobster Fishery Management Plan if it has failed to implement the required circular escape vent size increase to 2-6/6 inch in its waters by July 1, 2002.

This increase in vent size is required to ensure that the egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource.

In order to come back into compliance, the State must fully implement and enforce the required escape vent size increase for its waters.

The motion, again, it doesn't require a second in that it's made on behalf of the Policy Board. Discussion on the motion. We'll caucus, again, quickly. Okay, all those in favor of the motion, signify by raising your right hand; 13 in favor; all those opposed by like sign; any null votes; any abstentions; 1 abstention. The motion carries 13 in favor with 1 abstention.

Okay, that concludes the items with regard to the non-compliance findings. The next items we have are reviewing and approving fishery management plan amendment recommendations.

And with the board's indulgence, I would like to reverse the order of these and maybe take red drum first. I'd like to call on Mr. Travelstead.

MR. JACK TRAVELSTEAD: As I was saying earlier --

CHAIRMAN SHIPMAN: Before I so rudely interrupted you.

MR. TRAVELSTEAD: Everyone remember what I said, right? Earlier this morning the South Atlantic State-Federal Board completed their work on the amendment to the Red Drum Plan and now offers it to you for your approval. Therefore, I move to recommend approval of

Amendment 2 to the Red Drum Fishery Management Plan to the commission.

CHAIRMAN SHIPMAN: Thank you very much, Jack. This motion is on behalf of the South Atlantic Board and pursuant to the charter, it doesn't require a second. Any discussion on the motion to approve the Red Drum Amendment, which is the culmination of about two years of work?

Okay, all those in favor, signify by raising your right hand; all those opposed by like signal; any null votes; any abstentions. Okay, the motion carries 14 to nothing. It's a unanimous vote. Thank you very much.

And I want to especially thank Joe Desfosse and staff and the technical committee and everybody who has worked very, very hard on that amendment. Thank you all. (Applause) We are pleased to see that one done.

Okay, the next item is Amendment 13 to the Summer Flounder, Scup and Black Sea Bass FMP. Who is handling that one? Pres.

MR. PRESTON PATE, JR.: Thank you, Susan. Yesterday the Summer Flounder, Scup and Black Sea Bass Board approved for consideration by the commission Amendment 13 to the FMP for those species.

The proposed changes to the plan encompassed a number of management approaches. For the most part, status quo was selected as a preferred alternative. There were a couple of changes that I'll speak to briefly.

I'm not going to go into any great detail since most of the people around the table had participated in this rather long process already.

There was an issue that dealt with the permit requirements for fishing in the Southeast snapper grouper fishery, which was removed.

There was some concerns voiced by fishermen in North Carolina and Virginia about having to give up their black sea bass permit in order to fish south of Hatteras when they were fishing on two different stocks. The conclusion of the board was that was an unnecessary requirement and the alternative to remove that requirement was approved.

The most substantive change and the one that captured the most discussion and generated a process that required the consideration of the needs of all of the states by each of the individual states, and resulted in what was considered to be a fair compromise, was on the allocation of the black sea bass quota.

There were a number of alternatives that were presented in the public hearing document, but there was a modification of those that was actually approved by the board and that is not in the public hearing document. So if you will indulge me. I will go through the distribution of the allocations on a state-by-state basis very quickly.

In the states of Maine and New Hampshire, each received one-half of one percent of the annual commercial quota; Connecticut, one percent; Delaware, five percent; New York, seven percent; Rhode Island, North Carolina and Maryland each received eleven percent; Massachusetts, thirteen percent; New Jersey and Virginia each received twenty percent.

So on behalf of the board, Madam Chairman, I submit this proposal to the commission for approval.

CHAIRMAN SHIPMAN: Okay, thank you, Mr. Pate. You see the motion in front of you, and he has outlined what the various changes are that were undertaken yesterday. Is there discussion on the motion? Mr. Diodati.

MR. PAUL DIODATI: Yes, the Commonwealth had originally supported this motion back at a previous board meeting; and on further reflection, we find that we're not going to be able to vote in favor of it today.

But certainly, it's not our intent to be provocative or be in a position to create acrimony on this board. We simply, on further reflection, find that this particular amendment is not in the best interest of the Commonwealth and those that we serve in the black sea bass industry.

I know that my designee on the board, David Pierce, is going to want to add some comment; so if that's okay, I would like David to follow up with that.

CHAIRMAN SHIPMAN: Dr. Pierce.

DR. DAVID PIERCE: Paul has said some of the things that I had intended to say; however, I'd like to expand a little bit and certainly indicate that the Commonwealth understands the board's concerns regarding our position on the state-by-state quotas at this time.

