

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
COASTAL SHARKS MANAGEMENT BOARD**

**World Golf Village Renaissance**  
St. Augustine, Florida  
November 4, 2015

**Approved February 2016**

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## INDEX OF MOTIONS

1. **Approval of agenda by consent** (Page 1).
2. **Approval of proceedings of November 2014 by consent** (Page 1).
3. **Move that the Board approve the coastal shark specifications including changes in the final rule** (Page 8). Motion by Pat Augustine; second by William Adler. Motion amended.  
  
**Motion to Amend**  
**Move to amend that the Board agree to the small coastal shark specifications as outlined in the final rule and large coastal shark specifications with a July 15th increase to 45 sharks** (Page 12). Motion by Dr. Louis Daniel; second by Rob O'Reilly. Motion fails (12 opposed, 1 abstention) (Page 14).
4. **Move to table the motion for an email vote until after the final rule is published** (Page 14). Motion by Michael Luisi; second by Patrick Geer. Motion carried unanimously (Page 14).
5. **Motion to adjourn** by consent (Page 14).

## ATTENDANCE

### Board Members

Jocelyn Cary, MA, proxy for Rep. Peake (LA)  
David Pierce, MA (AA)  
Bill Adler, MA (GA)  
Jason McNamee, RI, proxy for J. Coit (AA)  
David Borden, RI (GA)  
Eric Reid, RI, proxy for Sen. Sosnowski (LA)  
Steve Heins, NY, proxy for J. Gilmore (AA)  
Emerson Hasbrouck, NY (GA)  
Pat Augustine, NY, proxy for Sen. Boyle (LA)  
Tom Baum, NJ, proxy for D. Chanda (AA)  
Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)  
Tom Fote, NJ (GA)  
Craig Pugh, DE, proxy for Rep. Carson (LA)  
John Clark, DE, proxy for D. Saveikis (AA)

Roy Miller, DE (GA)  
Bill Goldsborough, MD (GA)  
Mike Luisi, MD, proxy for D. Blazer (AA)  
Rob O'Reilly, VA, proxy for J. Bull (AA)  
Louis Daniel, NC (AA)  
Douglas Brady, NC (GA)  
Robert Boyles, Jr., SC (AA)  
Malcolm Rhodes, SC (GA)  
Spud Woodward, GA (AA)  
Pat Geer, GA, proxy for Rep. Burns (LA)  
Nancy Addison, GA (GA)  
James Estes, FL, proxy for J. McCawley (AA)  
Wilson Laney, USFWS  
Karyl Brewster-Geisz, NMFS

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

### Ex-Officio Members

#### Staff

Robert Beal  
Toni Kerns

Megan Ware  
Ashton Harp

#### Guests

Kelly Denit, NMFS

The Coastal Sharks Management Board of the Atlantic States Marine Fisheries Commission convened in the St. Augustine Ballroom of the World Golf Village Renaissance, St. Augustine, Florida, November 4, 2015, and was called to order at 3:15 o'clock p.m. by Chairman Adam S. Nowalsky.

#### **CALL TO ORDER**

CHAIRMAN ADAM S. NOWALSKY: We're going to change the order of the bullet points. We'll do the Amendment 9 proposed rule presentation first, and then move into Amendment 6 and the 2016 specifications.

#### **APPROVAL OF AGENDA**

CHAIRMAN NOWALSKY: Are there any other changes to the agenda? Is there any objection to accepting the agenda as written? Seeing none; the agenda will stand approved.

#### **APPROVAL OF PROCEEDINGS**

CHAIRMAN NOWALSKY: Next order of business is to approve the proceedings from our last board meeting, November of 2014. Are there any comments or changes to those proceedings? Seeing none, we will see those as accepted.

#### **PUBLIC COMMENT**

CHAIRMAN NOWALSKY: Next order of business will be public comment. We had one individual signed up who has subsequently indicated his needs have been addressed.

Thanks for bringing that to our attention. Is there anyone else that would like to comment on an item that is not on the agenda? Seeing none; we will move right along.

#### **HMS DIVISION OF NOAA FISHERIES SHARK RULES PRESENTATION**

CHAIRMAN NOWALSKY: Our next order of business will be to get an update from NOAA, and I'll turn the presentation over to Karyl, and

again, we'll start with the Amendment 9 proposed rule presentation.

#### **AMENDMENT 9 PROPOSED RULE**

MS. KARYL BREWSTER-GEISZ: Hello everyone, my name is Karyl Brewster-Geisz; I work for the Highly Migratory Species Management Division of NOAA Fisheries. I'm going to give an update on all three of our most recent shark rules starting with Amendment 9. This rule was a proposed rule back in August of 2014.

It has gone through a lot since we've started trying to manage smooth dogfish and the other smooth hound sharks. We started back in 2010 where we finalized measures to bring smooth dogfish under federal management; lots of hiccups along the way. Last year we released the Draft Amendment 9 and proposed rule, and this has to do with smooth dogfish, Florida smooth hound and Gulf smooth hound.

At the same time where you had a stock assessment underway for all of those three species. That stock assessment finished last March. We made a final determination in June, and we are hoping, fingers crossed, knocking on lots of wood to finalize this amendment in the next couple of weeks.

The proposed measures, these were proposed, are on the slide in front of you. They were to establish an effective date for the regulations we had finalized in Amendment 3 along with the subsequent trawl rule, and also implement the smooth dogfish specific provisions in the Shark Conservation Act. The Shark Conservation Act, if you remember, required fins be naturally attached on all sharks with an exception for smooth dogfish, and specifically smooth dogfish. In looking at the savings clause in the Shark Conservation Act we saw that there were five provisions, two of which we didn't feel were open to interpretation; those were 12 percent fin to carcass ratio and within 50 nautical miles.

