

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

**Crown Plaza Old Town  
Alexandria, Virginia  
February 2, 2009**

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## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of October 22, 2008 by consent** (Page 1).
3. **Motion that the board approve the 2007 FMP for all the states as presented with the exception of Massachusetts at this time** (Page 2). Motion by Pat Augustine; second by Willard Cole. Motion carried (Page 2).
4. **Motion to initiate an addendum that would allow smooth dogfish to be processed at sea, including removal of fins and head** (Page 11). Motion by David Pierce; second by Jack Travelstead.
5. **Substitute motion to initiate an addendum to re-examine measures for smooth dogfish in their entirety** (Page 15). Motion carried on Page 17 as the main motion.
6. **Motion to adjourn by consent** (Page 32).

## ATTENDANCE

### Board Members

T. Stockwell, ME proxy for George Lapointe (AA)	Tom Fote, NJ (GA)
Pat White, ME (GA)	Gil Ewing, NJ, proxy for Asm. Fisher (LA)
Sen. Dennis Damon, ME (LA)	Roy Miller, proxy for Patrick Emory, DE (AA)
Doug Grout, NH (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Ritchie White, NH (GA)	Bill Goldsborough, MD (GA)
Dennis Abbott, NH (LC)	Tom O'Connell, MD (AA)
David Pierce, MA, proxy for P.Diodati (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
William Adler, MA (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Vito Calomo, MA, proxy for Anthony Verga (LA)	Ernie Bowden, VA. Proxy for Del. Lewis
Mark Gibson, RI (AA)	Louis Daniel, NC (AA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Bill Cole, NC (GA)
David Simpson, CT	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Lance Stewart, CT (GA)	Bill Sharp, FL, proxy for G. McRae (AC)
James Gilmore, NY (AA)	Bill Orndorf, FL (GA)
Pat Augustine, NY (GA)	Margo Schulze-Haugen, NMFS
Brian Culhane, NY proxy for Sen. O. Johnson	Harry Mears, NMFS
Peter Himchak, NJ, proxy for D. Chanda (AA)	

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

### Ex-Officio Members

#### Staff

Nichola Meserve	Brad Spear
Robert Beal	Vince O'Shea

#### Guests

Bill Adler, MA	Steve Durkie, NMFS
LeAnn Hogan, NMFS	Sean McKeon, NCFA
Peter Burns, NMFS	Matt Cieri, ME DMR
Bob Ross, NMFS	Arnold Leo, E.Hampton, NY
Karyl Brewster-Geisz, NMFS	Jeff Marston, NH F&G
	Chip Lynch, NOAA

The Spiny Dogfish and Coastal Sharks Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 2, 2009, and was called to order at 4:15 o'clock p.m. by Chairman Louis Daniel.

### **CALL TO ORDER**

CHAIRMAN LOUIS DANIEL: Good afternoon. Welcome to spiny dogfish and coastal sharks. You have an agenda. With that, we have got a couple of actions we have got to take today. I will try to move us through. I know there are a couple of other business items that we're going to deal with and try to get us out of here on time. We have got 15 extra minutes so we should be in good shape.

### **APPROVAL OF AGENDA**

CHAIRMAN LOUIS DANIEL: Has everyone had chance to look over the agenda and our proceedings for our last October meeting? Yes, Jack.

MR. JACK TRAVELSTEAD: Mr. Chairman, I would like to add just a quick item under other business seeking clarification from the board on the smooth dogfish issue.

CHAIRMAN DANIEL: Any other business to add to the agenda? Pete.

MR. PETER HIMCHAK: Mr. Chairman, I have a very brief but kind of like an FYI item for the board members on the small coastal sharks and minimum sizes.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DANIEL: Thank you, Pete. With those two additions, can we approve the agenda and the proceedings by consensus? Without objection, so ordered. The next item is the public comment period. I haven't seen anybody or been given any indication that anyone wants to speak. Are there any hands in the audience? Seeing none, let's move on for a review and consider approval of 2007 FMP Review.

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

MR. CHRISTOPHER VONDERWEIDT: This is a pretty quick report. Basically to recap, at the August meeting the plan review team gave a presentation on state compliance in the 2007 and 2008 fishery. At that time we were missing reports from New York, Rhode Island and Massachusetts. The board did take action at that meeting, and they approved de minimis status for Delaware, South Carolina, Georgia and Florida.

All the other states were found to meet or exceed the fishery management plan requirements. The board decided not to take action and approve the FMP, and they said that they would wait until the three last states got their state compliance reports in. Since then there has been new information. Rhode Island and New York sent reports to the plan review team.

We reviewed them and found that Rhode Island and New York meet or exceed all requirements of the fishery management plan. Also, at that meeting Massachusetts handed out a copy of their state compliance report. There were about 20 copies that were handed out. I myself did not think to grab a copy, and I have requested the state of Massachusetts to supply the plan review team with a report.

I wish that I had grabbed the report at that time, but as of right now the plan review team has not received Massachusetts' compliance report, so we can't determine compliance one way or another, so that's where we're at. New York and Rhode Island meet or exceed all the requirements of the FMP, and there have been no new de minimis requests. This concludes my presentation.

DR. DAVID PIERCE: Chris pointed out that our last board meeting we did make available copies of our compliance report to all board members. I didn't realize that Chris didn't retain one to be used by the plan review team. He called me and asked for a copy, but I misunderstood what he said. I thought he indicated he wanted one just for the record.

I did not realize that he wanted a copy so that the plan review team would be able to take a look at it; so, a mistake on my part, mistake on his part. I apologize for the confusion. I will get a copy to Chris, so he will not only have it for record but then the plan review team can take a look at

it, too, I suppose. There will be no problems with it. For those of you who may have had an opportunity to look at it when last you received it; that is, at our last board meeting, I am sure you will have noticed that, indeed, we complied and we did more than comply.

CHAIRMAN DANIEL: Any objection to just holding off on approval of the report?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I don't have an objection, but I'm wondering – you know, Dr. Pierce has been with us for a long time; and if there is confusion maybe we could take ten seconds to let Bob just walk everybody through the process so at least other people that might be in this unfortunate situation could avoid it in the future.

MR. ROBERT E. BEAL: Well, I think the process is pretty straightforward with spiny dogfish and with all of our FMPs. There is an annual compliance report required by the states and there is a date certain in the FMPs. Those reports are sent into the staff and each of the FMP coordinators is the chair of the plan review team.

We can circulate it through the plan review team, conduct the review and bring it back to the board. Usually we try to do that within 60 days of the due date for the annual compliance reports. The process is pretty straightforward, but if we can get them to staff we can circulate through the PDT pretty easily.

The board usually acts on the input from the plan development team rather than from the – you know, it's difficult for the board to receive a document at this meeting and review it and those sorts of things. They are provided to the plan development team and plan review team and they can review them and synthesize all the information for the board and make the board's job a lot easier and require less reading at the board.

CHAIRMAN DANIEL: So if the PRT hasn't reviewed Massachusetts' report, then we need to delay taking action on the approval of the '07 plan review. Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, I think the other states have done what they had to do, and this seems to be a lack of communication on the part of where the paperwork should have

come. I just don't see why we don't pass the review or take the acceptance of the approval of those 2007 FMP states with the exception of Massachusetts; that once it clears the PDT and comes back to the board, it's done. But for the record we have got all the other states in compliance, and it seems to me that we should at least show our states if we moved forward and done what we had to do.

CHAIRMAN DANIEL: It's certainly another way to handle it; it is up to the board.