We certainly understand that the board wants this decision to be over and done with. Nevertheless, as Paul indicated, after further review and reflection, we have concluded that there are still some very significant issues and concerns, especially for Massachusetts, that need to be addressed, and these are some issues and concerns that the board, itself, also needs to visit.

All of these issues and concerns are described in a memo, a May 13 memo that was sent to the commission office last Friday. Unfortunately, that memo was not made available to board members until we sat down at the board meeting, the brief board meeting, yesterday, so it made it a little bit difficult -- very difficult, actually -- to adequately convey our specific concerns to the board.

To be brief, the setting of shares without reference to specific years is a problem and is inconsistent with the amendment or the addendum's intent. There's no way for the states to take advantage of the opportunity to correct databases, landings databases, or to adjust shares to account for a state's past conservation efforts.

If the board recalls, if this commission recalls, a while ago I had made a motion specific to this issue when it was approved, and it was included in the amendment, the addendum went to public hearing.

We considered it to be a very important aspect of the amendment/addendum because it enabled us, the Commonwealth, to attempt to get some sort of consideration for all of the conservation efforts we've had on black sea bass throughout the years, since 1986; the 12-inch minimum size, for example.

Now with the percent shares being set with no reference to years, we can't take advantage of those opportunities afforded in the plan. The language is in the plan right now and it's all moot, and we consider that to be inappropriate.

Furthermore, the technical committee has provided the board with some advice regarding this amendment, so their work has not yet been completed regarding specific Massachusetts analyses that were done to provide the board with some guidance as to how the record of landings should be corrected to account for past conservation actions by Massachusetts.

That analysis indicated that our share could be as high at 30 to 40 percent. I mean, we still are waiting for the analyses to be completed to see what the technical committee concludes. This is a very significant finding and should not be ignored.

Also significant is the fact that this amendment truly is for allocation, it's not for conservation, and the state shares are certainly relevant to allocation. They accomplish that.

Of importance to us, Massachusetts, is the fact that one of the purposes of the amendment, the addendum, as described in the public hearing addendum, public hearing summary and, of course, in the entire amendment/addendum, itself, one purpose is to deal with the shift of landings to Massachusetts; that is, to reallocate fish from Massachusetts to other states.

Now we're on record often objecting to this intent. Our record of objection has been expressed in a number of different pieces of correspondence.

As a matter of fact, in one of those pieces of correspondence, a memo that was sent to Dan Furlong, Executive Director of the Mid-Atlantic Council back in April, we provide some specific analyses that make the point very clearly that our analyses of Massachusetts landings data for sea bass clearly indicates that the increase of black sea bass landings in our state for the last three-four years or so has not been due to increased effort.

It has been due to increased abundance of black sea bass, increased availability of black sea bass. Black sea bass are frequenting our waters again in abundance.

So we conclude that the share of the 13 percent creates an unfairness and an inequity, especially when it's applied to the current quota. For example -- let me be specific -- Massachusetts would find our recent years landings, which are quite relevant to this discussion, our recent years landings cut by 40 percent.

And that's before the fishing mortality reduction that will be scheduled for 2003. Of course, we all will have to suffer the consequences of cutting that F next year, but as it stands right now using the existing quota, applying the 13 percent, we would experience a 40 percent decrease.

New Jersey would get a 3 percent increase. Rhode Island would get a 230 percent increase. New York would get a 57 percent increase. Maryland would get a 9.1 percent increase. Virginia gets a 6.6 percent decrease and North Carolina gets a 40 percent decrease.

I'm not sure if you're aware of that, Pres, but you have a 40 percent decrease in your landings, again, before the fishing mortality cut scheduled for 2003.

So, we suggested at the board and we're suggesting here at this commission meeting that, truly, there is a need for more time for discussion, for exploring options regarding how to deal with state quotas.

We understand that the Mid-Atlantic Council time table is driving the bus in this particular case, and we're working with the council, of course, to amend the plan.

And the Mid-Atlantic Council has specific SFA requirements to adhere to, National Marine Fisheries Service requirements, as to when documents must be submitted to provide for adequate review to get implementation early next year, at the beginning of next year.

Massachusetts is not part of the Mid-Atlantic Council. We're part

of this commission, working with this commission to manage black sea bass for conservation, good conservation reasons and, of course, deal with other issues regarding black sea bass management.

So it's our feeling that while we're sympathetic to the need to move forward quickly in order to oblige the Mid-Atlantic Council's concerns, we feel the rush is not justified from ASMFC's perspective in light of this inequitable impact that would occur; that is, the percent decreases that would occur with recent years landings, Massachusetts relative to the other states, except for North Carolina where we're both in the same boat.

You know, the strength of ASMFC is, I feel, we feel, an understanding of each state's situation, that we listen to other state's concerns and we respond in a fair way. That's extremely important. That's, we think, is what ASMFC is all about.

