

Atlantic States Marine Fisheries Commission

ISFMP Policy Board

May 22, 2013
1:15 – 4:15 p.m.
Alexandria, Virginia

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome; Introductions (*P. Diodati*) 1:15 p.m.
2. Board Consent (*P. Diodati*) 1:15 p.m.
 - a. Approval of Agenda
 - b. Approval of Proceedings from February 2013
3. Public comment 1:20 p.m.
4. Discuss the proposed rule for the domestic elements of the Shark Conservation Act (*K. Denit*) 1:30 p.m.
 - Consider ASMFC Public Comment on the proposed rule **Action**
5. Discuss concerns with the implementation of the Marine Recreational Information Program (*L. Daniel*) 2:10 p.m.
6. Consider revisions to the ISFMP Charter based on the approved Technical Guidance Document (*T. Kerns*) **Action** 2:40 p.m.
7. Discuss Whelk/Conch Management 2:55 p.m.
8. Review and consider the recommendation from the Artificial Reef Committee to send a letter to the U.S. Department of Transportation's Maritime Administration (*T.Kerns*) **Action** 3:10 p.m.
9. Management and Science Committee Report (*M. Armstrong*) 3:20 p.m.
10. Law Enforcement Committee Report (*M. Robson*) 3:30 p.m.
11. NEAMAP Report (*R. O'Reilly*) 3:40 p.m.
12. Habitat Committee Report (*T. Kerns*) 3:50 p.m.
13. Atlantic Coastal Fish Habitat Partnership Report (*E. Greene*) 4:05 p.m.
14. Other Business/Adjourn 4:15 p.m.

The meeting will be held at the Crowne Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia; 703-683-6000

Working towards healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

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| 1. Welcome; Introductions (<i>P. Diodati</i>) | 1:15 p.m. |
| 2. Board Consent (<i>P. Diodati</i>) | 1:15 p.m. |
| • Approval of Agenda | |
| 3. Public comment | 1:20 p.m. |
| 4. Consider Shad and River Herring Research Proposals (<i>K. Taylor</i>) Action | 1:30 p.m. |
| 5. Review of Non-compliance Findings (if necessary) | 1:45 p.m. |
| 6. Other Business/Adjourn | 2:15 p.m. |

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Working towards healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

MEETING OVERVIEW

ISFMP Policy Board Meeting
Wednesday, May 22, 2013
1:15 – 4:15 p.m.
Alexandria, Virginia

Chair: Paul Diodati (MA) Assumed Chairmanship: 11/11	Vice Chair: Louis Daniel (NC)	Previous Board Meeting: February 20 and 21, 2013
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, PRFC, VA, NC, SC, GA, FL, NMFS, USFWS (19 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from February 20, 2013

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Discuss the proposed rule for the domestic elements of the Shark Conservation Act (1:30-2:10 p.m.) Action

Background

- NMFS has published a proposed rule to implement the provisions of the Shark Conservation Act of 2010 (SCA) and prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. (**Briefing CD**)
- Public comment for the rule closes on June 17, 2013

Presentations

- NOAA staff will present an overview of the domestic elements of the Shark Conservation Act

Board actions for consideration at this meeting

- Consider ASMFC public comment on the proposed rule.

5. Discuss concerns with the implementation of the Marine Recreational Information Program (2:10-2:40 p.m.)

Background

- New elements of the MRIP program have been implemented in 2012. States have some concerns with the execution of the new elements and the impact on the survey results.

Presentations
<ul style="list-style-type: none"> • Discuss state concerns by L. Daniel
Board actions for consideration at this meeting

6. Consider revisions to the ISFMP Charter based on the approved Technical Guidance Document (2:40-2:55 p.m.) Action
Background
<ul style="list-style-type: none"> • The Technical Support Group Guidance and Benchmark Stock Assessment Process document was approved in February. Revisions to the ISFMP charter should be considered for consistency in the two documents (Supplemental Materials).
Presentations
<ul style="list-style-type: none"> • Overview of recommended revisions to the ISFMP Charter will be presented by T. Kerns
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Consider approval of revisions to the ISFMP Charter

7. Discuss Whelk/Conch Management (2:55-3:10 p.m.)
Background
<ul style="list-style-type: none"> • The Horseshoe Crab Management Board, requested the Policy Board discuss the consideration of a whelk/Conch FMP in February • The Policy Board directed staff to present information on current whelk/conch management and biology
Presentations
<ul style="list-style-type: none"> • Data on current whelk/conch management and biology by T. Kerns
Board actions for consideration at this meeting

8. Review and consider the recommendation from the Artificial Reef Committee to send a letter to the U.S. Department of Transportation’s Maritime Administration (3:10-3:20 p.m.) Action
Background
<ul style="list-style-type: none"> • In September 2012, the Maritime Administration implemented a new policy to restrict the use of vessels constructed prior to 1985 from being used in artificial reef projects. • The Artificial Reef Technical Committee and Habitat Committee request the ISFMP Policy Board consider sending the attached letter to the Administrator of U.S. Department of Transportation’s Maritime Administration to rescind the policy change.
Presentations
<ul style="list-style-type: none"> • Overview of letter by T. Kerns (Briefing CD)
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Approve sending a letter to the U.S. Department of Transportation’s Maritime Administration

9. Management and Science Committee Report (3:20-3:30p.m.)
Background
<ul style="list-style-type: none"> • The Management & Science Committee (MSC) met May 21, 2013 • The Policy Board tasked MSC with investigating climate-induced shifts in stock distributions and possible re-evaluation of state quota allocations.

- Task 1.5.2 in 2013 Action Plan – Develop Commission policy regarding risk and uncertainty in consideration of and in coordination with Councils approaches. MSC is working to draft for Policy Board consideration.
- MSC revisited how to incorporate ecosystem considerations in management, following the ecosystem based fisheries management workshop held for Commissioners in 2010

Presentations

- Chair will provide a report on MSC activities

Board direction to the MSC for consideration at this meeting

- Provide direction to the climate, stock distributions, quota allocations work
- Consider how ASMFC structure can accommodate ecosystem based management

10. Law Enforcement Committee Report (3:30-3:40 p.m.)

Background

- The Law Enforcement Committee will met during the Commission Spring Meeting

Presentations

- Report on outcomes and recommendations from the LEC meeting by M. Robson

Board actions for consideration at this meeting

11. NEAMAP Report (3:40-3:50 p.m.)

Background

- The NEAMAP Board met February 21, 2013
- NEAMAP 2013 Operations Plan describes tasks to promote coordination and efficiency between NEAMAP surveys

Presentations

- Chair will provide a report on NEAMAP activities

Board consideration at this meeting

- Consider reconstitution of ISFMP Policy Board Subcommittee to identify long-term funding for NEAMAP

12. Habitat Committee Report (3:50-4:05 p.m.)

Background

- The Habitat Committee will met May 8-9, 2013

Presentations

- Report on outcomes and recommendations from the Habitat Committee

Board actions for consideration at this meeting

13. Atlantic Coastal Fish Habitat Partnership Report (4:05-4:15 p.m.)

Background

- The Atlantic Coastal Fish Habitat Partnership will met May 6-7, 2013

Presentations

- E. Greene will provide a report on ACFHP activities

Board actions for consideration at this meeting

14. Other Business/Recess

MEETING OVERVIEW

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1:15-2:15 p.m.
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2. Board Consent

- Approval of Agenda

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4. Consider Shad and River Herring Research Proposals (*K. Taylor*) Action (1:30-1:45)

Background

- Two research proposals have been submitted to the Shad and River Herring Technical Committee for review
- The first is from Georgia to conduct an shad stocking program in the Ogeechee River.
- The second is from Maine to collect juvenile river herring (~620 alewife and ~620 blueback herring) in conjunction with the NOAA-NMFS trawl survey in Penobscot Bay.

Presentations

- Overview of proposals and technical committee report by K. Taylor

Board actions for consideration at this meeting

- Consider approval of shad and river herring research proposals

5. Review Non-Compliance Recommendations (If Necessary) (1:45-2:15 p.m.)

Background

- Species management boards and sections review compliance on an on-going basis.
- If a board/section recommends that a state be found out of compliance, the Policy Board must review this finding prior to the Commission taking action.

Presentations

- Staff will provide background on any non-compliance recommendations

Board actions for consideration at this meeting

- Determine if a recommendation should be made for the Commission to notify the Secretaries of Interior and Commerce of a state's non-compliance

6. Other Business/Adjourn

DRAFT

DRAFT

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DRAFT

**DRAFT PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD**

Crowne Plaza Hotel - Old Town
Alexandria, Virginia
February 20, 2013

These minutes are draft and subject to approval by the ISFMP Policy Board.
The Board will review the minutes during its next meeting.

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1. **Approval of Agenda** by Consent (Page 1).
2. **Approval of Proceedings of October 12, 2012** by Consent (Page 1).
3. **Move to recommend the Commission send a letter to USFWS urging expedited review and possible action on the importation of all Asian horseshoe crab species.** Motion by David Simpson. Motion carried (Page 17).
4. **Motion to recommend the Executive Director to send a letter to the Chairs of the Maine Legislature's Joint Standing Committee on Marine Resources. The letter shall describe ASMFC's compliance criteria and clearly lay out what level of increased effort within the glass eel fishery (licenses or gear), would put Maine out of compliance for the 2013 season. The letter should also state what the impact is to a state being found out of compliance.** Motion by Tom O'Connell. Motion carried (Page 17).
5. **Motion that the Commission send a letter to the sponsors of New Jersey legislation S.2376 and A.2653. ARM model output showing New Jersey's allowable sustainable harvest levels and potential negative consequences in the US and abroad as a result of New Jersey's horseshoe crab moratorium shall be included.** Motion by Adam Nowalsky; second by Rob O'Reilly. Motion carried (Page 17).
6. **Move to adjourn** by consent (Page 17).