MR. AUGUSTINE: May I make a motion, Mr. Chairman, that the board approve the 2007 FMP for all the states as presented with the exception of Massachusetts at this time.

MR. WILLARD COLE: Second.

CHAIRMAN DANIEL: Motion by Pat Augustine; seconded by Bill Cole. Any discussion on that motion? Seeing none, is there any opposition to the motion? Seeing none, that motion carries. Thank you, Pat. Mr. Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, just one thing I noticed in this thing; do we have to vote again on de minimis? It says that the PRT recommends granting all of these states de minimis status. Is that something that we need to basically to say, yes, okay?

MR. VONDERWEIDT: That was already approved. De minimis was approved for these states by the board at the last meeting, and there have been no new de minimis requests, so it probably won't be an issue.

CHAIRMAN DANIEL: It sounds like we're up to date on de minimis. Anything else on this item for the '07 plan review? If not, we will move right into an update on the state regulations for the Coastal Shark Plan.

## **STATE REGULATIONS FOR THE COASTAL SHARK PLAN**

MR. VONDERWEIDT: As everybody knows, January 1, 2009, states were required to implement regulations consistent with the Interstate Fisheries Management Plan for Atlantic Coastal Sharks. The plan review team held a meeting last Monday. It was delayed with the hope that we could get as many state reports

in as possible and to review as many as possible before the meeting.

At that time we had received letters of intent or plans from New Hampshire, Maryland, Virginia and Georgia. We found that we couldn't determine whether states met or exceeded the requirements of the FMP for one reason or another. There were a few things that kept presenting themselves, so we thought that it might be beneficial at this time to instead of going through and pick apart the four states that did submit proposals, for us to simply kind of provide some guidelines which will help states to quickly comply and provide the plan review team with what we will need to make recommendations to the board.

For starters we need states to include a copy of all the relevant state regulations even if there is no change necessary. There are 22 requirements in the fishery management plan, and we need to double-check that these are covered by the state regulations. The only way we can effectively do that is by looking at the regulations themselves. We would also ask that the states outline which regulations are pertinent with which aspects of the fishery management plan. It could be for several with one regulation, but with 22 requirements and 15 states that will make the job a lot easier and hopefully go quickly.

The next issue is de minimis and the way de minimis is worded in the plan is that there are no de minimis guidelines, but they will be handled on a case-by-case basis. Upon receiving the notification from a state that would like de minimis and seeing what their plan is, the plan review team will review the report. The technical committee will also review the report.

Both of those bodies will send recommendations to the board on whether they think that the board should approve or not approve the de minimis status, and then the board has final say. Basically the only thing that the plan review team can say is what we think the minimum requirements would be so that we could approve de minimis status.

There are six things. The first one is the recreationally permitted species, and these are which species recreational anglers can land. It is the species as the National Marine Fisheries Service permits. The second one is that recreational anglers have to keep the head, tail

and fins on. The third one is that you can't catch prohibited and research groups if you're a commercial fisherman without special permission.

4.3.4 is quota specifications, and this is that you would open and close for a species group when the quota has been harvested in federal waters; not closing or opening. When it's closed in federal waters not only will it hurt or lower the quota for the following year for federal fishermen but also for fishermen in states who have enacted the quota specification regulations.

The second to last one is dealer permits, and that's that you need a federal dealer permit to buy or sell sharks. The reason for this is that this will quickly and effectively get the landings' data to Highly Migratory Species so they can monitor the quota rather than having it come from a number of sources. This is deemed as one of the things that is most important.

Then finning and identification, that's that commercial fishermen must have the tail and fins attached naturally to the carcass through landing. This is for identification purposes and to avoid finning. It's unlikely that the plan review team could recommend to the board to approve de minimis status if there are any questions about that. Also, there was a report handed out that goes through these and kind of explains it in greater detail and also discusses each state report specifically so there is more detail on how this might relate to a specific state if you read the actual report.

MR. AUGUSTINE: I read the document as you presented all the questions and things that New Hampshire should do. The question is when you go down here to board action for consideration and approve New Hampshire, Virginia and Georgia state plans; have they really planned or do they plan on closing those loopholes? I didn't get that out of this document. I assume they are but can we have some clarification on that.

MR. VONDERWEIDT: Well, I guess the agenda was written several weeks before the actual meeting. My interpretation is at this time, since New Hampshire has submitted a de minimis request, the plan review team would not recommend to the board to approve it. The technical committee has not yet met to review the reports. This is a big committee with some very busy people, so it is thought that it is best to

get all the de minimis requests together and then hold a meeting. At this time I think it would be premature to take action one way or another.

CHAIRMAN DANIEL: And what may resolve some questions – and then I'll go to the hands around the table – we didn't get the plans from everybody in a timely manner, and a lot of us are in that same boat. What I would like to suggest to the board is that we give ourselves an April 1 deadline to have our plan for compliance with the Coastal Shark Plan to ASMFC, which will give them a little over a month to have them reviewed and make a recommendation to us for our May 5<sup>th</sup> meeting. Is that satisfactory to everybody around the table? Seeing heads nodding in the affirmative; Pat you don't like that?

MR. AUGUSTINE: Some of the states have trouble legislatively, and I'm not sure they can possibly respond that fast, any of those states that might have that problem. Usually Virginia has a problem, how about Maryland; are we going to be okay that they can deliver the goods by that? I'm concerned that these sharks move into their waters as the season progresses and we have a loophole here. And, again, these sharks do inhabit those waters and we could have a very hard hit on some of these protected species.

MR. ROY MILLER: If I may, Mr. Chairman, to that point that Pat raised; if a state is in the regulatory-setting process, which the state of Delaware is currently in with regard to sharks, will it be good enough for April 1<sup>st</sup> to show the intent of proposed regulations even if the regulation hasn't gone into effect as of April the 1<sup>st</sup>?

CHAIRMAN DANIEL: I would certainly assume so. You can't get them done any faster than you can get them done. I mean, not everybody has the same proclamation authority or whatever that other states have. We're able to change them in 48 hours, but I know other states don't have that luxury.

MR. G. RITCHIE WHITE: I just wanted to clear up one of the issues that you had or that was in this report on the 4.3.4 quota specifications. It is stated in there that New Hampshire had a history of landings in state waters of porbeagles, and I don't believe that is correct. I think the report that the state had sent in talked about porbeagle harvest in federal

waters that were landed in New Hampshire. I don't believe there is any history of porbeagle harvesting from state waters.

CHAIRMAN DANIEL: We will look into that clarification. Dave.

DR. PIERCE: If I may, Mr. Chairman, there is a lot to implement as part of this plan. I'm sure that many of us have had some difficulty determining exactly what we are supposed to implement. It would be helpful, if it hasn't already been done – knowing Chris it probably has been done – to have a checklist that we can use to give us some further instruction and guidance, especially for our staff, as to what they need to do to get us on board and completely in compliance.

MR. VONDERWEIDT: Yes, you're right, I do have that in an Excel Spreadsheet and I would be happy to e-mail that to the board either this afternoon or tomorrow morning. I would also encourage the board to look at the executive summary because it goes through those with less wording but explains them more than just the title with the section number.

EXECUTIVE DIRECTOR O'SHEA: In response to comments a couple of speakers back regarding implementation, keep in mind that the board voted on an implementation date of 1 January when they approved the plan. I understand that there could be difficulties and problems with the states implementing that, but I think perhaps the lesson going forward is that when we pick an implementation date we be mindful of the requirements. Presumably folks did that when they signed off on the 1 January implementation date. All we're reminding the board of is what you all collectively decided to do by the 1<sup>st</sup> of January.