But three of them we felt were open to interpretation, and we did propose a 75 percent catch composition along with no other sharks onboard. If you wanted to remove smooth dogfish fins at sea, you would need to make sure that 75 percent of your catch was smooth dogfish and that no other sharks were onboard.

We also felt that the state permits - part of the savings clause was up to interpretation, and we proposed that all states would generally just need to have a permit that allowed for smooth dogfish to be landed, not a specific smooth dogfish permit. Then geographic applicability, the Act said Maine through Florida.

Florida has an east and west coast. In the stock assessment they found that along the east coast, smooth dogfish was the primary species. You are very unlikely to catch either Florida or Gulf smooth hound; whereas, in the Gulf of Mexico you could catch all three of those species, and it would be very difficult to tell them apart.

Because that act was specific to smooth dogfish, we proposed limiting the scope of it to the east coast of Florida all the way up to Maine. You would need to meet all five of those provisions in order to remove smooth dogfish fins at sea. You could fish for smooth dogfish commercially; you would just have to leave the fins naturally attached.

Again, that is what we proposed; this is not final. We also proposed implementing smooth dogfish or smooth hound shark quotas based on more recent landings information, so that what we proposed was based on landings. We did have an alternative to consider the stock assessment, but at the time we proposed this the stock assessment was not complete.

Then we had two sets of alternatives regarding gillnet, sink and drift gillnet and soak time versus net checks; along with an alternative to change where you needed a vessel monitoring system if you had gillnet gear onboard. We received over 500 written comments on this

rule. There was a lot of mixed support and opposition to what I just went through.

By far the majority of the comments had to do with three measures; the quota, the catch composition, and the no other sharks onboard. Specifically, almost everybody supported moving forward with a quota that was based on the stock assessment. Very few people supported a 75 percent catch composition.

A lot of states and councils suggested moving that down to 25 percent catch composition. They felt 75 percent would cause too many dead discards. No other sharks onboard, again very few people if anyone supported that part of what we proposed. Most people felt that spiny dogfish and pelagic sharks are actually a big part of the smooth dogfish catch for those directed smooth dogfish trips.

We are in the process of working on the final rule. As I said, I'm really hoping it will be out in the next couple weeks. In the meantime, we do have the stock assessment. That was finalized in March. We released our status determination in June of not overfished, not experiencing overfishing, and this is specific for the Atlantic smooth dogfish.

The stock assessment said that in the Atlantic the total allowable catch could be 550,000 sharks, and just for a frame of reference the 2012 commercial catch was just over 400,000 sharks. Our timing, coming very, very close so it will be publishing soon effective early next year. It wouldn't be effective right away.

Because we are going to be implementing permitting requirements, so everybody who is fishing for smooth dogfish, or in the Gulf the other smooth hounds, would need to have a fishing permit. We want to give time for people to have those permits before the rule goes into effect. It would be sometime early 2016 if all goes well and the observer requirements and the smooth dogfish provisions of the Shark Conservation Act. All of that would go into effect at the same time.

The last thing on this, in our preparation to implement this rule we went and we looked at how many people already had permits. In this board, as you know, anybody who is purchasing sharks, each state needed to require that they have a federal shark dealer permit. We went looking to see how many people had been reporting, voluntarily at this point, smooth dogfish; and we found that there were a number of dealers throughout the Atlantic that did not have a federal dealer permit.

We let ASMFC know, Ashton sent out that information a couple weeks ago. As a result, and to make sure that all the dealers along the east coast could attend a dealer shark identification workshop, this is required in order to get the dealer permit. We have added in another dealer workshop.

We have the two previously scheduled ones in South Carolina and Florida, and then we added another one in New York. If you do have any dealers in your states that want to purchase smooth dogfish, they need to attend one of these workshops before they can get a federal dealer permit. Once Amendment 9 is finalized and implemented, federally we will be looking at that and could be taking enforcement action if they do not have it. That's it for Amendment 9.

CHAIRMAN NOWALSKY: I will go ahead and take any questions you have on the presentation. We also have up at the front to my left Captain Doug Messeck to address any law enforcement concerns that we have here as well. Questions for Karyl?

MR. ROB O'REILLY: I guess my question concerns the permitting. It's almost as if I heard two different things, and I'm sure that is just my hearing. The first time around and in the document, it talks about holding a state commercial permit valid for smooth dogfish. It almost sounded to me as if that could be generic or general permit. For example, if a state has a permit for fishermen that if they sell

at all, no matter what the species is, they would be covered.

But then, later on, as you went through the slides and talked about early 2016, it seems more that the harvester and the dealer or buyer are going to need a specialized permit; especially the dealer, you made that pretty clear. Am I on the wrong course here asking about the permit? What do you have for us?

MS. BREWSTER-GEISZ: With Amendment 9 we'll be implementing two permits, one for fishermen that if they want to land smooth dogfish and sell them commercially, they will need to have a federal permit. If they want to remove the fins at sea, part of the shark's savings clause, what we proposed was that they would also need to have a state permit that allows for the landing of smooth dogfish. For the dealers, once Amendment 9 goes final, dealers who are purchasing smooth dogfish from fishermen will need to have a federal dealer permit. Does that answer your question?