ATTENDANCE

Board Members

<p>Rep. Walter Kumeiga, ME (LA) Patrick Keliher, ME (AA) Willis Spear, ME, proxy for S.Train (GA) Dennis Abbott, NH, proxy for Sen. Watters (LA) Doug Grout, NH (AA) G. Ritchie White, NH (GA) Paul Diodati, MA (AA) Bill Adler, MA (GA) Rep. Sarah Peake, MA (LA) Robert Ballou, RI (AA) Bill McElroy, RI (GA) David Simpson, CT (AA) Dr. Lance Stewart, CT (GA) James Gilmore, NY (AA) Steve Heins, NY, Administrative proxy Pat Augustine, NY (GA) Peter Himchak, NJ, proxy for D. Chanda (AA) Adam Nowalsky, NJ, proxy for Asm. Albano (LA) Tom Fote, NJ (GA)</p>	<p>Mitchell Feigenbaum, PA, proxy for Sen. Vereb (LA) Leroy Young, PA, proxy for J. Arway (AA) Loren Lustig, PA (GA) David Saveikis, DE (AA) Roy Miller, DE (GA) Tom O'Connell, MD (AA) Bill Goldsborough, MD (GA) Russell Dize, MD, proxy for Sen. Colburn (LA) Jack Travelstead, VA (AA) Cathy Davenport, VA (GA) Louis Daniel, NC (AA) Sen. Ronnie Cromer, SC (LA) Robert Boyles, Jr., SC (AA) Patrick Geer, GA, proxy for S. Woodward (AA) James Estes, FL, proxy for J. McCawley (AA) Jaime Geiger, USFWS Kelly Denit, NMFS A.C. Carpenter, PRFC</p>
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(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Staff

Robert Beal

Toni Kerns

Guests

Margo Schultz-Haugen, NMFS

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Wednesday afternoon, February 20, 2013, and was called to order at 4:30 o'clock p.m. by Chairman Paul Diodati.

CALL TO ORDER

CHAIRMAN PAUL DIODATI: Welcome; I am Paul Diodati, Chair of the Policy Board.

APPROVAL OF AGENDA

CHAIRMAN DIODATI: You should have before you the agenda; and without objection we will approve the agenda.

APPROVAL OF PROCEEDINGS

CHAIRMAN DIODATI: Unless there is any objection; I will consider the proceedings from our last meeting approved; the minutes don't require any modifications. I see no heads shaking so we will consider those approved. I think I am going to jump around in this agenda so that we could deal with a couple of folks who are here today.

DISCUSSION OF ASMFC PUBLIC COMMENT ON AMENDMENT 5 TO THE HMS FISHERY MANAGEMENT PLAN

CHAIRMAN DIODATI: Let's jump to Louis Daniel, who wanted to discuss Amendment 5 to the HMS Fishery Management Plan. If you're ready, Louis, we could do that first.

DR. LOUIS B. DANIEL: Thank you, Mr. Chairman, and thank you to Dave and to Marin for getting the comments out so quickly. We had requested an extension of the comment period because there was a tremendous amount of information that impacted I think a lot of us that was not forthcoming from the National Marine Fisheries Service on moving forward with Amendment 5.

Today we got notice that they have indeed stripped out the measures that were of concern to us and will be dealing with those in a subsequent amendment; so for that we are grateful and appreciate the Service taking that step. I did sort of play the role of bad guy it seems like all the time when I'm dealing with HMS.

I'm sorry about that, but I do think that there are a couple of issues that we do need to discuss. Just to

make sure that I'm not out there on my own here, I think it is the general consensus of the commission and just again formally ask the Service to – Tom, have you got something?

MR. THOMAS FOTE: You said they stripped out the ones that – could you tell us which ones they stripped out because I have no idea which ones they –

DR. DANIEL: Yes; there is a notice that came out today.

MR. FOTE: I didn't get it.

DR. DANIEL: Basically the issue was they were under some mandates to move quickly on scalloped hammerheads, and so they're going to continue moving forward with measures to reduce overfishing on scalloped hammerheads. The other issue was some proposed closures to the pelagic longline fishery to protect dusky sharks, and there were a lot of questions raised about that. Some of those measures that aren't under a statutory timeline have been delayed to a subsequent measure. Is that a fair characterization, Margo?

MS. MARGO SHULTZ-HAUGEN: Yes; we've got the scalloped hammerhead, which has the rebuilding time clock going for late April, and so that will proceed. The dusky shark measures, we have a little bit more time. The two-year timeframe is in the fall in October, so we will pull out all of the dusky specific measures, so that would have been the time area closures for pelagic longline, shark research fishery changes, as well as the recreational increase in minimum size, which was based on dusky age at maturity. Those will be considered in a separate subsequent action and all the rest; so blacknose, blacktip. Scalloped hammerhead will proceed in Amendment 5 as quickly as we can. I have some copies of the list of notice, if people want them.

DR. DANIEL: So the issues that we really didn't have a chance to discuss fully were the issues that mostly are issues that have now been delayed. I would just like to formally again request that whenever HMS goes out for public hearings, if it has anything to do with the coastal sharks and this board, that that comment period end after a board meeting, so that we have an opportunity as a board to discuss those measures.

In this instance, the comment period ended on February 12th, and now we're meeting today. There are specific issues that are in this delayed-now action that the states need to be very much aware of. One

includes an extraordinary increase in the minimum size limit for large coastal sharks or for coastal sharks of I think it is 96 inches, which is an eight-foot shark.

So essentially what that does is that basically eliminates the vast majority of the recreational fishery for sharks. It may eliminate all of them except for the crazy folks that want to try to handle an eight-plus-foot shark. But as far as species like blacknose and blacktips and many of the other species that are important to the recreational fishery, if a 96-inch minimum size limit goes in, that fishery is done.

The other issue; and I don't know exactly how much this impacts other states, but if you look very closely – you know, there doesn't seem to be a tremendous amount of interest in the Coastal Shark Board. That is just my observation as having chaired it, and there are not that many folks that are really interested in the Coastal Shark Board; and so a lot of folks maybe don't pay as much attention to what is going in that board.

In this particular case this will have a significant impact on our pelagic longline fishery. That is our tunas, our dolphins, our wahoos that I'm sure many of you have a pretty significant interest in. It is an extraordinarily valuable fishery for North Carolina at least. The propose closure off of North Carolina is the famed Point off of Hatteras, which is the most lucrative pelagic longliner fishing grounds that we have, and that area is slated to be closed or was proposed to be closed for three months, pretty very lucrative months to protect dusky sharks.

I won't get into the numbers of dusky sharks. They're very small; the bycatch mortality associated with those sharks and the problems associated with the bycatch mortality rates. But if you look at Amendment 5, you will see there is a bunch of other boxes up off of Delaware and up off of Massachusetts and up off of a lot of your other states.

I don't know how that impacts you and I don't know if any of you have looked at those boxes and are aware of where those boxes are and what the potential impacts of those boxes will be. I wanted to have this opportunity to make sure that the board was aware of the potential impacts to the pelagic longline fishery; and if you're not, you need to be.

The other issue that you need to be aware of is that Amendment 7 for bluefin tuna is also coming in and proposing substantial closures in these similar areas because of bycatch of bluefin tuna, and so there is the potential for a devastating impact on our pelagic

longline fishery. One of the concerns or issues is bluefin bycatch, but we're not catching our quota of bluefin; and so what is not making sense – what we need to be thinking about – and I know we don't do bluefin tuna, but if we have tuna left over, why are we closing areas to account for bycatch?

Why don't we let the pelagic longline bycatch account for the fish that aren't being caught makes sense to me as opposed to closing the areas down? That is going to have significant impacts. The final issue; and this is one that has been frustrating, but is in data sharing. I think there has got to be a way that we work as state partners with the National Marine Fisheries Service to have a better relationship in terms of sharing data.

I understand the confidentiality issues with some of these things, but we have got to be able to get hold of the information that is being used to make these recommendations, to be able to review that data. If it is confidential data, it needs to be summarized in such a way that it is not confidential because at least in the state of North Carolina and I'm sure in all the other states we provide that information.

If we have to summarize some stuff to avoid confidentiality issues, we do, but we're constantly sending information and usually is a 24-hour time period that we get the data to our federal partner when it is asked for. I don't see that same reciprocity coming out of the National Marine Fisheries Service at least when it came to this data.

You know, the intent and purpose behind the Coastal Shark Board was to work very closely and intimately with NMFS and HMS in managing sharks. This has escalated into a position where all – and Margo knows – my senators, all my legislators, all my fishermen have gotten involved in this. It has created a mess.

I just feel it is important and it is consistent with the comments that we submitted on behalf of the ASMFC; and what I'm asking for is consistent with what the executive director has asked in terms of the comment period ending after a board meeting to give us this opportunity to have those discussions.