MR. MILLER: Mr. Miller, I realize that this is a very specific request for information, but maybe someone else noticed the same thing that I did in regard to the finning and identification requirement. There appears to be a difference between commercial and recreational; am I right, Chris? You're nodding your head. It concerns retention of the head. For recreational fisheries the head must be retained and for commercial fisheries the head can be removed; am I right in that? I didn't misread that? Thank you.

CHAIRMAN DANIEL: That is correct.

MR. DOUGLAS GROUT: Just a followup on our de minimis request; Ritchie is right that our request showed data that there are no state landings of porbeagles. They all come from federal waters. The PRT has made some requests of certain other things that we would implement to try and get de minimis, and we will try and work on that although I may try to look at something more creative than opening and closing the fishery in our waters for a fishery that doesn't occur in our waters. Based on the feds, we may just add porbeagles to the prohibited list of fish that can't be caught in our state waters and make it easier for us just not to have to go through the process. We will try and come up with a revision to this by April 1 to meet your standards.

MR. HIMCHAK: I think it is becoming obvious that the January 1<sup>st</sup> implementation date was rather ambitious. I appreciate your delaying suggestion until April 1<sup>st</sup>. In fact, nobody has met the January 1<sup>st</sup> implementation date. I'm trying to get a sense of how difficult it will be for some states to reach even the April 1<sup>st</sup> date.

Our regulations, we developed all 22 requirements of the FMP back in October and they're all written up waiting for regulatory development. We cannot move any faster than the department allows us. In fact, our Marine Fisheries Council, at its January meeting, requested that the commissioner of the department move our regulatory package forward, so we're not nearly on the same schedule as Maryland where they have a publication date.

That said, I would like to hear from some other states either if you do it by regulation or by legislation. What kind of timelines are you looking for as far as adopting all 22 of these provisions?

CHAIRMAN DANIEL: I am sure this is an issue for every plan when different states have different mechanisms. Maybe Bob can summarize from his understanding, instead of going around the table, what the various circumstances are.

MR. BEAL: Well, I don't think I can summarize each state, but I think – and, Louis, correct me I'm wrong, but the April 1<sup>st</sup> date is the request that all the states provide their plan or proposal or a status check on where they are with

implementing the Coastal Shark FMP. Then the board will get back together in May, review all those plans. Some states may be fully implemented; some may be somewhere in the legislative process and the rulemaking process.

The board, at that time, will have to decide how they want to handle the status of each individual state and de minimis requests and everything that goes along with it. If the states are able to provide as much detail as possible by April 1, the plan review team can update the board at our spring meeting. The board can then make a decision on how to move forward with implementation of the plan.

MR. TOM FOTE: It's interesting to watch the regulatory process in New Jersey – and I guess this is similar to other states – with early retirements, early buyouts and everything else, there are less lawyers and everything to get through the process, and with the economic slowdown and just because you're short of staff, to get any kind of regulation through. Because it has got to the governors for review through their lawyers, it just takes forever nowadays. It is not just fisheries, it's land use and everything else, just because of the economic situation and the layoffs and not hiring people to basically do the job.

MR. VONDERWEIDT: Just to conclude the third request from the plan review team, this one concerns conservation equivalency. It may be a little bit different in this plan than some other ones, but when we looked at conservation equivalency it has the potential to undermine an objective of the fishery management plan.

Specifically, it is Objective 3, which is to coordinate management activities between state and federal waters to promote complementary regulations throughout the species range. Even if a conservation equivalency isn't going to make more fishing mortality on the stock or things of that nature, it could present disjointed regulations which can confuse law enforcement.

It can confuse fishermen from different states that are adjacent to each other and from state waters to federal waters. It has the potential to really undermine that objective and again also open regulatory loopholes. We just wanted to make that clear that it is unlikely that we can recommend that the board approve conservation equivalency measures as part of the state plans.

CHAIRMAN DANIEL: So everyone agrees to get their plan for implementing in by April 1<sup>st</sup> so we will discuss it in May; is that satisfactory to everybody? All right, thank you. Next, I wanted to just take one minute because this was the best place I knew. I just wanted to, on behalf of the state of North Carolina, thank the board for the actions that you took at the last meeting.

We had a very successful January fishery for dogfish with our 16 percent, 1.28 million pounds. We did a daily monitoring and call-in. We went about 33,000 pounds over our 1.28 million pound quota, and we have provided that information to Chris. We will take that off next year's quota, but we had a very successful fishery. Our big day was we had 70 boats land 140,000 pounds in one day. It went fairly quickly, but everyone was very complimentary and appreciative of the board's action. On behalf of North Carolina I wanted to say thank you. I think we did a good job of taking care of the fishery. David.

DR. PIERCE: Thank you for that update; I appreciate that. Just to refresh our memories, that was at 3,000 pounds per day, right? Would you happen to know what the average price paid to fishermen was?

CHAIRMAN DANIEL: I do not. I have heard fifteen to twenty cents, but that is just what I heard. I did not hear anymore than that. It was just hearsay more than anything. And you're right, we did have a 3,000 pound trip limit. The reports we got was the guys were idling out to save fuel. They were idling out to the sea buoys, setting 300 yards of net and then bringing in their trip after one set, so it sounds like they were there.

The next issue on your agenda is just a very brief discussion, I hope, on the opening of the fishery this year for the large coastal, small coastal and pelagic sharks. Due to some reporting issues and some questions about the species that were being landing, we received a request – and Chris sent it to me – asking that the states not open our fishery until January the 23<sup>rd</sup>.

We sent that information out to the board members as the request from the National Marine Fisheries Service. I didn't follow on that because I did not feel like it was the intent of the board to not open if we were unable to get the specifications out in time. I feel like it was what

we had agreed to do was to close if the quotas were met, and that's what we all said we would do around the table.

I got a lot of calls from folks as we got the notice. A lot of fishermen saw the notice and were very concerned that they weren't going to be able to bring in their bycatch of pelagic sharks, primarily makos and thrashers; and with the fact that we have been so low on everything but porbeagles, which we don't see in North Carolina, I elected not to close the fishery for those three weeks in January.

We are set up and prepared to close if we get the notice from ASMFC or NMFS that the quotas have been caught, but not because of a delay in getting the season to open. I just wanted to make sure that that was a consistent opinion of the board. I don't know what else everyone else did, but I think this is just the first year in a new plan with a new start date of the fishing year. Hopefully, we won't run into this problem again in the future in our collaborative plan.

I just wanted to make sure that everyone was aware of the issue and had an opportunity to comment if they would like. Margo, if you would like to add anything to that comment, certainly I would welcome your comments as well.

MS. MARGO B. SCHULZE-HAUGEN: Well, I think this was a change that was made in Amendment 2 that we would not automatically open come January 1. As many of you know, we have experienced some very large overharvest the last couple of years, and just automatic openings have contributed to that, and so we changed for all the shark fisheries so that we would only open when the quota was made available.

So far small coastals and pelagics have not been exceeded. I think small coastals was exceeded once, and now the porbeagle shark has been exceeded. There is risk in just assuming that everything is fine until the process is done. Some of the delays were due to accounting differences between some of the state reports and some of the landings' information coming in.

So, to the extent to that states are open when federal fishermen cannot be, I think that would disadvantage some of them while the states are fishing. We appreciate the comments from

North Carolina and don't anticipate this happening again, but part of it was due to how late the season opening in July with reporting lags.

Hopefully, it won't happen again, but any suggestions that folks have for how to communicate better – I think we tried through our avenues to let folks know what was going on from our end, but it still seemed to come as a surprise – what else we could do I would be interested to hear.