MR. O'REILLY: It does, but I'm back to the harvester. The harvester if you have 75 percent of the harvest is smooth dogfish and there are not sharks and there can be finning. For the state requirement is that or is that not going to be a specialized permit for the harvester, or will the state rule on being able to harvest and sell apply? I hate to ask you twice, but thank you.

MS. BREWSTER-GEISZ: It's okay. We looked at two different alternatives, one was requiring a smooth dogfish-specific state permit and one was looking at just a state general commercial permit. What we've proposed was a state general commercial permit. Almost all of the comments were in agreement with that.

CHAIRMAN NOWALSKY: Any other questions on Amendment 9?

MR. TOM BAUM: Karyl, continuing with the state permits. Right now, our fishermen they

would have the appropriate state gear license. Does that qualify?

MS. BREWSTER-GEISZ: Under what we proposed, yes.

DR. LOUIS B. DANIEL: Hey Karyl. Just, I guess, a concern about the 75 percent. Most of our guys are fishing smooth dogfish and that's all they have. That is not a problem. I don't understand why, though, if they have a small coastal or a large coastal as bycatch, and they've got the appropriate permits, what the reasoning is for not allowing those other sharks.

If it is an identification issue it would seem pretty simple to distinguish between a core of a smooth dog and a fins attached large coastal, as long as you had the fins attached. I'm trying to figure out the justification for them having to throw those fish back dead.

MS. BREWSTER-GEISZ: Once again, those were the proposed measures - they aren't final. We had very little support. I don't think we had any support for the no other sharks onboard. What we were trying to do in that along with the 75 percent, was to meet the language in the Shark Conservation Act itself, which noted it was directed fishing on smooth dogfish. We were trying to - how do you define that - and that is where that came from that proposal.

#### **AMENDMENT 6 FINAL RULE**

CHAIRMAN NOWALSKY: Any other questions? Okay. Moving forward, we'll go on to the next presentation for the Amendment 6 final rule, and then after that we'll have another presentation on the proposed specs for 2016. Before we get into the proposed specs, I'll also give a brief overview of some ways forward that staff sees us for moving forward, so we'll be able to set that background.

MS. BREWSTER-GEISZ: Amendment 6, this had to do with the shark fisheries overall, mainly the commercial shark fishery. It didn't really have anything to do with the recreational. Our

purpose and need for this was to try to come up with more flexible management measures to address some of the issues in the commercial shark fishery. Some of the specific objectives in Amendment 6 were to increase the efficiency in the large and small coastal shark fisheries; promote economic viability throughout the fisheries; obtain optimum yield and then also continue to rebuild overfished shark stocks; along with prevent overfishing.

This rule went final and effective in August of this year. The overall changes had to do with both the Atlantic and the Gulf. One of the things we did was to change the retention limit for directed shark permit holders for large coastal sharks, from 36 to a default limit of 45 large coastal sharks per trip with a maximum of 55.

What this means is we have the flexibility to change the retention limit anywhere from zero to 55 throughout the season. Based on public comment, that is what a lot of people really wanted us to do. We also removed upgrading restrictions for all the limited access permit holders. They won't have to worry about their length of roe or hold space or anything like that.

They are removed for the shark permits. They still are in place for the swordfish permits, if you have anybody who is interested in that. For the Atlantic, specifically, we did not implement any sub-regional quotas. If you remember we did propose some for large and small coastal sharks. There were a lot of questions from everybody on what the numbers - where the numbers came from. How would we adjust? Would we be limited to those numbers forevermore?

A lot of people instead preferred the idea of us toggling the large coastal shark limit back and forth through the season, to make sure that all fishermen fishing for large coastal sharks from Florida, North Carolina, and north of that had that opportunity to fish. Small coastal sharks, there was a slightly different matter.

We did increase the non blacknose small coastal shark quota up to 264 metric tons. This is up from about 176, I think it was before. It was a large increase. This is the Atlantic - wide non blacknose small coastal shark quota. Blacknose shark was a different story. If you remember blacknose sharks and non blacknose small coastal sharks are linked, so if one is caught both of them close.

We implemented a management boundary at 34 degrees north latitude. That's about Wilmington, North Carolina. Anyone north of that cannot land blacknose sharks. Remember this is commercial it is not recreational; so anyone north of 34 degrees can no longer land blacknose sharks. They can continue fishing for the non blacknose small coastal sharks, even if the blacknose quota is caught and landed.

In August we actually reopened the non blacknose small coastal fishery north of 34 degrees. South of 34 degrees, once the blacknose quota is caught both non blacknose and blacknose close together. Since implementing Amendment 6 we've had a lot of comments from people, particularly menhaden fishermen south of 34 degrees who really want us to look at that again and maybe set up a trip limit for blacknose, so we are actively looking into that. The next slide shows everything I just said in map format for small coastal sharks, and that is it for Amendment 6.

CHAIRMAN NOWALSKY: Any questions? Again this was a final rule; it became effective in August of this year. Questions?

DR. DANIEL: A question on the blacknose, Karyl. We see a lot of blacknose north of the 34 degree line, but we don't really seem to catch a lot of them. They tend to be more inshore and in shallow water. I don't know why we haven't historically landed them, but I'm just curious as to where we are with an updated blacknose assessment and when we might be able to provide some relief north of 34.

I appreciate what you all did with Amendment 6. I think there was a lot of help there, especially for our guys north of 34 to be able to catch the blacknose sharks, but if you can give me some hint on when we might see something on blacknose that would be good.