My hope is that we will have an opportunity at our May meeting because I'm assuming we're going to move fairly quickly on the dusky issues, but I think the Coastal Shark Board needs to discuss these issues and the ramifications to our recreational fishery with the size limit and to our pelagic longline fishery and commercial shark fishery and other fisheries before

these actions are taken in final action. Those were the points that I wanted to make and I appreciate the indulgence of the board.

MS. SHULTZ-HAUGEN: There are just a couple of points I would make. We try very hard to coordinate and consider the commission a true partner for coastal sharks. Hearing the request to comment on pelagic longline fisheries for tunas and swordfish is new, and I guess I would ask is the commission asking to establish an HMS Board as opposed to a Coastal Shark Board?

As much as we try to have comment periods overlap with the meetings, in this case it was very difficult for a variety of reasons. We I think have a good track record of doing that, but it isn't always possible. Sometimes our timeframes are dictated by other reasons. I would also point out that the commission has a representative on our HMS Advisory Panel. We also have ex-officio seats for every state as well as the Atlantic Council.

I believe there are actual opportunities for all HMS fisheries that are provided, and so I welcome anyone that is interested to come. We have the budget to pay, if asked. I believe a number of states are participating on the panel. We have councils that are pulling their HMS Advisory Boards together and submitting comments. I think the Coastal Shark Board is one venue but it is certainly not your only venue.

I guess I would also ask that when there are issues or when we request time, that there be some time provided. There has been occasion where we're discussing a major action and don't have a lot of time on the Coastal Shark Agenda. I think our knowledge of the interest has been gauged by the time allotment to a degree; and so if there hasn't been time, then it leaves a message that maybe there isn't that same level of interest, but we are more than happy to work on that.

On the data sharing, the agency has data-sharing agreements I believe with every state except possibly North Carolina. I am trying to find the overarching data-sharing agreement from Northeast Center staff to see if we can use that. It is the first I had heard that it exists. That, Louis, may be part of the struggle that we have that may be unique to North Carolina. But, again, I'm working on trying to resolve that or develop a new one if we need to. We're certainly not trying to hide information and we're trying to comply with own data confidentiality and sharing

requirements. With that, I would be interested to hear the discussion.

MR. PATRICK AUGUSTINE: I don't understand why we don't have someone on the HMS Advisory Panel from the commission. I was fortunate enough, when I was with the Mid-Atlantic, that I was the representative. It is amazing the information that is exchanged and the opportunity that the membership of the groups around the table have to say things off record directly to the HMS staff as to recommendations and changes we should make.

I don't know if there is anyone in this room – maybe you did, Dr. Daniel – who received a SAFE Document that has all the details you possibly could want about the HMS, bluefin tunas, all the BAYS, all the sharks, about the minimum size and so on. I try to get some of our folks on Long Island cranked up. I happen to be the governor's appointee, so I took it upon myself to write a position as to what we should do and then spread that around.

I was fortunate to enough to get it in a local fisherman magazine. Most folks in the state weren't aware – in our area on Long Island were aware that these changes were occurring. Again, if we had a member of the commission sitting on the HMS Panel – as Margo said, we could do that – it would be most beneficial. The document, although it looked like it was complicated, was very comprehensive and very easy to follow.

My biggest concern was that we're moving the minimum size for pelagics from 4.5 feet up to 96 inches. If you read the document, really it said that the maturing ages for blue sharks, shortfin, makos and several other fish are between 53 to 70 inches; and to go from 4.5 when these fish are not rated as overfished and overfishing occurring without taking a stand on those specifically and asking why would we do that; I came up with a recommendation we should be looking at six foot or 6.5 foot.

I tried to get that aired and I talked to Marin about it, and she did have a copy of my document and so on. The document has been out there and I just don't think that we were on top of it and still think we could ask for and for our committee I suppose we could request copies of that SAFE Document and we still have time to respond to some of these issues that have now been put off to a later date, particularly the recreational sizes.

But, with HMS you have got to be on top of it. That moves faster than some of the things that we do.

They have two or four meetings a year. They have the spring meeting and a summer meeting and a fall meeting. They meet with and during the ICCAT group meeting, so you're in tune with what is happening nationally and internationally.

You know there has been a push for this finning regulation to stop all imports of finning. Well, I am sure that was brought to the ICCAT Advisory Panel and the HMS Group way, way back, a couple of years ago, and we have only just recently paid attention to it because a group went out and got California to agree to ban the import. Those things are happening; they're happening on an international basis, and I think we've got to be a participant. If you're looking for someone to go, I'll go, but I do think we need a member from the commission on the HMS Advisory Panel.

MR. PETER HIMCHAK: Mr. Chairman, I was going to add the – and again after hearing Margo's response, I'm kind of wondering where the responsibility lies because the HMS Committee of the Mid-Atlantic Council requested an extension to the comment period, which was declined, but their comments went out the last day of the comment period, which was actually the day that the Mid-Atlantic Council was scheduled to meet.

Again, I don't know; it is not appropriate to point the finger like who should have been on top of this or why the timing was bad, but maybe it behooves all of us to pay a little more attention. When you start reading the e-mails from Louis, like, yes, I was getting really excited, but the HMS Committee of the Mid-Atlantic Council was – I don't know what they were doing or what they received.

MR. FOTE: I saw this notice when I was away. It was also when Hurricane Sandy had basically affected a lot of New York and New Jersey and people's eyes weren't on fisheries regulations but they were on a lot of other things when it came to that. Louis went in to talk about bluefin tuna. I felt the necessity this year to go to a bluefin tuna hearing because I have usually stopped going because I don't like banging my head against a cement wall. But I decided I would go in Tom's River since was about three miles from my house.

I remember bluefin tuna hearings ten or fifteen years ago or twenty years ago when we would have 300 people in the audience to basically sit here and discuss the issues. It is such of small importance anymore to New Jersey or the fishermen are not concerned. When I looked around the room, there

were old friends like Ritchie Ruez, Terry Bideman, Hassan, myself and I think John Cagle, and that was the only people in the room when we were talking bluefin tuna.

I'm old enough and have been going to council meetings long enough to realize when HMS was basically handled by the councils. I just wrote an article saying I think that's what we should go back to. When we had that representation at the councils when we have opposed things, it was people sitting around the table that were both commercial fishermen, state directors and things that promote rules like that.

Since we have moved out – and some of you know the reasons why it was moved out and who moved it out years ago – there has been this disconnect getting further and further between the fishermen and what goes on. At least at the council system, when they had them – when they had a change in the shark plan, they used to do a hearing in each state.

It was our responsibility because one of the council members would do the hearing. That is not done on all the new interests. To get people to take three or four days – you know, I'm a volunteer. Okay, I take about five and half, six weeks to come here and now I'm supposed to go to another four times to D.C. to basically sit at meetings. I don't go anymore. I try to send other people but it is very difficult to do that; to use 12 or 14 days of people's time.

It is easy when they come to our area. It is now more convenient for NMFS to do this because that is with the headquarters. When it was the council, it was easy to go to the council system. I have a lot of concerns about HMS and it really goes – I think Louis for putting his document in. I just basically resent that to a whole bunch of people included into a document that I put out because I thought his comments were right on.

You know, when you start looking at 96 inches, we look and says who even thought of this? If it would have gone through a table where fishermen were sitting at or council members, nobody would even have reported this because they realize it would have eliminated most fisheries in the northeast that don't have dusky as a bycatch and yet you're basically implementing these rules that would affect us. That is where the disconnect happens a lot of times. It is also interesting all the people that we appoint for HMS advisors, after they serve one or two terms they don't want to go back again. I mean, it is very difficult to even get people to serve anymore and to

put themselves on. I will stop doing my dance right now.

DR. DANIEL: I am scared to death that I agree a hundred percent with what Tom has said. I think you hit the nail on the head, and it is the same thing I am thinking about. There is just such a disconnect in how the ASMFC operates and how the councils operate and then how HMS operates.

One of the problems – you know, my staff goes and my fishermen go to the HMS meetings, and they see a pre-draft but then a document comes out with stuff that wasn't even in the pre-draft. So where did this come from? One of the problems that you run into is that once it gets into a draft, you're done. It is hard to get it changed.

To the comment about being involved in swordfish and BAYS tunas and such, yes, I mean, the shark plan is going to have a significant impact on those fisheries that are of significant importance to all the states sitting around this table. My main interest and my main focus was to make certain that all the member states around this table were aware of the impacts to our pelagic longline fishery.

Just because it is not bottom longline, it doesn't mean we don't have an interest. We have an interest in the pelagic longline fishery. We have an interest in all of HMS activities; but the way it is appearing to me is that it seems like every time the ASMFC and all the member states and all the various councils and all the folks make a recommendation to HMS, it very rarely gets accepted.

The smooth dogfish is a great example. Why in the world HMS is doing smooth dogfish is beyond my comprehension and why that decision was made against the recommendations of the Mid-Atlantic, the ASMFC and all the member states. There needs to be more oversight in how that is done. It is like ESA stuff.

It is done by a committee in Silver Spring, and it needs to be handled by the councils to where we have exactly what Tom said, where we have recreational fishermen, commercial fishermen, and state directors sitting around the table making suggestions and having the folks that can say, "Hey, look, outside the hundred fathom contour you're not going to catch any dusky sharks and so why does the box go outside the hundred fathom contour?"