CHAIRMAN DANIEL: Thank you, Margo. Well, if you think of something brilliant let me or Margo know and we will communicate it to one another and then to you. Anything else on this item? All right, thank you. The next issue, Chris, you can do the technical committee update and then I will do the PRT.

#### **COASTAL SHARK TECHNICAL COMMITTEE UPDATE**

MR. VONDERWEIDT: Basically, this is just to keep the board updated with changes in the technical committee. The state of Maryland, Angel Bolinger has taken over from Mike Louisi; the state of North Carolina, Clark Gray has replaced Fritz Rhode. Thank you.

#### **REVIEW OF COASTAL SHARKS PLAN REVIEW TEAM MEMBERSHIP**

CHAIRMAN DANIEL: Fritz retired and went to work for NMFS. It seems like that is what everybody does when they retire from North Carolina. The next issue, I've already talked to a couple of you, if you will notice on the PRT's report there are only two PRT members, Greg Skomal from Massachusetts and Tina Moore from North Carolina.

I talked with Jack Travelstead and he is going to check with one of his staff, but I think we're going to be able to put somebody on there from the state of Virginia. I have mentioned it also to Florida, but if anyone else would like to seat a member on the plan review team they could sure use the help, and so I was thinking maybe four or five. I think we have got three for certain.

If we could get at least one or two more I think we'd be in much better shape. If you've got somebody that you can pony up for the plan

review team, it's really not that arduous a talk. It's just to go over the compliance reports. You don't have to write a bunch of stuff and things like that. If you can get with us and let us know, that would be great.

EXECUTIVE DIRECTOR O'SHEA: How much travel do these guys do?

CHAIRMAN DANIEL: I don't think they do any travel. I think it's all phone calls. Most all the time I've ever done it, it has been on a conference call. I served on weakfish and bluefish and several others and it wasn't a tremendous amount of time, maybe a couple hours a year, so it's not bad. If you're interested in sharks, if you can pony somebody up for the PRT, we would appreciate it. All right, Jack, do you want to talk about smooth dogfish?

#### **DISCUSSION OF SMOOTH DOGFISH ADDENDUM**

MR. TRAVELSTEAD: Yes, sir, thank you. Last week our commission held its public hearing on the proposed regulations to implement the Shark FMP. We didn't get a whole lot of public comment, but they decided to delay adoption of the final regulations until their February meeting, pending some clarification from the board on an issue that is specific to smooth dogfish. It is our understanding, in talking to staff, that the requirements against finning and processing sharks also apply to the smooth dogfish, and yet that fishery is one in which the product is processed at sea.

They're gutted, the head is cut off, the fins are cut off, the tails are cut off, and it is all done on the boat. That results in a substantially more valuable product when it is done that way once it gets back to the dock. I think the concern of staff or the technical committee was that once you processed that animal in that way that it is not distinguishable perhaps from a spiny dogfish or some other shark.

Yet everyone who does this tells me that there are substantial differences between the animal such that even after it has had its head and tail and fins cut off and gutted it is very, very easily distinguished between a smooth dogfish and any other shark. Apparently it is something to do with the translucent tissue that is very easily discernible.

I guess my question for the board was – and I'm not sure that anyone beyond North Carolina and Virginia has a smooth dogfish fishery; I don't know. I'm seeking clarification from the board as to whether or not these finning or processing requirements apply smooth dogfish like they do to all the other species.

CHAIRMAN DANIEL: Well, just from the other state that does this, we have always sort of handled smooth dogfish differently from all the other sharks because of exactly the reasons Jack just indicated. We process those fish at sea and I don't know that they could prosecute the fishery if they weren't allowed to process those smooth dogfish at fish.

I know the spiny dogfish comes in whole and are shipped whole but not the smooth dogfish, and that's probably why they get a much, much higher price per pound. It is a high-volume messy fishery. The technical committee's concerns were that they might mistake them for sandbars, juvenile sandbars. I am not sure that the temporal overlap in their occurrence would match up.

The way we have always done it, Jack, is we've issued the proclamation and exempted smooth dogfish from the requirements on all the other sharks. It would be my hope that we could continue doing that. I hope we don't have to take board action to get agreement to do that. Is there any feeling one way or other? David.

DR. PIERCE: Well, it is still unclear to me what the technical committee said regarding this issue. Have this been brought to the technical committee for their analysis? Is there a real problem relative to identification or anything else that relates to how we manage the landings of smooth dogs?

MR. VONDERWEIDT: Well, not being a member of the technical committee I can't give you my opinion on that, but I can recap the discussion that the technical committee had. They did bring up a possible exemption for smooth dogfish, and they kind of floundered on the issue and weren't sure exactly which way to go.

In the end it was unanimous that because a dressed smooth dogfish can be mistaken for a dressed sandbar shark, that the risk wasn't worth granting an exemption or recommending to the

board to go forward with an exemption. That was what the discussion was. As you'll remember, sandbar was a big reason why we have a plan right now. The seasonal closure is to protect sandbars. Because of that reason, the technical committee didn't go forth with a recommendation to exempt smooth dogfish finning requirements.

DR. PIERCE: Louis, I think you just indicated that there was distinction between the fisheries, seasonal aspect or maybe a geographical aspect, that would address a specific problem as identified by the technical committee; that is, a dressed sandbar may not be distinguishable from a dressed smooth dog. Could you elaborate more about that?

CHAIRMAN DANIEL: Well, no, I would feel much more comfortable with the technical folks here to tell us what is the spatial/temporal overlap of smooth dogfish and sandbars. It is my understanding that they would not overlap, and this is a fairly discrete in-time fishery. They usually follow right on the heels of the spiny dogfish. It's small boats but it is still a big fishery for them, 5,000 pound and 10,000 pound trips.

I've never heard of there being a problem. Usually when they catch smooth dogfish, that is all they catch. The trip tickets from North Carolina, at least, show that there is very little, if any, bycatch of other species associated with that fishery. If they had caught other sharks, it would have probably been worth more and they would have broken them out into different species. That's about all I can speculate on at this point.

DR. PIERCE: Mr. Chairman, if I can just ask one other question, and that is I think you said that unless we object you are going to, by proclamation, enable fishermen to land their smooth dogs in a dressed fashion; is that your intent?

CHAIRMAN DANIEL: Well, I don't know what to do. It is going to create a real scrape for us in North Carolina. It has been my assumption that we just added them to the management unit and that we had a size limit on it. It was never my intent that they be included. If I had known that was going to be an issue, I would have strongly objected to even including them in the FMP if the finning regulations applied. It puts

Jack and I at least in a spot. I think Roy has got a comment to it as well.

MR. MILLER: To that very point, in our state the two species occur at the same time in the same so that would indeed be a problem in our state.

CHAIRMAN DANIEL: So I guess to answer your question I don't know what to do. Pete.

MR. HIMCHAK: Mr. Chairman, there may be a solution to this, and I would have to ask the National Marine Fisheries Service. They have a course where they have a key on all dressed carcasses so that dealers – and dealers are required to take this course so that they can identify the species and not have them as unclassified sharks. I was just wondering if within that key – it was an excellent course and an excellent document produced by Mr. Sandler from Florida. Did he include smooth dogfish as far as dressed carcasses?

MS. SHULZE-HAUGEN: I don't recall off the top, but that is a dealer requirement. It is for dealers and not necessarily all fishermen, and that would be something to open it up for fishermen that we would need to revisit. It is Eric Sander. I just wonder if enforcement has considered this and whether they would agree that those carcasses are distinguishable.