MS. BREWSTER-GEISZ: We don't have blacknose on the schedule yet. I will say that historically, one of the reasons why we removed blacknose from north of 34 degrees is that landings are less than a metric ton on average, so it is very small. We don't have blacknose on the assessment list, we do have potential.

This is the upcoming schedule for shark assessments. We had blue sharks along with the smooth hounds this year. Next year we're having a dusky shark update. ICAT has changed its schedule since our advisory panel meeting, so they've moved Shortfin mako into 2017 and porbeagle down in 2019. That might change again when they have their meeting starting next week.

That is what we have on schedule right now and we're still working on figuring out 2018, where we know we definitely want to do Atlantic black tip and we were looking at ways of trying to figure out how to assess sandbar shark at the same time. We really want to do both of those, and at the moment the small coastals are not on the schedule.

MR. O'REILLY: I guess my question would be on the timing or the opening. For the aggregated category, January 1 is the date. I know you probably had it on that map, because I didn't run up there to look close enough, but I've seen the map before. The rule is there. I'll have to let you know that previously at the board meeting and for two years, we had later opening dates, as you know.

I think it was June 1 followed by July 1, if I'm not mistaken. Last time we deliberated this at the commission. We had again asked for that mid-summer opening. One reason off course in

Virginia we have that closure from May 14 to July 15. It would be very difficult for me without going back further than 2013, which I have dated in front of me, to really know whether January 1; to the degree it has disadvantaged Virginia fishermen, which is a state waters fisherman.

However, I would like your comments on something that I read last week and had in front of me a moment ago. But I think there was sort of a representation that opening in January 1 of 2013 provided nine months of a fishery, and opening later in 2014 allowed six months of that fishery for the aggregated sharks. I am wondering, was there an analysis of the proportions that were landed by state by month?

Maybe there were not, but in the future, if we could see that it might be something that would be important to the ASMFC to follow up on what Bob Beal had indicated previously, and I'll read from the minutes for just a second; that if there is a federal opening we, being the ASMFC, can subdivide that quota to try and spread it out or have the fishing occur differently within the quota period. I can't really say without knowing what the National Marine Fishery Service analysis involved, whether that's something that we can pursue or not. We can certainly try and pursue it, even though there is the January 1 opening. That is an option that was made available by the ASMFC. If you could comment on the analysis, because I would imagine it wasn't just as simple as nine months in one year, six months in the other; therefore, the nine months is better; without knowing how it impacted up through the Mid-Atlantic.

MS. BREWSTER-GEISZ: You're jumping a little bit ahead. I haven't yet presented the proposed shark specs. I will go through that. In terms of your analysis by state, yes we do look at that; but a lot of that information from our perspective ends up being confidential on exactly how we looked at it, so we don't have that information specifically available to the public.

But we do look at that. Our goal in both Amendment 6 and in our proposed 2016 specs was to try to make it so the large coastal shark fishery was open as long as possible; if possible, the whole year, which I don't think has ever happened since we implemented management. That is our goal.

## **2016 SPECIFICATIONS**

CHAIRMAN NOWALSKY: Any other Amendment 6 questions? Okay, seeing none; Karyl has a presentation for 2016 specifications. Before we begin with that, I'll just give a backdrop as to how this board acted last year. With regards to large coastal sharks, the board decided to open that fishery on July 1st, and with regards to other coastal shark groups - small coastal, hammerhead, pelagic and blacknose, the board opted to move with consistent openings with NOAA Fisheries for 2015.

That was the motion that was passed at the annual meeting last year. As we go through the specifications presentation, we can follow through with some similar motions. The board can choose to approve the final rule when it is published. Comment had closed the middle of September on it, waiting for the final rule to come out.

The board may decide to wait on a decision until February. Staff is willing to support an electronic vote for the board when the specifications become available, and distribute that information or the board can do something setting an opening date for a portion of it and wait to approve other specs when they are released. Not constrained by any of those ideas, but that is just what the board has done in the past and some ideas that the staff had for some proposed actions as you're listening to Karyl's presentation for 2016 specs. I'll turn it back over to Karyl.

MS. BREWSTER-GEISZ: For our proposed specs, as we already heard, the punch line is already done. We proposed opening all shark management groups on January 1, 2016. This is

a change then from what we've done in the past with large coastals. We are also proposing to open it with a retention limit of 45 large coastals other than sandbar sharks per vessel per trip for directed permit holders.

Again, this is an increase from what we've had in the past where it was 36 and adjusting that retention limit as needed throughout the season; and I do have a slide that goes through what we're thinking of. The only adjustment to the quotas is a decrease to the Atlantic blacknose quota.

They had an overharvest back in 2012 that was large enough we decided to spread that out over five years. Last year the blacknose quota was again exceeded, and we are proposing to keep that within that same five year period. That overharvest from last year would be adjusted over three years, so all of them would be done in the next three years. The next slide has lots of small numbers, I'm sure for those of you in the back, but these are the base quotas except for the blacknose sharks.

The next slide goes through what we are thinking of for that in-season action in terms of moving the retention limit up and down. We would open January 1 with 45 large coastal sharks other than sandbar sharks per vessel per trip. Then when we reached approximately 30 percent of the quota we would reduce that retention limit.

We are saying 30 percent because we close, as all of you know, when we reach or are predicting to reach 80 percent of the quota. That way if we have late reports we don't go over the quota and that has happened and continues to happen all the time. We do close when we're thinking we're reaching 80 percent, so 30 percent is a little less than half.