Those are types of things, though, that – and off of Charleston there is a box. There are people that want

to see impacts to the pelagic longline fishery, and I can appreciate that and appreciate that. But if it is the time – I don't know why there has not been enough time granted, and I think we can certainly resolve that issue.

If HMS needs the time to come to the board and have those decisions, but it needs to be at a time when we can actually have discussions and make decisions. I'm just asking for the board to understand the impacts and ramifications of Amendment 5 and know that we have a lot of work to do. I don't think anybody dropped the ball. Marin was on this from the beginning. I was on this from the beginning.

We were very hopeful and assumed with all the states and everybody asking for the extension, that we would get it. We had our comments ready before the 12th and we provided those to ASMFC; and with the concurrence of the Coastal Shark Board Chairman we got those comments out in time; but it was a good thing we did that or we wouldn't have had our comments in at all. I think we did the best we could. There is a tremendous amount of information out there that we need and we still don't have before we can make any logical and real recommendations on how to handle this fishery.

CHAIRMAN DIODATI: Louis, are you looking for a particular action from the board today, because I did have note here for an action item? I'm not sure if the delay for some of these things accommodate your –

DR. DANIEL: No; my hope was to have us formally request the split that occurred today; the delay that was decided on today and approved; so that action is no longer necessary because it has been done. Again, we appreciate that opportunity to be able to spend more time on this issue.

CHAIRMAN DIODATI: Margo, are you all set? Do you want to add anything else?

MS. SHULTZ-HAUGEN: No; I would certainly welcome time at the next board meeting. I don't know exactly where we will be so I don't know what we will have to share. Marin was at the January meeting. If there are others that are interested, it is an open meeting. Again, if you are a state that has not been participating, please let me know. We can afford to pay for someone to come. I think we're trying to provide the opportunities as we can.

CHAIRMAN DIODATI: Yes, and we hear you and we appreciate that. I heard Pat's recommendation as

well. I think most of the states do have the opportunity to participate as ex-officio or in some other way. I know that I have designee usually involved. As what was pointed out, we do have FMP coordinators that attend the meetings on our behalf.

I guess the question of whether or not we want one of our commissioners to be representing the commission in a sense to I guess report back and keep the commission on track relative to HMS, because it isn't a large part of our business usually, we can discuss that. I don't think we need to decide that today. Maybe during the executive committee meeting morning we can discuss that and make a recommendation. I am going to jump down the agenda because I believe Mr. Hooker is here today to talk about the Bureau of Ocean Energy Management. We're glad to have you here today. Do you want to give us a short presentation?

UPDATE ON BUREAU OF OCEAN ENERGY MANAGEMENT ACTIVITIES

MR. BRIAN HOOKER: Thank you for the opportunity to come and update the commission. This is the first time I have had the opportunity to update the commission on some of the activities of the Bureau of Ocean Energy Management has taken thus far in the planning and analysis of offshore renewable wind energy.

This is a result of a request amongst several stakeholder meetings, Rhode Island and elsewhere, that the Bureau solicit opinion and be more involved in providing feedback in our processes. My name is, again, Brian Hooker. I am a biologist with the Bureau of Ocean Energy Management. We are within the Department of Interior. I work exclusively in the Office of Renewable Energy Programs.

Just a quick overview of what I will be talking about today; a recap of where we are with the different stages of development, the status of our wind energy areas and a status update of our environmental studies program in relation to offshore renewable energy as well. Where we are right now, as you can see on this slide, we have several stages of development.

We have spent most of our time thus far doing identifying what we term "wind energy areas". That has involved a task force, consultation, and formal public notice and comment. The stage that we're pretty much just beginning to embark on now is the leasing stage; the next stage where we have done environmental assessments for the issuance of leases

and site assessment activities, site characterization activity that might be done in support of eventually submitting an actual construction plan. The leasing that we have done thus far has been for the Cape Wind Energy Project and off of Delaware there has been one lease issued as well. There is no construction that has happened thus far.

The next stage after leasing generally would be a site assessment plan where they submitted a plan where they want to actually gauge what the wind energy is in that area that they have leased and also do site surveys to determine where they might be able to place turbines and what the design standards or design criteria they will need to utilize for the area.

Then finally we would receive a construction and operations plan. One thing I did want to point out is we do have and are in the process of updating our best management practices, which are the things that we look for when reviewing those plans. I will get more into that a little bit later on in the presentation.

The only construction and operations plan we have received thus far is the Cape Wind Energy Project. For each individual construction and operations plan there will be a full environmental impact statement prepared. The last stage, of course, is decommissioning, and the default status is that BOEM would require that the facility be fully bonded to the extent that is necessary to decommission the facility to 15 feet below the mud line.

Of course, BOEM may permit facilities to remain in place on a case-by-case basis, but that requires a whole separate application later down the line. Where are we right now? Starting up in the very top, but that is the area of Maine that is – actually, no, it is not on there. It's off the top of the screen, but we do have basically an unsolicited application from Statoil in North America to do a demonstration project off of Maine for I believe five floating wind turbines in that area. That process is currently ongoing.

Moving down the coast, we have the Cape Wind Energy Project here. They're in their second year of surveys. Moving down we have the Rhode Island Wind Energy Area and the Massachusetts Wind Energy Area. We have a proposed sale notice that we issued for Rhode Island that the comment period just recently closed.

We're in the process of developing a proposed sale notice for Massachusetts and we're wrapping up the environmental assessments and associated consultations with NMFS for those areas. Moving

down to New York; that is another unsolicited application from New York Power Authority that is technically a wind energy area, but that is still in the early phase. Actually, we have an open comment period for that area to determine if there is any competitive interest from any other developers for that area and to solicit any other environmental information regarding that application.

Moving down to New Jersey; that is also in the process of developing a proposed sale notice and determine how many lease areas would exist in the New Jersey area. Maryland is in the same situation where we're developing a proposed sale notice. The comment period for the Virginia proposed sale notice just closed on February 4th.

Moving down to North Carolina; we do have – I did forget to mention that the backdrop to this slide was the vessel trip reports 2001 to 2010, and that obviously does not include non-federally permitted fisheries. I just wanted to point out that the blue area does not indicate there is no fishing going on in that blue area. It is just a lower scale of intensity.

The data is a little different for North Carolina. We're still working on trying to get better fishing data for that area. The point here is the three areas that we do have a call for information on right now; we extended that comment period on these three areas until March 7th. Once again, that is also determining if there is any interest in that area and then soliciting other environmental information for these three areas off of North Carolina.

Moving down; there is currently nothing off of South Carolina. There is a South Carolina Task Force that has a meeting and I think that task force is starting to look into developing or identifying wind energy areas. However, really the only other thing south of North Carolina are what we term these "interim policy leases".

These leases only allow for certain very small-scale activity to basically do some testing and/or put up a meteorological tower to look at wind speeds. What you see here is the Georgia Power Authority. These are three lease blocks. Lease blocks are three statute miles by three statute miles apiece.

Down there off of Fort Lauderdale is Florida Atlantic University has an interest in technology testing for underwater turbines. That is the only what we term marine hydrokinetic activity going on in the Atlantic Coast. Everything else is wind power. Moving on to the biological studies; one of the questions we often

are asked are the impacts of electromagnetic fields on fish and other marine mammals.

We have completed a model-based assessment and literature review and that is available on our website. We have started to embark on an in situ study in the Pacific and Santa Barbara Channel. Based on the success or failures in that model, we will try to do something similar on the Atlantic Coast.

The Department of Energy has also funded a laboratory-based study and the final results of that are pending. We have also convened a Fish Acoustic Impact Workshop to primarily look at the effects of pile driving on fish. That study was recently completed and is posted on our website. Next week we actually will be having a workshop on noise-quieting technology to reduce the noise impact of pile driving as well as we're having some Europeans fly in from the UK and the Netherlands to talk about habitat impacts as well.

We're very much looking forward to learning from their experiences thus far in the several years of offshore wind that they have had on the ground. Regarding socio-economic studies; the first one I mention up here is the development of mitigation measures to address potential use conflicts between wind and commercial fishing industries. That was the best management practices I showed on that earlier slide.

We also have an interagency agreement with the NMFS Northeast Fisheries Science Center, Social Sciences Branch, to evaluate socio-economic impact. That was signed in September. We also have a Space-Use Conflict Study that was done, and this other one is building off of that is available on our website. We are continuing to process VMS and historical fishing-use data to gain a better perspective on what historical and current use patterns are in and around the identified wind energy areas.

Moving to the Best Management Practice Workshops; we have been getting a lot of impact. I would say they have been successful in the feedback that we have received. Although the participation levels have not necessarily been what I would have liked to see, I do believe the feedback we're getting is very good. It is basically the first opportunity to provide comments on the construction and operational phases. Thus far BOEM has pretty much only done formal notice and comment on activities such as survey activities or the placement of a single meteorological tower or buoy, but I think where most

people's interests are in the actual full-scale construction and operations leg.

Right now we're in the process of developing best management practices for those phases. Eventually we will be able to apply those best management practices in our review of site assessment plans and construction and operations plan and general activities plans. This slide is actually not one of our slides. This slide is developed by Deepwater Wind for their Block Island Wind Farm Demonstration Scale Project.

