

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
BUSINESS SESSION

May 27, 2004

Radisson Hotel
Alexandria, Virginia

ATTENDANCE

Board Members

George Lapointe, Maine DMR
Patten White, Maine Gov. Apte.
John Nelson, New Hampshire F&G
Dennis Abbott, proxy for Mary Ann Blanchard,
NH
Bill Alder, Massachusetts Gov. Apte.
Mark Gibson Porxy for David Borden, RI, DEM
Gil Pope, Rhode Island Gov. Apte.
Eric Smith, Connecticut DMR
Gordon Colvin, New York DEC
Pat Augustine, New York Gov. Apte.
Brian Culhane, proxy for Sen. Johnson (NY)

Bruce Freeman, New Jersey DFG&W
Tom Fote, New Jersey Gov. Apte.
Eugene Kray, Proxy for Curt Shroeder, PA
Roy Miller, Delaware DFW
Pete Jensen, Maryland DNR
Bill Goldsborough, Maryland Gov. Apte.
Jack Travelstead, Virginia MRC
Preston Pate, North Carolina, DMF
David Cupka, South Carolina Gov. Apte.
Robert Boyles, South Carolina Leg. Comm.

ASMFC Staff

Megan Gamble
Bob Beal
Tina Berger
Vince O'Shea
Carrie Selberg
Vince O'Shea

Lydia Munger
Brad Spear
Nancy Wallace
Mike Howard
Toni Kerns
Geoff White

TABLE OF CONTENTS

Welcome; Introductions.....6

Approval of Agenda.....6

Approval of Proceedings from March 11, 2004 Meeting.....6

Public Comment.....6

Review and Consider Approval of Amendment 1 to the Northern Shrimp FMP.....6

Review Non-Compliance Recommendations.....6

Other Business; Adjourn.....11

Summary of Motions

May 27, 2004

On behalf of the Northern Shrimp Section, I move approval of Amendment 1 to the Interstate Fishery Management Plan for Northern Shrimp.

Motion by Mr. Augustine; Motion carries without objections.

On behalf of the ISFMP Policy Board, I move that the Commission find the Commonwealth of Massachusetts out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery. The seasonal closure is necessary to control the fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a seasonal closure that is consistent with the coastwide requirement as established by the Management Board in December 2003 for the 2004 fishing year. If by July 15, 2004, the Commonwealth has not implemented the appropriate measures notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

Motion by Mr. Pate. Motion carries with one abstention.

On behalf of the ISFMP Policy Board, I move that the Commission find the State of New York out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery. The seasonal closure is necessary to control the fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coastwide requirement as established by the Management Board in December 2003 for the 2004 fishing year. If by July 15, 2004, New York has not implemented the appropriate measures notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

Motion by Mr. Pate. Motion carries with one abstention.

On behalf of the ISFMP Policy Board, I move that the Commission find the State of Connecticut out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery. The seasonal closure is necessary to control the fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coastwide requirement as established by the Management Board in December 2003 for the 2004 fishing year. If by July 15, 2004, the state has not implemented the appropriate measures notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

Motion by Mr. Pate. Motion carries.

On behalf of the ISFMP Policy Board, I move that the Commission find the Commonwealth of Massachusetts out of compliance with the Scup FMP in that it has not implemented the required management measures for the recreational fishery. The required recreational management measures are necessary to control the fishing mortality and maintain the

rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a recreational management program that is approved by the Management Board and has measures that are consistent for all modes of recreational fishing and meets the technical criteria for review and approval of state plans. If by July 1, 2004, the Commonwealth has not implemented the appropriate measures notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

Motion by Mr. Pate. Motion carries with one abstention.

On behalf of the ISFMP Policy Board, I move that the Commission find the State of New York out of compliance with the Summer Flounder FMP in that it has not implemented a recreational management program for 2004 that is consistent with the annual specifications set by the Management Board. The required recreational management measures are necessary to control the fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a recreational management program that achieves a 48.5% reduction in landings (in number) relative to the 2003 landings. If by June 15, 2004, New York has not implemented the appropriate measures notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

Motion by Mr. Pate. Motion carries (8 in favor – MA, RI, CT, DE, MD, VA, NC, SC; 2 opposed – NY, PA; 2 Null -- ME, NJ; 1 abstention – NH).

Motion to Substitute:

Move to refer this back to the Summer Flounder, Scup, and Black Sea Bass Management Board for reconsideration, particularly the three-year averaging concept.