CHAIRMAN DANIEL: The Law Enforcement Committee hasn't discussed this specific issue. Pat Augustine.

MR. AUGUSTINE: I was going to ask the National Marine Fisheries Service did they really have a position on it or are they waiting for the Mid-Atlantic, who has briefly discussed it but hasn't been followed on with the discussion or not. So, there was some discussion as to where it would be picked up. The last I knew it was going to be covered under ASMFC. So, do they have position at this point in time on smooth dogfish?

MS. SCHULZE-HAUGEN: Well, we are in the process of developing our Amendment 3, which is addressing small coastals and some of the pelagics based on recent stock assessments, and we are considering smooth dogfish in that amendment largely based on the commission plan and to be complementary to the smooth dogfish measures that we can – you know, total

relief of this would not be workable from our perspective because of the statute in terms of not allowing finning on any shark in federal waters. That would be problematic from our perspective of any shark. I don't know that we have fully thought through how we would address this, but you all are welcome to the AP meeting and join us in the discussion.

MR. R. WHITE: Mr. Chairman, getting back to David's comment, as far as process, this would take an addendum to allow this; would it not? I mean, in the discussion we can't just do it. If it is in the plan that we don't allow it, it would take an addendum to change it.

CHAIRMAN DANIEL: That is where I was scrambling around trying to find before the meeting started was a copy of the plan to see if in adding smooth dogfish to the management unit, are they by definition then subjected to the rules on small coastals and large coastals and pelagics? I don't know the answer to that question. I would have to read the document. Maybe Bob can help me.

MR. BEAL: Well, I don't have a copy of the plan in front of me, but I do believe the finning prohibition is on all sharks. I think it is kind of across the board the way it is written right now. If that is true, then it would take an addendum to modify that and exempt smooth dogfish either throughout the year, at certain times of the year or however this board chose to move forward on it.

DR. PIERCE: It seems like there might be a relatively simple solution to this although it will require a little bit of effort, maybe an addendum. Bill Adler and I were talking about this and why can't finning be allowed for smooth dogfish and to deal with the problem identification require that the head be attached?

When they bring back the dogs to the dogs to the dock, I assume they can cut the heads off. The heads must serve a good purpose. They can be used as bait in some fishery, I am sure. But if the value of the fishery is important, then why not bring the heads in? That way the heads are attached and you know what they are.

MR. VONDERWEIDT: The language reads, Section 4.3.1.1, finning and identification, the first sentence, "All sharks harvested by commercial fishermen within state boundaries

must have tails and fins attached naturally to the carcass through landing.” Smooth dogfish is considered a shark in this plan and there is no other place in the document where it specifically exempts smooth dogfish from that requirement.

DR. PIERCE: Well, why can't we add some language to what you just said, "except for smooth dogfish that can be finned and landed provided the head is attached"? It is either do it that way or your smooth dogfish fishery is over, correct? There will be no landing of smooth dogs in North Carolina or in Virginia and elsewhere. I would move it if need be.

I'd hate to have another addendum initiated just to deal with this particular issue, but if it is necessary to stop the end of a fishery then I guess we have to do it if we can't clarify or somehow modify the existing plan we have without going through that process. I stand to be guided by staff.

MR. BEAL: If the board chooses to go with an addendum – and I'm not suggesting they should or shouldn't – it is a pretty straightforward document, I believe, just changing some language. Staff can draft that; we can have a FAX poll between this meeting and the May meeting. We're required to have a 30-day public comment period.

We don't necessarily have to have public hearings unless the states want to have public hearings, which we can do them. We could bring something back at the May meeting for final approval if this board chooses to do that. This is something that can happen pretty quickly. I think there is probably some value in having technical committee input as well as law enforcement committee input in that document when we draft it so we can provide a little bit of perspective of rationale for the public as they comment and for the board as they make a decision at the May meeting if you choose to go that route.

CHAIRMAN DANIEL: Well, certainly, if you leave the head on you can distinguish between the sandbar and the smooth dogfish. Ernie.

MR. ERNEST BOWDEN: I also believe even somebody from the National Marine Fisheries Service could possibly tell the difference given enough time. The sandbar is a rigid shark. The smooth dogfish, you can't possibly leave the head on them. You catch them in very warm

water. They're subject to spoilage. It is a high-volume fishery. North Carolina has higher volumes than we do, as high as 10,000 pounds. Virginia is probably more typical in the two to four thousand pound range.

As an advisor panel member, I will never be on another advisory panel because you all chose to disregard everything that the advisory panel decided they were for. We wanted to separate this out completely. If it was part of the management plan, it was chose later, and I think probably due to possibly some disagreement among the people at the top,

This is a fishery that has to have a fish to clean. You cannot land it with heads. The only choice Virginia is going to have is to go out of compliance, and I am sure North Carolina is going to have to do the same thing because it is do away with the fishery. Virginia has already been hit on fairly with the coastal plan.

This started out as a coastal fishery plan and now it includes pelagic, it includes small coastal and now it includes smooth dogfish when the problem was large coastals, and that's what the problem was supposed to have been addressed and you all decided to just take one brush and paint everything. In the case of this smooth dogfish, you can't. It just eliminates fisheries. I think one charge of this commission is eliminate physical waste in the fishery.

In this case you're propagating physical waste in the fishery. I don't see the intent. It is sad that most people around here don't know anything about the shark fishery, and I am a shark fisherman. I can identify different sharks easily. In the case of sandbars and smooth dogfish, Ray Charles could tell the difference.

MR. MIKE JOHNSON: Yes, sir, Mr. Chairman, it appears that there has never been a problem with how the smooth dogfish fishery is prosecuted. Just what we're talking about here today, it takes a not very valuable fish and by processing it on board it makes it viable product and a way to make a living doing it.

If you can't process it on board and you're losing some and you're losing some to spoilage then we have to have that many more fish removed from the water. The guys who actually prosecute the fishery know what they look like. The guys at the dock that buy the fish know what they look

like. There is plenty of enforcement at the dock in North Carolina and Virginia, and none of those guys want to go to jail so they make it point to learn what they look like, and they all do.

But, if you have enough committees that can poke enough holes in enough things, we can find a problem with everything we do. Nobody has ever heard a problem about a smooth dogfish getting dressed and inadvertently – I won't blame the people in committee, but inadvertently as we try to fix things we might do other things.

It would be my recommendation that we keep prosecuting the fishery just as we are, a fishery that nobody has had a problem with in any way. It is a small fishery for a small fisherman and it gives him another day's work to lengthen that season as a tough time. It would be dangerous for the people just because we find something in committee that is in writing, oh, my goodness, look at what we have done, to make those people go broke because we failed to start with, to hurt those people.

It is my recommendation that we keep allowing North Carolina and Virginia to prosecute their fishery in the same way they have been and we find a way to get in line with the plan by verbiage instead of changing the fishery.

MR. ADLER: Mr. Chairman, when is this fishery prosecuted? Is this in the spring or is it the summer or the fall? When does it take place usually?

CHAIRMAN DANIEL: It usually follows the spiny dogfish fishery, so right around now, early spring is my belief.

MR. ADLER: Okay, I was thinking in terms of how fast an addendum to fix it and does it clash with the season basically?

REPRESENTATIVE DENNIS ABBOTT: Probably a dumb question, but we have taken emergency action to close fisheries; can we take an emergency action to keep the fishery open?

CHAIRMAN DANIEL: Vince, say what we have to do to keep this fishery going.