This is for five turbines right on the edge of – in state waters so it is not a BOEM project, but right on the edge of state waters around Block Island. I thought it just did a good job of just generally characterizing some of the spacing between turbines and a typical trawl vessel going through the middle of it.

The distance for Deepwater Winds Block Island Project is 804 meters apart with a 75 meter minimum height. There have been some indications that if they worked to have an offshore project, the spacing would be close to twice as large. The Cape Wind Energy Project is about 629 meters separation distance by rows and a thousand meters on the columns.

The Fishermen's Energy Project, another state waters' demonstration scale project, off of New Jersey is a 1,080 meters between turbines – just to give you an idea of the scale of the distances necessary for these larger offshore turbines. As I mentioned, we're in the process and we've begun collecting VMS data from the Office of Law Enforcement primarily not only to look at where the fishing activity is but also, as you can see, we're very interested in what the vessel transit patterns are to and from the fishing grounds.

This is I think during the Elephant Trunk Closure. When the Elephant Trunk Closed Area was opened in 2010, that is where that activity is reflected and you can see the use patterns in and out and where things may intersect with where we've placed the wind energy areas. This is just an example of some of the analysis that we're beginning to do.

As I mentioned, also we're looking at historical data. This is the old Walford and Freeman publication from 1974. It is a Fishing Atlas. It was done with interviews up and down the Atlantic Coast and we have digitized all of those areas. Well, we have scanned and geo-referenced all the maps that were in that publication and then lifted all the areas that they

have identified as their fishing grounds back in the seventies.

Here is that same data but with it lifted out of the geo-referenced map, so those are all the areas that were identified in that previous document or that previous scanned image. That's really all I have for you right now and I would love to hear your comments and questions regarding our processes.

CHAIRMAN DIODATI: We have got a lot of hands up. Brian, does the Bureau of Ocean Energy Management just deal with wind power or are you dealing with oil, gas and other sources of energy that is constructed on the water?

MR. HOOKER: Yes; the Bureau of Ocean Energy Management does regulate all leasing of federal lands under the Outer Continental Shelf Lands Act. We have basically three program areas that we operate in; the Office of Renewable Energy Programs, the Oil and Gas Program and the Marine Minerals Program, which is a sand and gravel program for beach renourishment. Those are our three program area.

MR. WILLIAM A. McELROY: Brian, as you might recall when you came to Rhode Island, I was one of the loud voices that was there. One of the principal points that I made to you at the time was that when you explained how you were using the VTR information to predict where the fishing activity occurred, I pointed out to you that the small boat fleet – and by small we mean I think under 65 feet or so – aren't under VTR requirements.

And particularly the lobster fishery, you had no indication whatsoever of where any of that fishery activity was occurring through that reporting system. I recommended to you at that time that the process that the Rhode Island Ocean SAMP Process was using where they come up with overlays by interviewing the fishermen to indicate where their areas were, to give you something in addition to those VTR reports, so it would indicate where a vast majority of the fishery was to occur. Have you integrated that suggestion into your system at all or have you come up with some way of dealing with that?

MR. HOOKER: We have received a couple of recommendations for doing more of that participatory GIS or participatory mapping. We have not begun that just yet. We have the last of the fishing best management practice workshops next week up at the Maine Fishermen's Forum. After that I think we could start turning to the next project that we would

do in support of this data gathering. That is definitely on our screen as something that we do want to pursue and through our workshops we have definitely heard that as something that we need to do more of.

MR. WILLIAM A. ADLER: I am going to repeat without repeating everything that Bill said having to do with Massachusetts and our fleets that do not report with the system that you usually work, and so I'm just adding to that idea that it needs to be added in for Massachusetts. My second question had to do with the mitigation measures; and are they published or is there some way to find out what the practice of mitigation for fisheries issues are when you plan to give out leases or you're looking for it and mitigation for adversely affected fishermen. Do you have that in writing or is it a set thing or you've just got that on the agenda?

MR. HOOKER: By no means was I trying to say that the story on the fishing data is done with what I revealed to you thus far. I think it is clear that the reason for coming to the commission is because we realize that there is definitely more data that needs to be gathered, especially the folks that don't report under those systems.

Regarding mitigation measures, we don't have mitigation measures, per se. On the EIS that was done for our entire program, we developed a list of best management practices and those best management practices in our regulations state that developers must use those best management practices in developing their plans.

However, what we're doing now is trying to refine those best management practices so that we get more detail; so when we actually receive the plans, we know is that actually meeting the spirit of that best management practice; such as there may be a best management practice or coordinate with fishermen; how we judge if the coordination with fishermen is adequate. What we're trying to do is really flesh that out and determine does that include like hiring a fisheries liaison or doing some other type of activity that clearly demonstrates there is that coordination with fishermen ongoing.

We do have – and I can show you under the record of our decision for that EIS – those existing best management practices, but there is nothing in there right now regarding compensatory mitigation. That's one question we get a lot in our workshops and there is no requirement, per se, right now for that type of mitigation.

MR. ADLER: I have just one more. Well, for instance, when a plan comes it or a proposal comes in to you; is that something that your agency can put in to the requirement? Is that the way it would work?

MR. HOOKER: Yes; it is our intention when we receive any plan, we look at the impacts of that plan. We develop an EA or in the case of a construction and operations plans it would be an EIS, so there would be full scoping, public hearings and EIS development. In that we would look at the impacts of that particular activity on other users. We can then tie terms and conditions of approval to that plan. That is open ended and we don't have necessarily any bounds on what those terms and conditions of approval are, but we do have that ability.

CHAIRMAN DIODATI: I guess to this point, during your presentation you talked about an interagency agreement with the National Marine Fisheries Service to structure the socio-economic impacts from various projects. Is that something you can talk more about?

MR. HOOKER: It is in its early phases. We just contracted or developed the agreement late last year, so we're trying to gather what all the impacts are so that they can start to be able to quantify that. It is looking at not just an individual facility but more of a coast-wide issue because one thing we have heard about is obviously not just looking at one facility versus another but more of a coast-wide ability to look at the range of potential impacts from these facilities. It is not going to arrive at one number. I feel it is going to arrive at a range of issues with certain assumptions as to what the impacts are from facilities.

MR. LOREN W. LUSTIG: Thank you for this report. I had to step out briefly so perhaps you covered it while I was out, but I was very interested in the slide that you said was not a slide that you had generated. I believe it was for an area called Block Island, and I think you said that it was to be found in state waters, nearshore waters. If I was a recreational fisherman, I believe I would target those kinds of areas; but would I be allowed to approach? If I was disallowed, it would be a net loss for me. If I was allowed, it would be a net gain. Can you comment about, please?

MR. HOOKER: I can't really comment necessarily on a state waters' project. The federal lead agency on that would be the Army Corps of Engineers. But in general – and this is a question that we obviously receive a lot of questions about regarding exclusion

zones or access to these sites once they're built. Other than tying up – we don't anticipate there would be tie-up provisions allowed because they're private facilities – there would be no exclusion zones around them.

The exclusion zone; I should state that it is the United States Coast Guard that has that authority to establish exclusion zones. They could do it by the request of a developer if it meets certain criteria or they could do it if they see the need arises; but they have stated in all their public meetings that there is no intention to establish any exclusion zones around these facilities.

MR. LUSTIG: We were just speaking about socio-economic impacts or the entire prospectus, and certainly I could fully understand disallowance of tying up, but other than that I would hope that the recreational anglers would be given full access to fish in what might be viewed as somewhat like an artificial reef and then enjoy that opportunity. Thank you.

MR. G. RITCHIE WHITE: Your discussion leads into my question. When you say no exclusion, I know when Homeland Security ups the threat level; I know the area around power plants extending out into the water is extended substantially. I was wondering whether in that type of situation would the area around these be excluded; and if that is the case, it would be a concern where those power lines are running a long distance, not only from the windmills but to shore. Are you aware of anything of that nature taking place if there is a terrorist threat and they up the level of security?

MR. HOOKER: What the Coast Guard would or would not do is something they have stated over and over again and they have not indicated that type exclusion would occur. I don't believe there is any such similar activity taken in the Gulf of Mexico around an oil and gas platform, for instance.

There are only I think 3,000 oil and gas platforms, and I think there are seven or eight – a very small handful of ones that actually have a 500 meter exclusion zone around them. The only example I have on the Atlantic Coast, up in Maine, in Copscook Bay there is an underwater device and even in that instance the Coast Guard would not place a regulatory restriction around that site. They just basically issued a notice to mariners to avoid doing certain activities around that site. Every indication from them, both verbally and in their past practices, indicates that would not be there, the practice.

DR. DANIEL: Brian, thank you for the presentation. Loren mentioned recreational fishing, and I am just wondering the base of these things and any kind of facility coming off of them; is that going to constrain commercial fishing activity around there? Are there chances you might hook something or hang something with a trawl or those types of things because it looked pretty clear in the picture that they can travel through those areas without any trouble; but would they still be able to fish in those general areas? That is my first question.

My second question is you were talking about the "de-assession" or whatever they call it. I'm assuming we're trying to learn from the lesions in the Gulf and was curious if 15 feet is sufficient because we have run into some problems with that with the Corps in our artificial reef program, the depths that we can – if we can do 15, I think that would be great, but then would you have to mark those things.