So, to adopt, you know, these shares at this time will mean that our legitimate concerns, our legitimate issues are set aside to reallocate sea bass away from Massachusetts to other states. So, clearly, you know, that would be something unacceptable to us.

CHAIRMAN SHIPMAN: Thank you, Dr. Pierce. Pres.

MR. PATE: Susan, there was one point that's fairly important that I failed to mention, and that is that this allocation scheme applies only to the 2003 and 2004 fishing season. It would be revisited prior to the 2005 season.

CHAIRMAN SHIPMAN: Thank you, Pres. Bruce.

MR. BRUCE FREEMAN: Thank you, Susan. I feel the need to respond. The issue that the board had to deal with was more complex than just the issue with Massachusetts. There were several issues that were raised.

David indicated the concerns of Massachusetts, but there are several states that historically had very low catches of black sea bass and may very well not have had any catches or very low catches for the future, depending how the commission and the council voted.

Other states indicated that they had poor record keeping and that, indeed, their catches were probably substantially above what was reported officially and used for calculations. So there were a number of difficult issues that the board certainly had to deal with.

It was the opinion of the board to come up with some system that would satisfy a number of these needs, not just Massachusetts needs, but other needs as well. And as a result, as the motion indicates, as Pres indicated, the percent allocation was made, trying to take all these considerations into play.

I can tell you from my own perspective, New Jersey, that if we picked a management alternative that would have favored us, we would have gotten a harvest of about 1.2 million pounds. As it is, we will probably get around 600,000.

So in order to make this plan work, we felt that we could or should give up some of our catch to make this more equitable among all the states. And I can tell you that our fishermen, our commercial fishermen were certainly not happy about the efforts that we made.

But we did this in an effort of cooperation, trying to bring the commission together to find solutions to our many problems. We would hope that the other states looked at this the same way.

CHAIRMAN SHIPMAN: Thank you, Mr. Freeman. Mr. Colvin.

MR. GORDON C. COLVIN: Thank you. I have the need to respond, but I think with a question to the representatives of the Commonwealth of Massachusetts.

I listened carefully and understand their expressed concern with respect to action by the commission at this time on the adoption of Amendment 13. Yet, nonetheless, it appears that shortly we will vote on the adoption of this amendment, and we will either adopt it or we will not.

Given that, it is a matter of concern to me, given the comments I've heard as to what the implementation intentions of the Commonwealth are with respect to the quota shares that were the subject of unanimous board approval at our meeting in Newport News, and I wonder if the Commonwealth is willing to address my inquiry in that regard.

CHAIRMAN SHIPMAN: Mr. Diodati.

MR. DIODATI: No, other than we're just prepared not to support this motion today.

MR. COLVIN: I understand. In that case, Madam Chairman, I need to make a few remarks. There was more than one state who came to the meeting in Newport News, at which time we thought final action on Amendment 13 was taken by the board that had significant problems with the options that were before us.

New York state came there prepared to oppose any state-by-state any quota option, to express its strongest possible opposition to the entire concept of a state-by-state quota allocation system for black sea bass, and to make it clear to the board that it had no intention of implementing any such option if the board decided to pursue it.

Part of the reason that we had that intention -- and I might add

that we've expressed concerns consistently about state-by-state allocation systems in other fisheries as well.

But our concern was, I think, indicated by Mr. Pierce's remarks a little bit earlier when he pointed out that the fundamental purpose of that situation appears to have boiled down to allocation and not to conservation.

And it's our perception that there is not an equitable basis on the record for selection of a state-by-state allocation formula for black sea bass, and no less an authority than the First Circuit Court of Appeals in the Massachusetts scup case came to that conclusion in that case when using, as we have done here, any way of addressing the history of landings as the basis for the allocation.

We have other reasons beside the inequity basis and those are on the record. I'm not going to reiterate them now. My point is to let the commission know that we in New York had as strong reservations as anybody about proceeding.

We ultimately did vote to agree to bring to the commission and to adopt Amendment 13 consistent with the conclusions that were arrived at the end of the day at the board meeting in Newport News.

We did so because we appreciated the need to act on the matter to bring it to conclusion. We appreciated the need to address a compromise that met the needs of some of the states and their fishermen in terms of the difficulties associated with managing this fishery that operates differently in different regions and that is causing dislocation under the present system.

We very much appreciated the spirit that everyone, that every single state representing the board evinced at that meeting, and in particular those states that were prepared to make sacrifices, most notably New Jersey, to move us forward.

And, lastly, what was particularly important to us was the fact that this management program was adopted for a two-year period during which we would have an opportunity to continue to address all of the issues that have been discussed here today and many others that were brought up at that time.