Motion by Mr. Jensen, second by Mr. Colvin, Motion fails (4 in favor, 7 opposed, 1 null)

The Business Session of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel Old Town, Alexandria, Virginia, on Thursday, May 27, 2004, at 12:17 o'clock p.m. and was called to order by Chairman John I. Nelson.

-- Welcome; Introductions --

CHAIRMAN JOHN I. NELSON: I'd like to convene the Business Session of the ASMFC.

-- Approval of Agenda --

On the CD that was sent to you, there is an agenda. Are there any changes to the agenda? Seeing none, the agenda is approved as listed.

-- Approval of Proceedings --

The proceedings from the December 18, 2003, Policy Board -- yes, that's the business meeting. That's the business meeting, so change that. Any objection to approving those? Okay, they are approved.

-- Public Comment --

Public comments. Any public comment that anyone wanted to make some public comments before the Business Session? We will also take public comments on the agenda items as necessary.

--Approval of Northern Shrimp Amendment--

Okay, seeing none, let's go right into the review and consider approval of Amendment 1 to the Northern Shrimp Fishery Management Plan. I'll turn that over to George, then.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. The Northern Shrimp Section met in January and we reviewed and approved the Northern Shrimp Plan. It came back to us for review of some changes that staff made.

We have reviewed those changes and we have a motion. That motion is on behalf of the Northern Shrimp Section -- I think it should

say I move and not recommend, but either way, I move approval of Amendment 1 to the Interstate Fishery Management Plan for Northern Shrimp.

CHAIRMAN NELSON: Thank you, George. On behalf of the Section I don't believe it needs a second.

MR. LAPOINTE: Right.

CHAIRMAN NELSON: All right, any comments, questions associated with this motion? Gil.

MR. GIL POPE: One very brief question as to why it's in the Business Section.

CHAIRMAN NELSON: It was formed as a section, yes. It's not a management board.

MR. LAPOINTE: He was asking why it's in the business meeting and not -- because it's the full Commission, isn't it? I think approval of FMPs is at the full Commission level, and that's where we are right now.

CHAIRMAN NELSON: The Commission approves the management plans.

MR. LAPOINTE: Amendments.

CHAIRMAN NELSON: Yes. Other questions, comments on the Amendment 1? Do you need a moment to caucus? Okay, the moment is up. All those in favor, please say aye; opposed; abstentions; null. It passes unanimously. Thank you, George, fine job. The next item is the review non-compliance recommendations.

-- Review of Non-compliance Recommendations --

MR. PRESTON PATE JR.: I'm going to read it off of the screen, I guess. These upcoming action items will be action taken by the full Commission on the preceding compliance decisions by the ISFMP Board. For the record, I'll be reading each one of these.

On behalf of the ISFMP Policy Board, I move

that the Commission find the Commonwealth of Massachusetts out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a seasonal closure that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year.

If by July 15th, 2004, the Commonwealth has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

CHAIRMAN NELSON: Thank you, Pres. Any questions or comments on the motion? A need for a caucus? All right, ready for the question? All those in favor of the motion, please say aye; opposed; abstentions, one abstention; null. The motion carries. Pres.

MR. PATE: The next motion reads as follows: On behalf of the ISFMP Policy Board, I move that the Commission find commonwealth -- oh, maybe not. Now the motion reads as follows:

On behalf of the ISFMP Policy Board, I move that the Commission find the state of New York out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year.

If by July 15th, 2004, New York has not

implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

CHAIRMAN NELSON: Thank you, Pres. Comments on the motion? Are you ready for the question? All those in favor, please say aye; opposed; null; abstentions. The motion carries.

MR. COLVIN: Mr. Chairman, would you please record New York as an abstention on that preceding motion.

CHAIRMAN NELSON: Okay, New York abstained on that last vote.

MR. PATE: The next motion reads as follows:

On behalf of the ISFMP Policy Board, I move that the Commission find the state of Connecticut out of compliance with the Black Sea Bass FMP in that it has not implemented the required seasonal closure for the recreational fishery.

The seasonal closure is necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a seasonal closure that is consistent with the coast-wide requirement as established by the management board in December 2003 for the 2004 fishing year.

If by July 15th, 2004, the state has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

CHAIRMAN NELSON: Thank you, Pres. Comments on the motion. Ready for the question? All those in favor, please say aye; opposed; abstentions; null votes. The motion passes.