We figured that gives us time to adjust, for everybody else to adjust, still keep the fishery open, have most of the fishery come June, July, whenever we decide to open it; well not open it again. We wouldn't necessarily reduce it down

to zero, but increase that retention limit back up to 45. Maybe we would increase it higher if there is still a substantial amount of quota left.

But the goal, as I said earlier, is to try to keep the fishery open throughout the year if possible. We may be moving that quota, I'm sorry, retention limit again down, up, to try to keep the fishery going as long as possible, reduce dead discards and provide all fishermen throughout all the regions that opportunity to fish. That is it on the specs.

CHAIRMAN NOWALSKY: Where we're at is any specific questions you have for Karyl, and then the board can deliberate on how to move forward, either with a motion today or again the idea of waiting until February or something else over e-mail, given that we are pending a final rule on this. No hands, oh, there we go.

MR. O'REILLY: What a difference a couple of years makes, and this is exactly what Bob Beal had talked about, about a year ago, I guess, that there could be a progression in the quota amounts. Certainly by adjusting from 45 it will be very important, I think. That achieves more than probably we expected, so that's good.

Virginia is not a major shark capital of the world right now in comparisons to some of the larger states like North Carolina and Florida, but nonetheless just looking at January 1 in previous years, opportunity could be lost at a time when it was important to at least have some ability to harvest sharks. I think this is much improved over a couple years ago.

DR. DANIEL: I would agree as well, and think that having the bycatch allowance when the season closes is helpful too, to be able to keep one or two fish. I think that is going to help reduce discard levels. You know my issue on the start date with the closure that exists off North Carolina from January through – I can't remember now, it has been so darn long since we talked about it. But what was it, July 30th or June 30th is the closure off North Carolina?

MS. BREWSTER-GEISZ: The end of July.

DR. DANIEL: The end of July. That still hasn't been put in an amendment to resolve that problem off North Carolina. Certainly, I know that you have been working with our fishermen, and talking to them. I know you all have done your best. But the later we can open it, without hopefully disadvantaging Virginia, when North Carolina is open, the better off we are.

July 1; that is 30 days that we missed because we can't fish in the EEZ off North Carolina until really August 1. I would appreciate us keeping that in mind for the opening. I guess we can decide, but it is really going to be up to when you open so that we can fish in the EEZ.

CHAIRMAN NOWALSKY: The Technical Committee did have a chance to review this, and one question they had was how much time does HMS intend to give with the CRL adjustments?

MS. BREWSTER-GEISZ: That is a hard question to answer. We have not yet done this, so we don't know exactly how it will play out. When we do closure notices, as soon as we have those updated landings, we get to work on that notice and we send it out pretty much within a day or two. That is all the notice we have. I'm hoping we'll have a little bit more notice on these change of retention limits. We might need more discussion. I can't promise much more than a couple days' notice. They would go into effect five days after filing.

MR. PATRICK AUGUSTINE: I don't think there is any more information you are going to be able to give us, is there, Karyl? I think this is it.

MS. BREWSTER-GEISZ: Unless you have more questions, yes.

MR. AUGUSTINE: No, I have no more questions, but when you're ready, Mr. Chairman I would like to make a motion.

CHAIRMAN NOWALSKY: All right let's go ahead and start that process.

MR. AUGUSTINE: **I move that the board approve the 2016 Coastal Shark Specifications as presented today.**

CHAIRMAN NOWALSKY: Megan is working on putting that up for us, and while she's working on that, do I have a second to that; seconded by Bill Adler? We'll give us a chance to get that up for a moment then we'll come back to you, Pat, just a moment. Let me let Ashton, and staff, provide some comment about the motion as it is first, before we turn it back to the board.

MS. ASHTON HARP: Just one comment is that the wording says as shown today. NOAA is receiving comments on the proposed specifications, and if there are changes that they move forward with we would not be in sync with NOAA if we were to move forward.

MR. AUGUSTINE: Change the language accordingly then to fit our need.

CHAIRMAN NOWALSKY: Again, where the challenge lies right now is that we have a proposed rule. The comment period is ended but the final rule may be different. With this motion as it is, would set the specs as they exist in the proposed rule and should they change, then that would likely require further action by this board. Again in the past and last year, the motion was to defer to the regulations that they would be consistent with the final rule when published. But the motion as it is written right now says move that the board oppose the coastal shark specifications; and you want to stop it right there.

MR. AUGUSTINE: Let's change it the way it was. We will end up, including the changes in the final rule that we will be accepting. Thank you very much for that and then a question back to Karyl, when we can, Mr. Chairman.

CHAIRMAN NOWALSKY: **Okay let's be clear on the motion that has come before the board,**

**the motion from Mr. Augustine is move the board approve the coastal shark specifications, including changes in the final rule; and is that the motion that you're seconding, Mr. Adler?**

MR. AUGUSTINE: That is correct. That is the motion before the board. I'll first go to Pat and then I'll come back to Dave Borden.

MR. AUGUSTINE: Karyl, will our advisory panel adjust the possible movement back to July 1st, or is that a foregone conclusion, or will the staff end up making that decision directly?

MS. BREWSTER-GEISZ: Are you talking about the HMS Advisory Panel?

MR. AUGUSTINE: Yes.

MS. BREWSTER-GEISZ: That advisory panel won't be meeting until March/April timeframe. The final specifications will be out in probably another month, maybe a little less.

MR. AUGUSTINE: I was referring to in the future. If it will be addressed for the next year, it could possibly be brought up in April for next year, so they may want to move it from January 1st to July 1st is that true or could?