EXECUTIVE DIRECTOR O'SHEA: Well, a few minutes ago the board decided to have the states turn in their reports so that you could look

at all this on the 1<sup>st</sup> of May. My interpretation would be you're going to look at all of this and wait until at least the 1<sup>st</sup> of May.

DR. PIERCE: So what Vince just said is there will no rules and regulations required to prohibit your smooth dogfish fishery this spring. The question will be what has to be in place in all the states once we do get to that particular deadline when we all must be in compliance. It doesn't seem as if it will be a problem for this year.

I guess we have two courses of action. We can actually move forward now and initiate an addendum that would allow smooth dogfish to be processed at sea that would include removing of fins and heads or we can bounce this back to the technical committee for them to give us further advice as to whether or not there really is a problem.

I see nothing in writing here regarding what the technical committee has concluded. I don't know how thoughtful they have been on this issue because maybe they didn't understand how important it was to a few states; notably, North Carolina, Virginia and perhaps a few more. I'm willing to make a motion regarding an addendum if that would move things forward.

That would also, I suppose, trigger some technical committee input that might mean that our next meeting we would decide not to move it forward. But, anyway, I will make a motion that we initiate an addendum that would allow smooth dogfish to be processed at sea, including removal of fins and heads.

MR. TRAVELSTEAD: Second.

CHAIRMAN DANIEL: We have got a motion by Dr. Pierce; seconded by Mr. Travelstead to initiate an addendum that would allow smooth dogfish to be processed at sea, which would mean that the fins and the heads could be removed; only for smooth dogfish.

MR. R. WHITE: Included in that can sending this to the technical committee and law enforcement; is that automatic or should that be included?

DR. PIERCE: That would be my understanding, that we would have to get their assistance and advice as to whether or not it is something that

we actually should move forward in an aggressive way.

MR. ADLER: Is this wording in an amendment or an addendum?

CHAIRMAN DANIEL: It is an addendum.

MR. ADLER: Okay, that wording is an addendum part, so it can be changed by this addendum is where I'm going, or is the finning in the amendment?

MR. BEAL: The finning provision that Chris read a few minutes ago is in the Coastal Shark FMP. However, in the adaptive management section of that FMP finning issues are allowed to be modified through an addendum.

CHAIRMAN DANIEL: We're straight.

MR. AUGUSTINE: Mr. Chairman, my question was if you were to gut and head this fish; would that still make it a more valuable fish? In other words, do you have take the fins off and the tail at the same time or would it be simple so this doesn't become a very complicated issue with the National Marine Fisheries Service and we're out of sync with them. To just remove the head and gut; would that still hold up the quality of the product?

MR. BOWDEN: No, and I will tell you why you would have a problem. The stomach on a smooth dogfish is large for the size fish it is. He is a very long shark so there would be no confusion with sandbars. A sandbar that long (indicating), a carcass probably would weight five pounds and it would take a smooth dogfish that big (indicating). You have that much belly on them before you get to the fins.

You're going to have to remove that before you can sell it so you would be coming in with, say, 4,000 pounds of car carcasses plus the additional weight, whatever you would be leaving on it that would have to be disposed of at the dock, so you're going to make it very bad at the marina that you're going to be disposing of this.

You're going to have a poor quality of product because you have to – you cut right straight down and right along the belly until you get to the anal fins. It's the only way you can do it and it's the only way you can sell it.

MR. HIMCHAK: I'm still a little confused here. According to the way the plan is written now, you can cut the head off and eviscerate the smooth dogfish, so why couldn't you do that and just leave the fins on and land it?

MR. BOWDEN: Because when you take the stomach off, they're going to be taking the fins off. They sit very low on the shark and you're going to be removing the fins, so you would have to leave the stomach on. The only chance you would have would be to gut down the middle and leave the stomach on and have to dispose of it later.

MR. R. WHITE: I think these are all issues that can come out as part of the process in this addendum so I think we're not going to solve this today, but these are all things that can be to the public input to the addendum process.

MR. GIL EWING: Unless I'm mistaken, the idea was to keep a carcass with every set of fins. They were cutting the fins and throwing the carcasses away, and I think that's why the no finning was put in there. I think if that was the intent I think that ought to be added to this so that there is a carcass for every set of fins that they have. I think that is an amendment that should be added.

CHAIRMAN DANIEL: I think that is a good suggestion that we can add for discussion in the addendum, but we are talking about small sharks with small fins. Certainly, you don't want anybody coming in with a full of fins and no shark meat.

MR. BEAL: Just a question on timing. A minute ago I proposed one possible course. You know, staff will draft this, consulting with the technical committee and the law enforcement committee, and there can be a FAX poll and 30-day public comment period, bring the document back at the May spring meeting for possible approval then. Is that the timeline or is the board willing to see the first draft in May with final approval in August? We can do it either way; we just need the direction from the board.

MR. ADLER: What does that do to your seasons this year?

CHAIRMAN DANIEL: Well, from the discussion around the table, I don't think it has an impact on us this year, and that is a little

squirrelly for me as chairman. We have implemented all the regulations. I don't know if any of the other states have or not, but we have implemented everything with this one exception.

I don't want to take all the regulations that we've implemented off to not have the smooth dogfish issue in there, but we will deal with it in our way and not include it for this year, but my hope would be that we could get this thing resolved over the summer. With an addendum coming back to us in May, we will go to public comment, come back and hopefully approve it and we will have that exemption just for smooth dogfish, to keep that fishery from having to be impacted.

I would like for the technical committee to see, though, if we do have any observer information from the smooth dogfish fishery to see if we have ever had an incident where there has been sandbar bycatch in the smooth dogfish fishery. I would think that would be a pretty obvious thing to see. I can't imagine that there is a problem with identification, especially when it is a ridgeback versus a smooth dogfish, but I guess if some folks say there is a problem there we will wait and see what the report says. Is that satisfactory to everybody?

MS. SCHULZE-HAUGEN: I just had a process question on what a FAX would mean and whether we would be – it sounds like there are issues to consider and the amendment is directed to allow it; whereas I'm not sure – at least from my perspective, I have been able to think through all of the things.

One of things I'm thinking I'm struggling to think about is the interplay with permit holders, federal permit holders, federal and state permit holders and what would apply to them for federal water fisheries if the state waters are different. I mean, I just haven't had a chance to really think through, and is the FAX poll whether we would support the amendment or whether we would support going through the process to get the comment and consider the amendment as opposed to a definitive versus that – does that make sense?

CHAIRMAN DANIEL: Kind of, but I think it does to Bob because he has his hand up so I'm going to let him answer.

MR. BEAL: Under my scenario the FAX poll would be a poll of this board to allow the document to go out for public comment. It would not be the final decision. The final decision would be by this board at the May meeting if you chose that course of action. We would probably draft the document, send it around for some quick review and editing, make those edits and then send out a FAX poll where all the voting members of the board could vote on it if it should or should not go out for public comment.

CHAIRMAN DANIEL: Roy.

MR. MILLER: Mr. Chairman, just a general comment. I have found our entire process troubling with regard to smooth dogfish. It seems like smooth dogfish have been an afterthought in this planning process, and I am not sure that we've entirely thought through what we want. I am learning things about the fishery today from Mr. Bowden, for instance.

Having said that, we're supposed to make a report to this board in April on what our regulation-setting process is going to look like or is looking like. What are we supposed to do with smooth dogfish come April 1<sup>st</sup>? Are they part of our proposal or not part of our proposal?

CHAIRMAN DANIEL: That is a good question. I have got an answer but I want to see if somebody else has got a better one.