Then the last comment is the South Atlantic Alliance and some of the folks within the South Atlantic Alliance have looked at these areas a lot, and I'm sure it is partly with your agency as well, but there is some additional information for the area off of North Carolina. If you will get with Michelle Duval in my office, I think she has got some additional information on the activities that are occurring off there that may be a little more – we don't have the VTRs, but it may be a little more informative than what you have now.

MR. HOOKER: Thanks to Michelle for participating actually in one of our workshops in Morehead City last month. The target burial depth for the undersea cables is six feet. That is the target burial depth. Now, there may be instances where they hit rock or they hit something hard that is going to be very difficult to bury through, in which case we will consider other mitigation such as concrete mats or some type of covering that will prevent a hang on a cable.

We obviously don't want hang on a cable and anything obviously that is above the seafloor that could potentially produce a hang would have to be marked and put in a notice to mariners as well. There are really no other devices other than the turbines themselves and the cables. There is an electric service platform that is usually in the middle of the array, but otherwise there is not a whole lot of stuff all over the ground other than the cables themselves.

DR. DANIEL: Can you commercial fish around them?

MR. HOOKER: It is our intention, yes, that we would not prohibit that activity. I think it is up to the commercial fishermen to determine if it is safe to do so or if they feel comfortable doing so. I think one of the things we're learning in our best management practice workshops is how to design them so that there is perhaps minimizing the number of cables so that there is a better comfort level with trawling in certain areas within it, but certainly passage through them should not be an issue. We have gotten a lot of comments on how to actually light them so that there is the potential to actually identify corridors to and from areas.

MR. McELROY: I don't know if this is exactly a question and it might be just an observation. With that Block Island Project being in my backyard, I have been paying careful attention to what goes on. The question of exclusion of the zone is paramount in the commercial fishing community.

As it turns out in Europe there are precious few wind parks that allow commercial activity in them, and there are three different ways that they are excluded. Number one would be a government edict saying that they don't want them there. Number two would be the developer saying that they don't want them there. Number three is the insurance underwriter saying that they don't want them there.

In Europe all three of those things are done, so at this point there is very little commercial fishing activity allowed in those parks. Do you have any way of solving those problems? In that regard the significant secondary underwriter of marine insurance policies in the northeast goes over to Lloyds of London and a couple of those companies over there for reinsurance, and those are the companies that have said no to the commercial fishermen.

They say they thought that the hazard would be too high and they didn't want to insure the vessels. In other cases the underwriters who were insuring the towers for the developers had the same concern and created exclusion zones. Those weren't government exclusion zones but they effectively locked the commercial fishery out of all of those European fields. I understand recently one or two of those parks is investigating the possibility of relaxing some of those requirements and perhaps allowing activity in those fields, but at this point in time there doesn't seem to be any clear way that the developer or BOEM or anybody else can assure the industry that we will be allowed that access. Do you have any current insight into that that you could offer?

MR. HOOKER: Thank you for that comment. I will start with the insurance issue because it came up in Rhode Island. I did have a conversation with – the gentleman's name is escaping me now – with the Parker's Group that does the insurance. I just want to make sure I say his name right.

MR. McELROY: Fred Matera?

MR. HOOKER: Yes, thank you. I talked to Fred Matera at great length to try to figure out what this issue was. I think the last time I talked to him, which was in December, that there had been no action on the commercial fisheries insurance – there were no prohibitions on the insurance. I think his concern was that the underwriters may eventually – because they're asking about it; that eventually they may take action, but at least as of December there have no action to limit vessel insurance for commercial operators in those wind facilities.

I do completely understand that is a concern of folks and I have talked to insurance underwriters in the U.S. about the issue, and they basically told me that there is no policy that they're developing; that it is just if you're a bad operator or a bad driver, for instance, if you have a habit of hitting jetties, then your insurance might go up if you fish in a wind facility, but it is more of a one-on-one issue. We're not taking it lightly and not dismissing it.

One of the things we have been asked at our best management practices workshops is to actually try to work with the insurance companies to have them state a policy publicly, especially the underwriters, on what that might be. I don't know how we can do that, but it is something that we are looking in because we want to reduce that risk or want to reduce that uncertainty for folks that want to operate in there.

Regarding the exclusion zones in and around the facilities, yes, there are some in Europe that don't allow fishing within them, but there are others that do. I think there is big difference between the wind facilities off of Northern Ireland and Scotland than those down in England and then off of the Netherlands, too.

I think we actually have some Europeans coming into our office that are coming to our workshop next week that I intend to ask them very question and what their experience was, but it is definitely a mixed bag in all Europe regarding what the different restrictions are in different areas.

MR. ROBERT BALLOU: The prospect of a major offshore wind energy project off Rhode Island is garnering a lot of attention in our state for good reason. While I think there is general support for the concept of offshore renewable energy development, there are deep concerns – and I want to emphasize this; deep concerns that there is a lack of effective coordination with the fishery resource managers at the state level and at the regional level as well as the national level with regard to the status of the fishery resources in the areas slated for development, the need for additional survey work to better inform those assessments and a commitment to support that additional work.

Our concern is that we're setting ourselves up for a perfect storm where the focus is too much on site-specific impact analyses, which can't be nested within an overall context of good, baseline – fundamental baseline understanding of the status of the resources. Lobster is the poster child in Southern New England. We have a terrible situation with regard to lobsters.

Our concern is that there is not enough of a commitment right now to move forward almost irrespective of wind energy development, respective of the importance of that resource to the region, to the nation. It is the most valuable fishery resource in Rhode Island. We don't have enough of a handle on its status right now and yet we appear to be moving forward with a major offshore development in the very area where these animals live.

It is our strong concern that there is not enough coordination. There seems to be some ad hoc efforts underway, working with fishermen, working with university folks, but the resource managers themselves seem to be, for whatever reason, sort of out of the loop, and they should really be front and center.

BOEM I think in coordination with NOAA Fisheries, coordination with the states and coordination with this commission should be very, very interested in making sure that as we go forward with wind energy we do so with a full understanding of the status of the resources in the areas to be developed so that you can then – so that meaningful impact assessments can then be conducted, which can be related. In other words, let's not lose sight of the forest as we get too focused on the trees.

I really can't emphasize this point enough; and I think we have a golden opportunity right now to commit – and I mean the Royal We to commit to an

effort to really understand what the status of the resources is in these areas slated for development before the ball gets rolling much more. We stand ready and willing to assist in any way we can and look forward to further efforts to coordinate on this issue. Thank you.

CHAIMRAN DIODATI: Do you want to respond to that?

MR. HOOKER: Well, yes, on the study side. I entirely understand that and that is one of the reasons that I'm here today is to – I have heard that loud and clear and I definitely would like advice in ways that we can coordinate especially. I mentioned that Environmental Studies Program. We have an annual Environmental Studies Program where every year we do allocate money to doing this type of work, biological assessment work.

One of the things I do have on tap is a ventless trap survey in the Rhode Island and Massachusetts areas. How to coordinate that with this body; I would love advice from you on how to do that. Whether it be through a technical committee review or some other avenue, I am willing to take that advice back to the office.

Regarding coordination with the National Marine Fisheries Service, the new regional administrator has reached out to us and we are working to try to better coordinate not only us utilizing their outreach mechanisms but for them to be able to funnel information that they hear back to us as well, so the dialogue has improved greatly in recent months with him on board.

CHAIRMAN DIODATI: Last question, if that is what it is, Bill.

MR. ADLER: The insurance issue which Bill already explained was another thing I was going to bring up because we're concerned about that, too, both from the wind farm people and the boat insurers. The last thing I wanted to just mention is that the electromagnetic field, you said you have a study or you're doing a study on the results of electromagnetic energy on creatures on the bottom; which is it?

MR. HOOKER: We have multiple. The Department of Energy is funding a laboratory-based study that actually they imported American lobster. It is at the National Renewable Energy Labs on the west coast, but they actually imported a bunch of American lobsters and that is actually actively going on right now. Also, we're testing an in situ active cable and non-active cable in the Santa Barbara Channel in

California which obviously is not the east coast. We're investigating their successes and how they set it up and on how to set up something similar on the Atlantic.

MR. DENNIS ABBOTT: Mr. Chairman; a quick question. Would it be possible in the permitting process regarding the possible exclusions zone, to have that in the permitting process that an exclusion zone would not be permitted?

MR. HOOKER: Once again, that is the Coast Guard's authority. It is not within our authority to do.

CHAIRMAN DIODATI: Okay, I appreciate your coming here today, Brian, and you have had some excellent responses and we had some good questions. I am going to rely on our executive director maybe follow up with you in the future on some of the issues pertaining to information we might be able to provide on resource assessments; and particularly if you have funding that you want to provide to gather information, I think Bob would be a good conduit to help you with that.

MR. HOOKER: Thank you and I hope this is the first of many times.

CHAIRMAN DIODATI: Most of you have been here since early this morning so I really don't want to keep you past let's say six o'clock. We will delay a couple of things right off. I think Items 6 and 9 on your agenda; we will delay those until tomorrow. I would like Toni to go through Item Number 4, which is a quick summary of the results of the commissioner survey, because we will need that information I think for tomorrow morning's executive committee meeting.

RESULTS OF THE COMMISSIONER SURVEY

MS. KERNS: I have abbreviated my presentation in the interest of time. The commissioner survey is part of our annual action plan and it is to measure progress towards the commission goals. In this year's survey we had 24 commissioners respond out of 43 potential responses. Since we had two new commissioners, we let them have a free pass on this year's survey.