MS. BREWSTER-GEISZ: You can always bring up that idea in front of the advisory panel. We were hoping with Amendment 6 that we wouldn't necessarily be doing that any more, but a lot of that will depend upon how this works this coming year.

MR. DAVID V. D. BORDEN: I am not totally opposed to the motion, but my preference would be to go back to the original motion that Pat and Bill made. I think it's a wiser course of action, provides the flexibility for the commission in the event there is a change to offer comments. What I would suggest is, if they were willing to go back to their original motion we would simply state that when the rule comes out if the committee feels a need to comment on it, they are designated to do that on behalf of the commission, that's all.

CHAIRMAN NOWALSKY: At this point we've got a motion that we're debating. I don't think there is going to be any more comment to submit, with the public comment period closed. I don't think there is going to be any additional opportunity for comment at this time. If you would like to propose an amendment to the motion as it is right now that we're debating; that would be the course of action we would follow.

MR. BORDEN: Maybe, Mr. Chairman, I'm not interpreting. Maybe Karyl can straighten me out on this. My understanding is there is going to be a final rule, and the final rule could be different than the existing proposal. All I was suggesting is give us some flexibility to respond to that; that's all, Mr. Chairman. I'll defer to Pat and Bill. I'd ask them to make a friendly amendment back to the original one.

CHAIRMAN NOWALSKY: I believe that it is the intent, and I think the motion would specify that any changes to the final rule, the specs that we approve would include those changes. That was the intent of the motion, as I heard it, was to include any changes in the final rule. Essentially the end result will be the board approving the same specs as the final rule.

MR. O'REILLY: Certainly, as I mentioned there is an improvement. Virginia did comment on the proposed rule on September 15th, and I'll make that letter available as soon as we wrap up here. It is really a letter that is similar to what was provided in 2014. I share Dave Borden's points on the fact that we still need to see the final rule.

I am not positive, usually that means there is a comment period after that as well. Despite the recent years not making much of a difference in Virginia, whether it is January 1 or whether it is July 1, that is just two years. The points that were raised in the letter that we submitted were that we have a very short window of opportunity, given the May 15 to July 15 closure, and also that we certainly recognize that the National Marine Fisheries Service can

adjust the in-season as was talked about here by Karyl just a little while ago.

But that also can mean if it is not done correctly, that by the time the adjustment is made it is too late. I know there would be good intentions, and the best ability. Karyl was asked just a few moments ago about what the protocol would be for notification the Technical Committee had, and indicated this is the first time out of the shoot, it is very difficult to comment on that. But as an experiment we just don't want it to go wrong. We would like to hope it succeeds, but would like to wait and have our option open a little bit.

July 1 is still the preferred opening date, and has been for two years. The minutes will show that Dr. Daniel and I made that pretty clear last year. Again, I will say that we are not a major shark harvesting state, but it is very important at the time that those sharks are available and before they leave in October that we have the ability to have some harvest. I don't know what that does to the motion, but those are my comments.

CHAIRMAN NOWALSKY: Well, it doesn't do anything to the motion right now.

MS. TONI KERNS: Just a question and clarification for the maker of the motion and the board. I just want to make sure that we're clear on sort of at least what is in the proposed rule right now that we're potentially voting on what we don't know what comes out of the final rule. It is that we're looking at an opening date of January 1 for large coastal sharks, and a variable retention limit of 45 sharks per vessel per trip with a maximum of 52 or 54; 55 sharks and a minimum of zero sharks.

I want to make sure that the states do truly have the ability to respond quickly to variable retention limits before we take action on this motion, because if states don't have the ability to actually respond to those variable retention limits, then we wouldn't be able to implement our own measure. Then Karyl did go over a

change in the quota for the blacknose shark. We typically don't do quotas at the commission. We usually just follow the federal quotas, so I don't know if that means that you're asking for us to do a quota or not; since we don't have the things listed up on the board.

CHAIRMAN NOWALSKY: Let me first turn to Karyl, for clarification on the blacknose quota, and then I'll turn it back to board comment on the ability to implement the variable retention limits.

MS. BREWSTER-GEISZ: My understanding is in your FMP, you don't set the quotas, you just follow ours. But I did want to provide what they would be for you.

CHAIRMAN NOWALSKY: Okay so staff is looking for input from the board on the ability to implement the variable retention limits.

MR. BAUM: Yes I was going to bring up that concern, as far as New Jersey is concerned. We are concerned that we might not be able to keep up with HMSs changes to retention limit. That is a concern.

MR. STEVE HINES: I think New York with a regulatory change at some point in the next year would be able to do that. But we're going to have to change our regulations to get that ability to vary the trip limit. Right now our regulations state that the possession limit is at 36 sharks. I would have to remove that and add language that would allow us to do that. That is going to probably take us four months to do that. We won't be ready to go by January 1st, but at some point next year we would be able to go.

MR. JASON E. MCNAMEE: Rhode Island does have the ability. We would need a minimum of 48 hours, though. That is kind of our rule. It sounds like that would fit the scenario that you outlined. The other question I had, though, is on how we get notified. I'm assuming it is through the same mechanism we have now with the notices we get through e-mail and

sometimes fax. But that might be good to standardize exactly how that's going to happen as well, so we know what to look for.

MS. BREWSTER-GEISZ: We do have different options we can do. Yes, we have the e-mail list that would go out to everybody. I also make sure to contact Ashton with anything, and then we have another running list of people that we need to contact for certain actions, so we call them directly to make sure that they go the information.