MR. R. WHITE: My sense is if you can by this harvesting season, which it sounds like you can, I'd rather take the time and try to do this right and not rush this process. It sounds like we have the time to do it correctly. It sounds like there may be other issues here that haven't been vetted, so we send it to the technical committee, send it to law enforcement, come back to us. Then at a meeting we can vote to send it out to public hearing. I think doing the FAX poll may be too quick.

CHAIRMAN DANIEL: I agree. Vito.

MR. VITO CALOMO: Mr. Chairman, I've heard some very good comments on fishing, especially from our boys down in that corner. They only talk about common sense, Mr. Chairman, about fishing. Yet we have a process and I don't want to dilute the process, but I heard earlier, and I think I would like it repeated, we

have dealers that buy sharks that don't know what type of shark they're buying?

That is almost incredible for me to hear that coming from the east coast. They know what scale it is off where I come from, and I can't believe that we're going to say, "Well, we didn't know what kind of shark. It was a sandbar; we didn't know it was a sandbar; it was a smooth dogfish." I don't believe that. That is hard for me to believe.

I think the problem is not with your fisherman. The problem is if the dealer buys that fish. A fisherman will only sell to a dealer that is buying it; and if he is going to buy an illegal fish, that's where your problem is and not from the fisherman. If the fish cannot sell that illegal fish through the process that they do, you don't have a problem.

They're going to bring in the fish that is sellable. It goes right back to the dealer and not to the fisherman. Believe me, fishermen, yes, there are fishermen that would break the law if the dealer would buy them fish. That is where you are, and I sit here, coming from three generations of fishermen, shaking my head and somebody is telling me that the dealer is going to go to school – they've got money provided – so he learns what type of shark he is buying. It is incredible to me. Thank you, Mr. Chairman.

CHAIRMAN DANIEL: Thank you, Vito. Is there any other discussion on this motion? Dave.

MR. DAVID SIMPSON: On smooth dogfish I'm trying to remember a few months ago; didn't we have another sort of urgent issue with dogs in terms of trip limits? Wasn't it smooth dogs and we initially had a – I forget what it was – 10,000 pound trip limit or something and we decided that was not workable for the industry. We apparently didn't get the – 1,000 pounds, whatever it was – the industry either wasn't aware of it or didn't have the opportunity to comment sufficiently, and so we made a modification there.

It has always struck me as curious that now we have a smooth dogfish plan with no trip limit for a commercial fishery, but we're expected this spring to implement a two-fish smooth dogfish limit in the recreational fishery. I just don't know if it passes the straight-face test. Hearing this now about smooth dogs and the extent to

which it has just been overlooked in a long list of species.

I confess I haven't even started with the shark plan implementation and the 22 components for species that we don't see in Connecticut. We're reaching a level with this plan where we're dealing with a lot of species that have very little to do with anything we catch, and we seem to be missing some pretty big things here with smooth dogfish at least.

So if we're going to initiate an addendum, my long way around to this is I think we need to back up and look at smooth dogfish in total, what are we doing with them, what do we know about them, what do we want to have for a management plan. I think we have to address many issues rather than one at a time as we are now.

CHAIRMAN DANIEL: Well, I think that is a good point, but I think what happened was there was just this sense that we needed to do something for smooth dogfish because we didn't know anything about them. Then we got a recommendation based on some trip level data – I mean, some average catch level information that would have taken the fishery out.

The recommendation from the technical committee was this is the average landings, this is going to be a no-harm, no-foul thing. When we got home we discovered at least in Virginia and North Carolina, whoa, we've got 15 and 20,000 pound trips; you're going to cut the fishery by 85 percent. With a thousand pound trip limit, nobody is going to go.

Really in desperation we came back and said, whoa up, you know. With the recreational folks it is more of an identification problem is what we're told. But, certainly, for the commercial side of the coin, I mean, all of our trip ticket information – and we'll make this available for the technical committee's review – is pretty pure smooth dogfish even when they could had other sharks with it. Hopefully, Virginia will have some of that information as well.

But if anybody has any other issues that need to be discussed, I agree with Ritchie, I think we need to take this through the process and get together and discuss these issues and have the opportunity to talk with the advisory panel that is involved in the fishery as well as the technical

folks. Is that a satisfactory move forward?  
David.

MR. SIMPSON: I guess to that, then, I'd suggest an addendum to this motion to say that we initiate an addendum to examine management measures for smooth dogfish in their entirety. I don't think it is clear. I mean it is clear we around the table didn't understand what the impact of the proposed regulations were. We're sitting here today with this amendment in place. We're supposed to be in compliance with this right now.

We're in February 2<sup>nd</sup> now of 2009. It just sounds like a number of states are out of compliance. I think it is much more than just dealing with just one problem at a time. I frankly have a hard time going back to our public and talking about a two-fish limit in the recreational fishery and there is no limit on the commercial fishery. I don't know how to do that.

MR. COLE: I am going to second this motion, Mr. Chairman.

CHAIRMAN DANIEL: Well, would it be considered a friendly amendment by the maker and the seconder of the original motion? David.

DR. PIERCE: No, it is a motion to substitute so it is not a friendly amendment. It is just a new motion.

CHAIRMAN DANIEL: All right, then we have got a substitute motion and that is to initiate an addendum to examine everything on smooth dogfish. Is there any discussion on that motion?

DR. PIERCE: I'm trying to focus in on David's specific concerns. I thought that we had dealt with smooth dogfish to the extent that we could and intend to for the commercial fishery; that is, the trip limit issue, we dealt with that already, and now the other aspect of it; that is, how do we allow the fishery to be prosecuted – well, the processing at sea.

It seems to me that David's principal concern is about recreational fishermen being restricted to two fish and perhaps it should be larger than that or no limit at all. If that is the issue then maybe we can address that specifically, but if there is something else that we think needs to be addressed let's mention that now to give staff

some guidance because as the substitute motion reads now I don't really understand what it will embrace because it is just a whole ball of wax. I thought we have pretty much covered it.

MR. R. WHITE: Mr. Chairman, can't we send this issue to the technical committee, law enforcement and AP? We want to go ahead with an addendum and have any board members that want to give issues to those three bodies, to send issues in, have them come back with a draft that we review in May.

CHAIRMAN DANIEL: Yes, I think if there is something other than the recreational bag limit and the processing-at-sea issue, you need to get that information to your folks to get to the technical committee and the advisors.

MR. PATTEN D. WHITE: I was doing all right until recently and now I'm confused. I guess I would like Dave Simpson if he could explain what this does because I thought the previous motion was for a specific thing, and it wouldn't have any effect on the recreational fishery because they don't process at sea. Am I missing something as part of a bigger picture that you're having a problem with?

CHAIRMAN DANIEL: I think it is the bigger picture. I think it is just overall smooth dogfish management not related directly to the processing at sea, but the fact that now we may take an action to eliminate any trip limit on the commercial fishery yet states are being asked to move forward with a two-fish limit on recreational; and that perhaps while we look at this processing-at-sea issue we could also look at the concern over the two-fish limit on recreational and what the basis is for that recommendation and what the impacts to the recreational fishery are from that recommendation. I think that covers the point. Roy.

MR. MILLER: Mr. Chairman, I'd like to say that I appreciate the intent of Dave Simpson's motion, but now that raises another question. For those of us who are approaching regulation setting this spring with regard to sharks, if this motion were to pass are we to effectively remove smooth dogfish from our regulation-setting that we're going through this spring pending the results of this addendum?

CHAIRMAN DANIEL: My feeling would be yes.

MR. MILLER: Mr. Chairman, does that also include recreational limits that we were otherwise prepared to set on smooth dogfish?