MR. PATE: The next motion reads as follows:

On behalf of the ISFMP Policy Board, I move that the Commission find the Commonwealth

of Massachusetts out of compliance with the Scup FMP in that it has not implemented the required management measures for the recreational fishery.

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the Commonwealth must implement a recreational management program that is approved by the management board and has management measures that are consistent for all modes of recreational fishing and meets the technical criteria for review and approval of state plans.

If by July 1st, 2004, the Commonwealth has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

CHAIRMAN NELSON: Thank you, Pres. Comments on the motion. Ready for the question? All those in favor, please say aye; opposed; abstentions, one abstention, Massachusetts; null votes. The motion carries. Pres.

MR. PATE: The next motion reads as follows:

On behalf of the ISFMP Policy Board, I move that the Commission find the State of New York out of compliance with the Summer Flounder FMP in that it has not implemented a recreational management program for the 2004 season that is consistent with the annual specifications set by the management board.

The required recreational management measures are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement a recreational management program that achieves a 48.5 percent reduction in landings (in number) relative to the 2003 landings.

If by June 15th, 2004, New York has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior.

CHAIRMAN NELSON: Thank you, Pres. Comments on the motion. Tom.

MR. THOMAS FOTE: I think since this is going to be controversial, we should actually have at least a count or even a roll call vote on it.

CHAIRMAN NELSON: Pete.

MR. W. PETE JENSEN: Mr. Chairman, I want to make a substitute motion to refer this back to the Summer Flounder Management Board for reconsideration, particularly the three-year averaging concept.

MR. COLVIN: Second.

CHAIRMAN NELSON: Second made by Gordon Colvin of New York. Okay, the motion to substitute is before you. Comments on the motion. Let me have Bruce.

MR. BRUCE FREEMAN: Just to be technically correct, it should be Summer Flounder, Scup and Black Sea Bass Management Board.

CHAIRMAN NELSON: Okay, I had Jack, George then Roy.

MR. JACK TRAVELSTEAD: I'm just trying to understand the effects of the substitute motion. Are you in fact asking the board to consider an amendment or an addendum to the management plan to allow for averaging of multiple years of MRFSS data?

MR. JENSEN: That's the particular thing. What I'm really saying is let's refer it back, because I think the debate on how to solve this more appropriately occurs at the management board than it is here at or than it did at the Policy Board.

MR. TRAVELSTEAD: I don't object to the board considering other options like averaging

that the motion, but it seems to me that's an actual amendment process that the board would have to go to to implement.

What we're doing with the prior motion is measuring New York's compliance against the existing standards in the management plan. It seems to me we don't have any choice, based on those standards, but to find New York out of compliance.

If we want to go back and now amend the management plan, you're basically delaying a vote of compliance for many, many months at least, if not a year. That doesn't seem appropriate to me.

MR. JENSEN: Well, Jack, I would respond by saying by the time the process for this out of compliance gets through the system, the year is going to be essentially gone anyway, and so I would rather make more productive use of that time to solve the problem rather than run it through the system the way it is going to go.

CHAIRMAN NELSON: Okay, George.

MR. LAPOINTE: I'm empathetic to the situation New York finds itself in and other states have, but because of the timeliness of this, I think that referring it back to the board is going to take far too much time, so I'm going to vote against this motion.

CHAIRMAN NELSON: Roy.

MR. ROY MILLER: I, too, am empathetic with the intent of the motion; however, I'm not going to support the motion. The motion is not specific enough to me. It just says particularly the three-year averaging concept.

That's non-specific enough to me because I can't tell from the motion what other considerations will be given. Frankly, I feel the whole summer flounder management process needs to be revisited, the way that the quotas are assigned, the use of the MRFSS, the whole thing.

I don't see that happening in one more board

meeting, per se. I agree with Jack in that, so the only recourse that I see for the time being is to vote consistently with the action already taken by the board and deal with this through the addendum process. Thank you.

CHAIRMAN NELSON: Okay, Roy. Tom.

MR. FOTE: Just a question, I thought we answered this before that really you don't need an addendum or an amendment to basically allow for a three-year average, and I thought that's what was talked about before.

MR. ROBERT E. BEAL: Yes, Tom, actually, that's right. As I said earlier, the process is set up in the plan right now for establishing conservation equivalency. Each year the board can decide what exactly the states are required to do and what data they're going to use to support that information or those changes.

MR. FOTE: Then to follow up on that, that means this could be done at the August meeting and actually set it up and changed right at the August meeting to allow for a three-year averaging.