If ASMFC wants, they could put together a list of who in the states we should call for changes on the retention limit, and we can make sure to call them when we are changing the retention limit; and possibly as soon as it files so you would know as soon as possible that it is happening.

DR. DANIEL: I can do mine immediately through proclamation authority, so I don't have a problem there. I am concerned about the motion though, including changes in the final rule but we don't know what they are yet. That makes me nervous, and I can't support that part of the motion. But talking to Virginia and Florida, and I'm not sure if any other states want to comment on this. I think we're a consensus of the three major shark players to open July 15 instead of July 1. I would like to make a motion for the large coastal sharks once this is dispensed of, to open on July the 15th instead of July 1. That way Virginia gets to start as soon as their closure goes off on July 15. We've still got to wait two weeks for August 1. But at least it is not a month. January 1 is still open, January 1 for Florida; still manage it the same way you've been doing it, but just hold off on opening the summer season until July 15.

CHAIRMAN NOWALSKY: Question from Karyl for Dr. Daniel?

MS. BREWSTER-GEISZ: Just so I'm clear on what you're saying. When you're saying open July 15th, do you actually mean increase the retention limit back to 45?

DR. DANIEL: Yes. Go back to 45 from whatever you lower it down to, to throttle back; which is a great opportunity. But July 15 would be far better for us than July 1. I think it would satisfy everybody; July 15.

CHAIRMAN NOWALSKY: I think we're at a point where we need to either take action by voting on the motion or need another motion to amend or substitute, but I think we're at that point of taking some action here. I saw Pat's hand go up and then I'll come back to Dr. Daniel.

MR. AUGUSTINE: Just a clarification, Karyl. Assume that the final rule is different and you implement it. A lot of the sequence of events that then happen, are we individually by states found out of compliance? Are dealers found out of compliance? Are permitted shark fishermen found out of compliance?

At the end of the day what would we, ASMFC, this board, have to do to come back into compliance; either accept the final rule or will you amend the final rule? I don't think so. Could you give the board some clarification as to what the scenario might be if we, the board, does not agree with the final rule? I know. Some of them don't.

MS. BREWSTER-GEISZ: If I understand the question correctly, you are asking what would happen if we finalize our rule and it is different than the proposed. What would happen to state fishermen who are then following the ASMFC regulations?

MR. AUGUSTINE: Yes, I know the answer, but someone else needs to know it around the table.

MS. BREWSTER-GEISZ: Once our rule is final, federal fishermen and federal permitted dealers need to abide by that; so they would be limited by it. If it is a state fisherman fishing in state waters that is up to the state, so they would have to follow the ASMFC regulations.

MR. AUGUSTINE: And if the quota is reached by your numbers, what happens?

MS. BREWSTER-GEISZ: Then we close when the quota is reached. My understanding is under ASMFC regulations, ASMFC also closes.

MR. AUGUSTINE: Thank you, I rest my case. I would move to move the question.

CHAIRMAN NOWALSKY: Two other hands, Dr. Daniel and then Mike Luisi.

DR. DANIEL: Well, I was hoping you were going to withdraw the motion, so I'll try an amendment here. **I would move to amend that the board agree to the small coastal shark specifications as outlined and large coastal shark specifications with a July 15 increase to 45 sharks.**

My intent there would be that that would do exactly what we did last year, Adam, as you pointed out, which was very helpful on the small coastal sharks. On large coastal sharks we're agreeing with everything that NMFS has proposed, we're just requesting the July 15 opening date as opposed to the July 1. That keeps 30 percent in January for the Florida fishery; all the other things stay the same, just the July 15 specification.

CHAIRMAN NOWALSKY: With that motion, what is your intention with regards to -- are we approving the proposed rule or are we approving the final rule when it becomes published? Last year for the other coastal shark groups including the small coastals, the board agreed to be consistent with NOAA Fisheries when that final rule was published. You have here, as outlined. I think the board would need clarity as to whether that means the proposed rule or whether that means the final rule and published.

DR. DANIEL: Well, I think we're not going to really have a choice with our federal permit holders not to comply with the federal rule. I would say the final rule.

CHAIRMAN NOWALSKY: Would you like to leave your language, as outlined in the final rule?

DR. DANIEL: That's fine.

CHAIRMAN NOWALSKY: **Do I have a second for that motion? Okay, Rob O'Reilly.** Let me go to Mike Luisi who had his hand up.

MR. MICHAEL LUISI: I was going to speak to the original motion. I thought I heard earlier that this final rule was going to be final in a month's time, which I just don't like the idea of voting on a final rule that I'm not sure what that specification is going to be. It is likely going to be the same as the proposed rule.

I hope that there would be some indication, Karyl, that if you were thinking that something would change. I know you can't say for sure, it is likely going to be the same. But I don't like voting on the final rule unless I know what it is. I just wonder, I thought I heard earlier that there is an opportunity here that we could wait for that final rule and do this via e-mail.

You know, take a vote via e-mail in December some time, which would give states still an opportunity to see the final rule, make a decision. I certainly will support the July 15th increase. I think that's a good compromise for North Carolina, given that they have to keep the state waters closed until the end of the month. I'm just asking that of you Mr. Chairman, if that is a direction that we could consider here instead of voting on a motion where we don't know what the final rule is going to be.