CHAIRMAN DANIEL: If you're going to back off on the commercial measures for processing at sea that some of us didn't realize was even part of it, then, yes, I would say that you would have a reprieve until we can settle this issue that we have initiated an addendum on and hold off until we find out what the resolution is to everything and then do your smooth stuff at the same time. If you all disagree with me, yell at me.

EXECUTIVE DIRECTOR O'SHEA: I guess two things, Mr. Chairman. One is that states always retain the right to be more conservative than the plan; so if people wanted to put regulations in place, keep their process in place, there is nothing prohibiting them from doing that. I think the second thing is while there is an interesting flow of conversation around the table, but this was two years in the making.

Unless I'm mistaken, I think your predecessor was from the state of Connecticut, the chair of this board during the development of this. The 10,000 pound trip limit was addressed at the appropriate time, and that was before you implemented the plan. That was a condition of implementing the plan. I would just urge some caution here that two years of work went into this thing.

You have a very specific problem that is in the first motion that has now been brought to your attention, but it also begs questions about the process of advice you're getting from the advisory panel, your LE guys and your technical guys, and I think we need to reflect on that as well. Thank you.

MR. HIMCHAK: I just have one comment that might help Roy out. We may proceed with the two-fish recreational possession limit and then after the public comment period we can do an agency-initiated change to the proposal on adoption, so we would have the ability not to adopt the possession limit at that point. But we can't stall our whole – I mean, with the other 22 provisions, we have got to move forward on that now.

MR. MILLER: I appreciate Pete's suggestion, and it is my intent to move forward with regulation setting on the other sharks other than smooth dogfish, but I believe what I just heard is if this substitute motion were to pass then I could reasonably delay any action on smooth dogfish pending the results of this addendum-setting process. Am I right in that?

CHAIRMAN DANIEL: Yes.

MR. SIMPSON: This is a really awkward one for the commission because we have a plan in place and it says there is no finning, no heads cut off; can't do it, cannot do it. Right now this year you cannot do it. My only point for bringing up the two-fish limit, I don't think that's a great big deal, but I think smooth dogfish was outside the radar for most folks around this table. We were looking at the other species; it was a long time in the making, but it is very complicated, and smooth dogfish got overlooked.

When you have to go into the tables and figure out – when you have to arrive at a two-fish limit for smooth dogfish by saying you get one in Column A plus a bonus dogfish, it is unclear. I don't know what other things we're going to find with smooth dogfish that are broken. First it was the trip limit. It did not work and we didn't get any public comment on that.

Now it is another fundamental component of the commercial fishery that just doesn't work for the fishery, and I don't what else there is out there. I do know the two-fish dogfish limit in the recreational fishery and no trip limit in the commercial fishery doesn't pass the straight-face test at public hearing. We have a commission process problem and I think because this plan is so complex smooth dogfish just got overlooked, and my suggestion is we need to take another look at it and see how imperative it is to implement conservation measures for smooth dogs.

DR. PIERCE: I am very sympathetic to what David says about the recreational issue because obviously if we're extremely liberal with the commercial, how can you go with two on the recreational? I don't mind going with the substitute if indeed it enables us to address a specific issue, but I don't think we're going to go much beyond that.

I do recall seeing the chair of the technical committee right next to you – well, you weren't the chair at the time, Mr. Chairman, but the technical committee was – and Chris can correct me if I'm wrong, but they were constantly urging for precautionary action, we don't know much about smooth dogfish, we need to be very careful.

I didn't quite buy into that logic, but, hey, they said that often and I thought rather strongly, and that is what got us into this situation of embracing smooth dogfish and bringing it into the plan and going with the measure regarding the no finning, et cetera, et cetera. We are where we are. This particular motion to substitute brings in at least the recreational fisheries measures and certainly the other motion that it is intended to substitute for, so I would urge us to get on with this. It is already quarter of six, and I don't think we're going to make any further progress on this issue. Let's call the question.

CHAIRMAN DANIEL: Well, I had Ernie written so Ernie has the last word and then we're going to vote on the substitute motion.

MR. BOWDEN: I think one of the problems with smooth dogfish is Chris never brought it to the advisory group on the quota. We never knew there was going to be a landing limit. It was never discussed in the advisory panel whatsoever about a landing limit. We didn't know as a state until after fact that we had a landing limit. As far as processing, we just didn't discuss this. We focused on large coastals because that is what we were told to focus on was large coastals.

So, really, this hasn't been something that has slipped to the back burner over a two-year period. This was something that was initially just thrown in at the end with very little very discussion. If we had discussion at the advisory panel, I certainly would have made them aware of things I made you aware of today with the fishery, how it is prosecuted, and I think we probably would have addressed it at the appropriate time. It was just overlooked.

CHAIRMAN DANIEL: All right, we have a substitute motion on the floor to initiate an addendum to examine measures for smooth dogfish in their entirety, which really means recreational bag limit and processed at sea, but if there others, get them to us. Is there any further

discussion on the motion? Let's take a 30-second caucus.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: All right, everybody ready? I have got to read it again because we changed it a little bit. Move to substitute to initiate an addendum to re-examine measures for smooth dogfish in their entirety. All those in favor raise your right hand; all those opposed, same sign. The substitute motion becomes the main motion. All those favor signify by raising your right hand; those opposed, same sign. The motion carries.

MS. SCHULZE-HAUGEN: Louis, just for the record NMFS is abstaining.

CHAIRMAN DANIEL: Sorry, abstentions; null votes. The motion carries. Vince.

EXECUTIVE DIRECTOR O'SHEA: Now that you have voted and decided to do this, my interpretation of that is to do it within the existing resources. We didn't budget for this additional effort and activity, and the direction I'm going to give to the staff is that we try to accomplish this with conference calls and with a minimum of travel and additional expenses.

I was reluctant to bring that up before you voted because it would then appear that we're going one way or the other. I think we can accomplish this on the cheap, but I want to let people know ahead of time if they want to know why they're doing conference calls instead of meeting, that is why. Thank you.

## OTHER BUSINESS

MR. HIMCHAK: Mr. Chairman, other business. I'll make this as painless as I can. When we adopted the shark plan, we included four species in small coastal sharks, the sharpnose, the bonnethead, the blacknose and the finetooth. We do not have a minimum size limit on those four species. Now, if you look at the federal plan it is not the same.

The Atlantic sharpnose and the bonnethead have no minimum size; however, there is a 54-inch minimum size limit for the blacknose and the finetooth. When you develop your brochures and everything for this year, it is the same as the

feds only we have a closure – that is not entirely correct, so there are two species that are different. That’s an FYI for the board members.

CHAIRMAN DANIEL: And I’d also like to bring up one other quick point, and I will bring this up at the policy board, but it is just on how to dovetail in – now that NMFS has mirrored the dogfish quotas in the federal waters, and we have the same quotas, state and federal, making sure that the quotas are still divvied up properly, if you understand what I’m saying, so the southern area gets its quota, the North Carolina quota, and the northern quota, finding out exactly how those all dovetail and make sure everybody agrees that is the breakup of the landings.

I am sure with the states monitoring and ASMFC monitoring the landings as well as NMFS and closing the areas when they need to be closed, we will all be cool with that. I am going to have some discussion off the record, and then I am going to bring that up at the policy board just to make sure everybody is clear on that. That is an issue we don’t want to get into right now.

### **ADJOURN**

Anything else to come before the Spiny Dogfish and Coastal Shark Board? Thanks for getting me through a tough one; I appreciate it. We are adjourned.

(Whereupon, the meeting was adjourned at 5:45 o’clock p.m., February 2, 2009.)

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