The response scale is on a one to ten; one being not supportive, ten being very satisfied or very supportive. We had five topics and twenty questions. What I'm going to do is let you know sort of what the

lowest score was for each of the topics. These are the issues that maybe the commissioners think we need to work on the most. There was strong support for both the vision and the goals, and both of those had scores all higher than eight. The lowest score was the agreement with the overall vision and goals, which was at an eight; so commissioners' agreement with our goals.

Whether or not we have a clear plan to carry out the vision scored a 7.6 under the carrying out the vision section was the lowest. Looking at the commission's execution and results, our confidence that the commission has that we will actually achieve our vision is the lowest at 5.9, and this was the lowest score that the commissioner survey had for all of the questions.

Also, within that section, whether or not the commission has an appropriate level of cooperation with federal partners, it scored a 6.2, which was the second lowest, so I thought it would be important to point that out. Looking at measuring progress and results, support for the metrics used by the commission was the lowest scoring at 7.95.

Then under measuring the availability and utilization of the commission resources, while it is a high score, it is the lowest in the category. It was just about 8.6, and that is our commission's performance in reacting to new information and adapting accordingly to achieve the commission's goals.

There were five open-ended questions in the survey. The first one is what is the most significant problem that we need to solve? There were a bunch of answers that were listed out on the memo as a part of the briefing materials, and I pulled out a couple common themes that I saw. That is coordination between federal and ASMFC on the FMPs; funding for both state and the commission; multispecies management is going to be a challenge; and dealing with climate change and impacts that will have on our fishery management plans.

The next question was what is the most important change to improve the results that we see as a commission? There was theme here with improving some partnerships in a lot of the responses. One was expanding the relationship with congress. Another was to increase the focus on the vision in the upcoming years; making decision standards that are based on science; and focusing on long-term benefits to the fisheries and communities rather than just looking at short-term impacts.

The biggest obstacle to success of the commission's goals and vision were financial constraints, political pressures and data quality. The last question was do we use the appropriate metrics? Most answers were, yes, we do. Some folks felt that we may need to provide more information on outside forces and factors impacting our successes and failures with our fishery management plans. There were a couple of common themes that we must update the vision.

And then some additional comments that we received is that the commission needs to continue working towards its goals; that we need to also continue working on transparency of all of our processes and making sure that discussions are fully engaged by all of our stakeholders and members; that there seems to be some fragmented management between state and federal plans; and that we have a great leadership and staff here at the commission.

The discussion that we would want to frame is how does the commission want to react to the survey findings; and then, secondly, since we had a lower response rate this year than we did in the previous year, we want to find out if this survey is an effective tool; is it working for the commissioners; and if it is not, what can we do to improve the survey or is there another metric that we went to use?

CHAIRMAN DIODATI: Thank you, Toni. Are there any questions for Toni about the survey results or any general comments about them? Ritchie.

MR. WHITE: I was disappointed in the drop in the percentage of return. Is there any way that you think you can kind of poll the commissioners that didn't respond to the survey to see if there are any themes on why and if there is something in our method of presentation or notification to see if there is something that we could improve upon on that. I think it is very disappointing that we're not getting a higher percentage.

MS. KERNS: We can do that, Ritchie. There were a couple of folks who did fill out the survey that didn't let us know that they filled out the survey. It is anonymous so I apologize in advance to those of you that did fill out the survey and I'm going to send an e-mail to you even though it did fill it out, because you didn't let us know.

MR. JAMES GILMORE: Toni, the vision statement; was it just the issue of 2015 is getting close or were there other concerns with it?

MS. KERNS: I'm assuming that it is that 2015 is getting closer. No one was specific in their response, so I'm not a hundred percent sure.

CHAIRMAN DIODATI: I guess the obvious thing about that particular vision, whether we were successful or not, we're going to have to change it. Adam.

MR. ADAM NOWALSKY: I know that we have had this discussion about participation in the past, and one of the other items that we've discussed is the fact that a lot of the commissioners aren't actually here. They have proxies that are here. In fact, okay, there may be 45 commissioners, but the reality is that there is probably 75 or 80 active participants around this table throughout the year that in some cases probably have a better handle about how the commission is doing than the commissioners themselves. How do we go about getting the actual participants' input, because those are the people that here and actually getting things done in a lot of cases.

MS. KERNS: Adam, when I send the e-mail out letting folks know of the survey, we sent it to both the commissioners and their proxies. In the e-mail we say that we realize that there are proxies for some of the commissioners, and we leave it up to that commissioner to decide if it is he or she that is going to fill out the survey or whether they're going to direct their proxy to fill out the survey in their place, but we let the commissioner make that decision and not us.

MR. ABBOTT: To Adam's point, I have been here 16 years and the last two times I haven't gotten a survey. I assume that Senator Watters probably received it as New Hampshire's legislator. I don't know if I'm the exception or whatever, but I might have something to say.

CHAIRMAN DIODATI: I bet you would. I'm surprised that you didn't so we will make sure that the proxies are included in all future surveys. Loren.

MR. LUSTIG: I just wanted to encourage further use of this instrument in the future. I found that it was very important just to take the time to ponder these broad and important implications for our organization and actual grapple with the issues. I remember when Commissioner Boyles encourage a lot more participation, and I am hopeful that we will find in the future that our commissioners are able to respond at greater numbers.

MR. DOUGLAS GROUT: Just a comment for Toni on the format of this; I do like the graphic formation that you put in that helps show the differences between them. One of things that made it kind of difficult to interpret was the difference in the scales. Some of them go from one to eight and others have a range of 0.2. It kind of makes like the 0.2 looks like, oh, my gosh, we've made a tremendous change but actually it is a pretty flat trend between the years.

DR. JAIME GEIGER: Mr. Chairman, I believe I'm going to make a comment that I've made before in the past. I think the Atlantic Coastal Fisheries Cooperative Management Act clearly lays out the responsibility of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in assisting this commission to achieve its mission and its success.

At the same time it becomes a little more problematic that we're not included and asked for our input, our suggestions, or our advice on whether the commission is or is not meeting its goals and objectives. Secondly, I noticed with interest that one of the requirements or one of the outcomes of this is to improve the relationships with congress.

Certainly, every time – and I'll speak only for the Fish and Wildlife Service – we brief members of congress sometimes two or three times a year. Whenever we mention the strong partnership that the Fish and Wildlife Service has with the Atlantic States Marine Fisheries Commission and we provide what we think we provide as value added to support the commission activities.

When they look at commission materials, they do not see a mention of the U.S. Fish and Wildlife Service nor the National Marine Fisheries Service as indicated in those literature and those outcomes and those results. At some point in time, Mr. Chairman, I think this commission seriously needs to reevaluate what is the appropriate role of the U.S. Fish and Wildlife Service; and again are we full franchised partners or are we not?

Certainly, with the increased emphasis on resource outcomes and resource actions and results that congress is putting on agencies like the U.S. Fish and Wildlife Service, we're becoming more and more accountable to show resource outcomes. If we can't show that, congress is questioning why are we participating in that particular activity. I think these questions are going to come up more and more.

At some point time I think I would like to see a more robust discussion about what this commission expects from the Fish and Wildlife Service, what are the expected results and outcomes you expect from us; and then what is your role and expectations of what the Fish and Wildlife Service should do for the commission and how can we better ensure success of the commission in meeting management objectives.

Again, I think it is not an unfair question to ask, Mr. Chairman, but I do know this has come up several times with at least two previous executive directors, and I think it needs to be debated again. Again, we are being asked hard questions by congress and I don't see the earmark policy coming back. I have seen the mechanism for funding to this commission delivered to one or both federal agencies and without earmarks I think those results and that accountability and the allocation process is going to get much more stringent.

I think it is going to be focused on resource outcomes and it is going to generate a lot of questions. I think it is to our collective best interest to have some of these discussions. Whether you want to do it online or offline and whatever transparency you may want to have, but I do think we need to have those discussions, Mr. Chairman. Thank you.

CHAIRMAN DIODATI: I agree, Jaime; your points are extremely well taken by me at least. I'm not going to speak on behalf of the entire policy board because we haven't had an opportunity to have this discussion, but I agree that it is worthy of a discussion. I think to the extent that we might want to write something up, Bob, I think we might want to maybe create a subcommittee of the policy board to work with our two federal partners and establish what we think is our commitment to them and what we believe their commitment to us should be.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Just to followup, I agree that Jaime's comments are important. I think the commission's greater focus and greater need to focus on diadromous species and the habitat issues associated with restoring eel and sturgeon and river herring and others that are listed or potentially going to be listed under the Endangered Species Act, I think that partnership with the Fish and Wildlife Service is more important than ever; and then continue the marine side of it through the National Marine Fisheries Service, NOAA Fisheries.

I am happy to work with you, Paul and Louis and put together a group to work with the two services to sort of coordinate our relationship a little bit better and

sort of reaffirm our commitments to each other I think is probably – renew our vows maybe is the right thing to do.

CHAIRMAN DIODATI: I think the three of us working with our counterparts, the two federal agencies, could accomplish that. Tom.