CHAIRMAN NOWALSKY: The direction we're going to go is we have an original motion. We have an amended motion. I am going to ask for a show of hands of people that want to speak on the amended motion, and we're going to proceed with voting these up or down. If the will of the board is to delay action on this to an e-mail vote or something, then the course of action would be to vote against these actions, get them dispensed with as quickly as possible

and then move in another direction. Let me ask for a show of hands. Karyl has something to say, and then we'll get back to comments on the motions.

MS. BREWSTER-GEISZ: I just wanted to address the point about whether or not the proposed rule would be the same as the final. We received a lot of comments on this proposed rule. It is a new thing that we're proposing to do, in terms of moving the retention limits up and down. Opening January 1 has always, or in very recent years, been a very controversial action.

We have gotten a lot of comments. Some of these comments are very similar to what we received on Amendment 6, in terms of the retention limit. On Amendment 6 people felt that the 55 shark retention limit was too high, and this included some of the fishermen. We received similar comments on this; that people thought opening January 1 with 45 was too high.

They suggested reducing it, some reduced it down to 25 others reduced it back down to 36. The January 1 opening, we did have some people saying yes and other people saying no, it should be in July as you've done in the past. As you already noted, I can't tell you that it will change, I am just letting you know that there were a number of substantial comments that could change what we proposed.

CHAIRMAN NOWALSKY: Okay so let me get a show of hands. I'll just also offer that procedurally speaking we could go one additional layer. If the desire was to delay action to some point, a motion to substitute for what we have here with that would be an option procedurally, so a show of hands of people that want to speak on the motion to amend.

MR. ERIC REID: I'm going to have to oppose this, because it is against my principals to vote on something that I really don't know what it's going to be. I don't think it is in a positive light

for this commission to forego a comment on the final rule once it actually comes out. If we vote on this, essentially, we've given up our right to comment on whatever the final rule may be.

I don't care for that. I would oppose both of these. Perhaps maybe we should table the whole thing until the final rule is made public, and then vote; whether it is by electronic media or snail mail for all I care about. But I can't support either one of these.

DR. DANIEL: I think there may be a little bit of confusion. The request that we're making is not to open. We're asking for the EEZ to open on July the 15th, just to make sure that is clear. It is not for a state waters fishery to open July 15th, it is to make sure that the EEZ opens on the 15th.

But Mike and Eric's comments, I agree. I am going to withdraw my amendment motion with the hope that we have something that would delay this until we see the final rule, and then we can make a decision based on an e-mail poll or whatever. I agree with what they're saying so I am going to throw out my amended motion.

CHAIRMAN NOWALSKY: I think given the amount of discussion we've had already, we need to dispense with it.

MR. O'REILLY: I did second the motion, but what sticks with me is that we don't even know yet about July 15th, so in a way this is going to be turning out to be a comment on the final rule, the way it's going; because we don't know. NMFS may or may not want to be ramping up the number of sharks to 45. We don't even know that. I like the intent of this, but again, we can go ahead and vote on it.

CHAIRMAN NOWALSKY: Okay, seeing no other hands; I think I know the direction we're going. **I'll give you a moment to caucus and we're going to vote on the motion to amend; that the board agree to the small coastal shark**

**specifications as outlined in the final rule and large coastal shark specifications with a July 15th increase to 45 sharks.** Motion by Dr. Daniel and seconded by Mr. O'Reilly.

Okay, just as another point of information. When we get to the final action, which the motion to amend is not, this is a final action. Unless we have a motion without objection that will require a roll call, but the motion to amend itself is not the final action, so we'll vote on this via show of hands. All those in favor; raise your right hand, please. All those opposed; same sign, 12, abstentions; 1 abstention. **Null vote; motion fails, 0 in favor, 12 against, 1 abstention, null votes.** Okay, that brings us back to the main motion. Mike Luisi.

MR. LUISI: **Mr. Chairman, I move to table the motion to an e-mail vote after the final rule is published.**

CHAIRMAN NOWALSKY: Okay so we have a motion to move to table until after the final rule is published. The first hand I saw was Pat Geer for a second. Any further discussion on the motion? There is no discussion on a motion to table. We have a first and a second. I'll give you a moment to caucus. **The motion is move to table for an e-mail vote until after the final rule is published.** Motion by Mr. Luisi, seconded by Mr. Geer.

Okay, on the motion to table, all those in favor; raise your right hand. Thirteen in favor; all those opposed, abstentions, null votes. **Okay, motion to table passes 13 to 0 to 0 to 0.**

DR. DANIEL: Karyl, would it help -- I mean, we've kind of provided our opinion on the 15th, and the final rule is going to come out, I guess, with the 15th on it, right? But would it help if we were to provide that, or are our comments around the table -- would a motion asking NMFS to do July 15th be of help?

MS. BREWSTER-GEISZ: The comment period is already closed. I believe July 15th was in your comments, Louis. It is on the public record and

I certainly heard it very loud and clear here. I don't think we need anything else.

CHAIRMAN NOWALSKY: Okay, well, did you have any other comments?

MS. BREWSTER-GEISZ: I just had a quick question on whether or not the board wanted to put together a list of state contacts for my staff to contact when we change the retention limits up or down.

CHAIRMAN NOWALSKY: I think that's something that staff can work with commissioners to compile, and all those commissioners that have names pass it on to staff or let people know that staff is collecting that.

#### ADJOURNMENT

Okay, is there any further business to come before the board? Seeing none; I will entertain a motion to adjourn, motion by Mr. Augustine, second by Mr. Adler. Without objection we are adjourned.

(Whereupon, the meeting was adjourned at 4:25 o'clock p.m., November 4, 2015.)