And on that basis and because, further, this was a unanimously agreed-to resolution of a difficult issue, New York voted yes. Here today, not knowing what the intention of one of the key partners is with respect to implementation of this amendment, I am going to have to ask for a few minutes to confer with my colleagues to ascertain how New York will vote on the adoption of this amendment. But I needed, before I asked that, to burden you a little bit with my underlying thinking. Thank you, Madam Chair.

CHAIRMAN SHIPMAN: Thank you, Mr. Colvin. We're going to take a break, and I'm going to pass the chair to John Nelson, if you all will excuse me. I'm sorry, we have to go catch a plane.

(Whereupon, Vice-Chairman Nelson assumed the Chair.)

VICE CHAIRMAN JOHN I. NELSON: Susan, thanks for another good week. All right, again, for the record, Susan, thank you very much, another great meeting week. Other comments on the motion? All right, why don't we take a 30-second caucus. I think everyone pretty much has their minds made up but go ahead. David.

DR. PIERCE: Yes, can we have a roll call vote, Mr. Chairman?

CHAIRMAN NELSON: You'd like a roll call vote? As soon as I get my roll call person, I will do that.

MR. COLVIN: We're not ready, Mr. Chairman.

CHAIRMAN NELSON: No. Okay, that's all right, I've got some preliminaries. Are all the members ready to vote? Okay, we're going to do a roll call vote. Bob.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. I'll go from North to South calling on each state for one vote. The State of Maine.

MAINE: Yes.

MR. BEAL: The State of New Hampshire.

NEW HAMPSHIRE: Yes.

MR. BEAL: The Commonwealth of Massachusetts.

MASSACHUSETTS: No.

MR. BEAL: The State of Rhode Island.

RHODE ISLAND: Yes.

MR. BEAL: The State of Connecticut.

CONNECTICUT: Yes.

MR. BEAL: The State of New York.

NEW YORK: Yes.

MR. BEAL: The State of New Jersey.

NEW JERSEY: Yes.

MR. BEAL: The State of Pennsylvania. (No response) The State of Delaware.

DELAWARE: Yes.

MR. BEAL: The State of Maryland.

MARYLAND: Yes.

MR. BEAL: The Commonwealth of Virginia.

VIRGINIA: Yes.

MR. BEAL: The State of North Carolina.

NORTH CAROLINA: Yes.

MR. BEAL: The State of South Carolina. (No response) The State of Georgia.

GEORGIA: Yes.

MR. BEAL: The State of Florida. (No response) You have eleven votes in favor and one against and that's it, sir.

VICE CHAIRMAN NELSON: Okay, the motion passes. Is there anything else under that item? Okay, we have some other business from the Horseshoe Crab Board and, Charlie, I guess we're going to get our money's worth out of you.

MR. CHARLES LESSER: Yes, I'll read it again. On behalf of the Horseshoe Crab Management Board, I move to request that the commission support, in the form of a letter, the Virginia Tech Horseshoe Crab Research Congressional Appropriations Proposal as presented to the board on May 21, 2002.

CHAIRMAN NELSON: Okay, and you're making that on behalf of the board, so it doesn't need a second. Charlie, do you want to give just a little background in case there were folks that were not at that board meeting.

MR. LESSER: Yes, Virginia Tech has a new program devoted to horseshoe crab research, and they presented us with a budget for a five-year program amounting quite significantly -- over \$3 million -- and the only source of funding is through congressional appropriation. They asked for our support.

He reviewed the project; and without a doubt, it is the current state-of-the-art in terms of evaluating the horseshoe crab stock to get at the information for the stock assessment and also to contribute to the knowledge that we all are going to need to convince ourselves that we're doing the right thing in terms of the

managing of species that has quite an impact on the bird population of the Delaware Bay. There was no dissent at the board meeting.

CHAIRMAN NELSON: All right, thank you, Charlie. Comments on the motion? Bruce.

MR. FREEMAN: If I may just add a few more comments, John. As we all recognize, we don't know what the population of horseshoe crabs is. Money was provided last year to do a pilot survey to come up with techniques that could make that determination as a result of that work.

Virginia Tech has developed a sampling scenario, and the legislation, which we don't have a bill number for, it is our understanding it will be submitted soon in Congress, will provide funding to do a survey for five years.

We agreed at the board to support such funding through this federal appropriation. This would begin in the year 2003.

CHAIRMAN NELSON: Thank you, Bruce. Any other comments on the motion? Okay, seeing none, do you need a caucus? No. All right, all those in favor, please say aye; opposed; abstentions; null votes. Okay, the motion passes unanimously.

Is there anything else to come before the business session? Do we need a motion to adjourn. We are adjourned. Thank you very much.

(Whereupon, the meeting adjourned at 5:55 o'clock, p.m., May 22, 2002.)

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