MR. BEAL: It's difficult to say. A mid-year change on recreational measures is sometimes difficult. States have implemented things that have achieved certain reductions, and kind of changing horses mid-stream may be difficult on a lot of states.

Some of the state that were allowed to relax this year may now be required to take a reduction. You know, there's a lot of unknowns that may happen with three-year averaging.

MR. FOTE: A follow up on that question. I'm going to have to do the same thing on striped bass. I'm going to have to do a mid-year correction that's going to confuse a lot of people, and that's what I'm going to be doing because we're basically going to try and get into compliance.

CHAIRMAN NELSON: Gil.

MR. POPE: Thank you, Mr. Chairman. With

your permission, I'd like to ask Mr. Colvin a question, if that's okay.

CHAIRMAN NELSON: Well, you would ask it through the chair, obviously, and then I will relay it to Mr. Colvin.

MR. POPE: If this motion were to pass, would New York intend to keep their 17-inch fish/three fish in place for the remainder of this year?

CHAIRMAN NELSON: Gordon, to that point.

MR. COLVIN: New York would intend to keep its 20 percent reduction based regulations in place until such time at least as we had an opportunity to participate in the reconsideration by the board that this substitution motion calls for.

CHAIRMAN NELSON: Any other comments on this substitute motion? Eric.

MR. ERIC SMITH: I voted against the Policy Board motion to find New York out of compliance because I thought they made a good point. I never got the opportunity to say why and I won't take that time now.

The problem is I have a problem with this motion now, and it's a process of the Commission issue. I mean, we had the debate and this puts us in a position of mid-year back to the Fluke Board for reconsideration that.

I guess Jack said it best, it's most appropriately as Fluke Board business for subsequent years, and I think we really need to amend this plan. But today we're supposed to decide whether the standard was met to meet what was supposed to be done in 2004.

We had the debate. I was on the losing side. Life goes on. But, I don't think this kind of a motion is healthy for the Commission process, so I have to oppose it.

CHAIRMAN NELSON: Anyone else want to speak on the motion? All right, why don't you take a minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: All right, are you ready for the vote? All those in favor of the motion to refer this back to the Summer Flounder, Scup, Black Sea Bass Management Board for reconsideration, please raise your right hand; opposed -- I'm sorry, raise your hands again; I'm having trouble counting -- opposition; abstentions; null, one null vote.

All right, the motion fails. The motion to substitute fails. We're back on the main motion. Any further comments on the main motion? Are you ready for the question? Gordon, I'm sorry, go ahead.

MR. COLVIN: Roll call, please, Mr. Chairman.

CHAIRMAN NELSON: Okay, a roll call vote requested for this main motion.

MR. BEAL: Maine.

MAINE: N-u-l-l.

MR. BEAL: I'll skip New Hampshire for now as the only representative is currently the chair of the meeting. Massachusetts.

MASSACHUSETTS: Yes.

MR. BEAL: Rhode Island.

RHODE ISLAND: Yes.

MR. BEAL: Connecticut.

CONNECTICUT: Yes.

MR. BEAL: New York.

NEW YORK: No.

MR. BEAL: New Jersey.

NEW JERSEY: Null, n-u-l-l.

MR. BEAL: Pennsylvania.

PENNSYLVANIA: No.

MR. BEAL: Delaware.

DELAWARE: Yes.

MR. BEAL: Maryland.

MARYLAND: Yes.

MR. BEAL: Virginia.

VIRGINIA: Yes.

MR. BEAL: North Carolina.

NORTH CAROLINA: Yes.

MR. BEAL: South Carolina.

SOUTH CAROLINA: Yes.

MR. BEAL: Georgia, not here. Florida, not here as well. And back to the chair, New Hampshire.

CHAIRMAN NELSON: Abstain.

MR. BEAL: Abstention.

CHAIRMAN NELSON: All right, so the motion carries, for the record. I believe that's the last non-compliance issue. Is there other business to come before the Business Session? Bill.

-- Other Business; Adjourn --

MR. WILLIAM GOLDSBOROUGH: Mr. Chairman, would it be appropriate or necessary at this point to offer a motion to ask the plan or management board to thoroughly evaluate that three-year averaging approach?

CHAIRMAN NELSON: Is there any objection to what Bill has requested? Any objection to it? Go ahead, Gordon.

MR. COLVIN: Certainly, no objection but if I can be so bold as to characterize, which I will be called on to do a great deal to do in the next few months, the discussions today, I think that the

Commission and the Policy Board may have an interest in broadening substantially what it asks the Summer Flounder, Scup and Black Sea Bass Board to reconsider, not just the three-year averaging, but, frankly, the whole nine yards.

CHAIRMAN NELSON: Yes, I think that probably that was the intent of what Bill was suggesting, that there's a number of measures or flexibility to be provided via that board to its management plan and for it to take a look at that and see what they feel is appropriate to broaden the opportunity for management tools to them. Does that capture it all right, Bill? Thank you. Pat.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman, that was good.

MR. PAT WHITE: Just a question, Mr. Chairman. Does that concept then begin another process which is what I'm concerned about? How are we leaving this meeting? Are we leaving it with the thought that we are going to begin a process to correct this problem?

CHAIRMAN NELSON: I think that we are asking the management board to look at the tools that they have available to manage the various stocks that they have under them and see what they might need to broaden that array of tools.

Whether that is a formal process or they can do it internally, I can't answer that right now, and I think the staff will have to give them that type of guidance depending on what they come up with.

And then obviously if they have to do some additional work, basically we're almost into June, so I would think that if they would do an addendum or something like that, that they'd be looking at the action plan for the coming year to make sure that they have that in there so that they were funded accordingly. Pat.

MR. AUGUSTINE: Very briefly, Mr. Chairman, thank you. It is my understanding that we are using MRFSS at our organization, at the board level, as opposed to -- well, let me restate.

Collectively the states have a quota that is agreed to by the council and the board. We take that. We then further subdivide by states.

If we go forward with -- I don't know whether it's an addendum or an amendment -- with the council to go to a rolling quota plan, whether it's a TAL or quota or whatever it happens to be, would it not be appropriate to somewhere in there make sure that it's clearly stated under adaptive management, that we state in there that whatever the mechanism that we arrive at that quota, that it can be a rolling plan.

I know what Bill said. I mean, saying three-year averaging is one thing, but including specifically whatever that mechanism is, whether it's through a license program that states are using, do their own assessment in addition to MRFSS or with MRFSS, and including MRFSS specifically, my understanding is with the council plan that's coming forward, it just talks about a three-year management plan, but it doesn't go on to state either from the Commission or the council that this will be a part of it.

It further is my understanding that as long as we collectively, as all states don't go over the allocated recreational quota, it appears there shouldn't be any cause for the regional administrator to find any of us out of compliance.

So, having said that, can Bob or someone at least address that concern? I want to make sure that it is a part of the adaptive management process, that it will be a part of the consideration.

CHAIRMAN NELSON: I think that's up to the board. The direction to the board was to look at their management tools available to them, and I think we want to give them the opportunity to look at all aspects and then come back to the Commission for any recommendations that they might have. I think that's the appropriate way to handle that. Any other business? George.

MR. LAPOINTE: Based on today's discussion, Mr. Chairman, I'd like to direct staff to add the

term "hoodwinked" to the glossary of the ISFMP charter. (Laughter)

CHAIRMAN NELSON: That motion is out of order and we'll move ahead. Eric, go ahead.

MR. SMITH: Thank you, Mr. Chairman, very briefly, and I will offer this with very sincere respect to those who were involved in the Policy Board debate and their strongly held views.

I want to point out that a member of the Policy Board took my time. I never got to express my views to the board and they might have been persuasive. Even though I agreed with that member's position on the issue, I have to speak against his propensity to monopolize the debate.

In any deliberative body I've ever been a party to, when the chairman says, "Cease", that member ceases. We may need a censure process in the Commission whereby an offender is reported to his appointing authority to ensure that behavior does not become endemic to our process.

Again, I never got to express my views and that member spoke repeatedly on the issue. That is bothersome to me. I know, Mr. Chairman, you tried very hard to contain the debate, and frankly you were rebuffed, and I don't think that was fair to you either.

I thank you for the time and I hope everybody will consider it for future meetings.

CHAIRMAN NELSON: All right, thank you, Eric. I think we will continue to fine-tune our skills at running the meetings and that includes myself, of course.

MR. SMITH: Mr. Chairman, that was not directed at you at all.

CHAIRMAN NELSON: No, I understood what you were saying.

MR. SMITH: I think you masterfully tried to deal with it. Thank you.

CHAIRMAN NELSON: Any other business

before the business session? There is a motion to adjourn, seconded and we are adjourned. Thank you.

(Whereupon, the meeting was adjourned at 12:45 o'clock p.m., May 27, 2004.)

- - -

Nan Redmond