MR. FOTE: With the understanding that this is a Compact of states, and the states are a part of this. Also, I look at the lawsuits over the years, we are not a federal agency and that is how we have avoided a lot of those suits. We have got to keep it as a commission. That is why they always have been on the policy board and the management boards because of their contribution.

We can spell it out more differently, but with the understanding that we need to keep that separate as far as the legal and the way the Compact is written. One of the things when I was looking at the survey – and Jaime brings up another point – you know, we limited this to commissioners to basically answer the survey, but we have five members -- and now it is five or six different members of NMFS sitting at the table, depending on where we are with a meeting, and at least two from the U.S. Fish and Wildlife Service; and then there is Pete, there is Tom, and there is Russ, and they all sit here.

Now maybe is the time to do a survey of all the people that are involved in sitting at management boards; not as commissioners maybe surveying the management boards and the participants of that board. We get a lot more responses and a lot more ideas and there are people that are sitting on the boards actually doing the work a lot of times.

That would cover – you know, you'd get a lot more responses than 24. I did send my e-mail four or five days later than I did fill out the survey. I sent it in because I did fill it out as I usually do. If you want to get more participation, that is one way of doing it and it would be interesting to see what the larger body feels on this.

CHAIRMAN DIODATI: I agree we need to expand the survey and we will talk a little bit about how to do that and how to do that judiciously. Pete.

MR. HIMCHAK: To that point, I know in New Jersey we get multiple notices on doing the survey. When it comes, I always talk to Tom McCloy. Essentially he is my supervisor and I say, "Well, you know, are you filling this out for the agency for New Jersey?" And he says, "Yes." I don't know that you

may benefit from having three separate responses from board members, Russ Allen, myself and Tom McCloy. That's your call.

CHAIRMAN DIODATI: So what I'm hearing – I'm not hearing anyone say that we should discontinue the survey. I agree with Loren's comments that the survey is of value. It gives me an opportunity to pause and think about what I'm going to say when I fill out the essay questions. I think there is certainly value in this; and if anything, we want to make our audience a little bit broader for it. On the issue of transparency, I know that we started at the menhaden meeting broadcasting a webcast of our meetings. Are we doing that now?

MS. KERNS: Yes; we made an announcement yesterday that we were broadcasting.

CHAIRMAN DIODATI: Good. All right, Adam, on this topic, the survey; you want to bring up something new?

MR. NOWALSKY: Well, Mr. Chairman, in the interest of time I don't know if we have to address it today, but an issue came up earlier today at the Horseshoe Crab Board that I had some follow-up discussion with some members here and the executive director. We wanted to address that regarding a letter to New Jersey. I don't know if time allows tonight to or if we can just make sure we have a placeholder on tomorrow's agenda to address that.

CHAIRMAN DIODATI: Yes, we actually have that. We have about seven new items that we have added because of your discussions at prior board meetings, so that is there. Jim, did you have an issue?

MR. GILMORE: Toni, the webcast thing now; is there a link or something on the website because the way the council does it is just to listen live, so is there an easy way to get to it?

MS. KERNS: On the final meeting agenda, there is the information there and that is also linked on the website. I think throughout the day we have maybe had up to 20 folks listening in.

MR. PATRICK GEER: Toni, just out of curiosity, how people listened in at the menhaden meeting?

MS. KERNS: I think the maximum at one time was more than 25; the maximum was 30 at the December menhaden meeting.

CHAIRMAN DIODATI: And I believe there is a cap.

MS. KERNS: We can take up to a thousand folks; is it more? A hundred in December; yesterday 30; is that what you're saying, Kate? Yesterday 30; a hundred at the December meeting.

CHAIRMAN DIODATI: Are there any other questions? I am going to suggest that we adjourn this meeting. Go ahead, Tom.

MR. FOTE: I really didn't know we were on webcast because I must have been out when you basically mentioned it, and so it didn't make any difference to me. I think if it is buried in the agenda, people don't go through the agenda to see the instructions. Maybe it would be nice to send out an e-mail to everybody that is on our e-mail list saying that. I notice I didn't get an e-mail saying that we are now webcasting. Maybe I missed it.

MS. KERNS: We did send an e-mail notification that we were webcasting and we also made the announcement at the annual meeting that we would be webcasting. The first meeting would be the menhaden meeting as sort of test and then we would be webcasting for the future onward.

DR. DANIEL: I think what I would suggest that we do is in all of our agendas just note "webcasting" and that way – because we oftentimes have a lot of folks around the table that may not know, and that way we can all be reminded that we're being webcasted. I think that is helpful.

CHAIRMAN DIODATI: Okay, again, most of you have been sitting here since 8:00 o'clock this morning so I think it is appropriate for us to take a break at this point. I will announce that the executive committee will meet at 7:45. We did schedule an executive session to deal with one or two HR issues. We will have that, but that will be towards the end of the meeting, so the meeting is open to anyone who wants to sit in on the executive committee meeting, which starts at 7:45. Bob.

EXECUTIVE DIRECTOR BEAL: This is probably pretty obvious; but given that there are a number of agenda items postponed today, we will need to have the policy board session tomorrow after the dogfish meeting as well as the business session will have to be convened to consider the resolution on Asian Horseshoe Crabs as well.

CHAIRMAN DIODATI: Okay, so if there is no opposition to adjourn, we will adjourn right now and I will see you tomorrow morning.

(Whereupon, the meeting was recessed at 6:05 o'clock p.m., February 20, 2013.)

THURSDAY SESSION

FEBRUARY 21, 2013

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission reconvened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Thursday afternoon, February 20, 2013, and was called to order at 1:13 o'clock p.m. by Chairman Paul Diodati.

MEETING SUMMARY OF THURSDAY AFTERNOON SESSION

In 2013, the commission will update the strategic plan. A facilitated commissioner workshop will be held during the Commission's Spring Meeting in May to assist staff in developing the first draft of the strategic plan. This will be followed by a series of public meetings throughout the summer to seek stakeholder input on the first draft. The plan will be finalized at the Annual Meeting in October.

The Board approved the new Technical Support Group Guidance and Benchmark Stock Assessment Process document. The document is to improve the function of the commission by providing guidance to all commission technical support groups on the structure, function, roles, and responsibilities of the committees and their members.

The board reviewed and took action on three species-related activities. At the request of the Horseshoe Crab Board, it forwarded a recommendation to the commission to send a letter to the U.S. Fish and Wildlife Service urging its expedited review and action on the importation of all Asian horseshoe crab species. On behalf of the Horseshoe Crab Board, move to recommend the Commission send a letter to USFWS urging expedited review and possible action on the importation of all Asian horseshoe crab species. Motion made by Mr. Simpson. Motion carries.

At the request of the American Eel Board, the Policy Board tasked the executive director with sending a letter to the Chairs of the Maine Legislature's Joint Standing Committee on Marine Resources regarding required management measures under the American

Eel FMP. Further, the letter would specify what level of increased effort within Maine's glass eel fishery (licenses or gear) would lead the state to being found out of compliance with the FMP for the 2013 season. The letter would also identify the potential impacts to a state for being found out of compliance.

On behalf of the American Eel Board, move to recommend the Executive Director to send a letter to the Chairs of the Maine Legislature's Joint Standing Committee on Marine Resources. The letter shall describe ASMFC's compliance criteria and clearly lay out what level of increased effort within the glass eel fishery (licenses or gear), would put Maine out of compliance for the 2013 season. The letter should also state what the impact is to a state being found out of compliance. Motion by Mr. O'Connell. Motion carries.

The Board also agreed to send a letter to the sponsors of New Jersey legislation S.2376 and A.2653. The letter would present the output of the Commission's Adaptive Resource Management Framework, which includes a sustainable harvest level for New Jersey of 162,136 male horseshoe crabs, and the potential negative consequences in the U.S. and abroad as a result of limited domestic horseshoe crab availability for bait purposes.

Move that the Commission send a letter to the sponsors of New Jersey legislation S.2376 and A.2653. ARM model output showing New Jersey's allowable sustainable harvest levels and potential negative consequences in the US and abroad as a result of New Jersey's horseshoe crab moratorium shall be included. Motion made by Mr. Nowalsky and seconded by Mr. O'Reilly. Motion carries (Roll Call Vote: In favor – ME, RI, CT, NY, PA, DE, MD, VA, NC, SC, GA, FL; Abstentions – MA, USFWS, NMFS; Null – NJ).

The Board approved a new direction for the Commission's Habitat Program to establish a solid organizational and functional foundation, ultimately leading to a focused and prioritized workload for the Program and the Habitat Committee. With this foundation, the Habitat Program will be better aligned with the commission's vision, mission, goals, and objectives.

The Board approved the Habitat Management Series on Harbor Deepening, which describes potential impacts to inform decision-making on future harbor deepening projects. Staff updated the board on activities of the Atlantic Coastal Fish Habitat Partnership including its strengthened partnership

with 2012 North Atlantic Landscape Conservation Cooperative Priority Science Program and details about a proposal ACFHP submitted to National Fish and Wildlife Foundation River Herring Conservation Initiative.

The Management and Science Committee updated the board on its plans to address climate change and warming coastal water temperate impacts on the geographic distributions of fish stocks, including the consideration of allocation schemes. The MSC will define species to investigate, evaluate data, and define methods and timing for allocation adjustments. The MSC will provide a progress report to the Policy Board at the Commission's Spring Meeting in May.

(Whereupon, the meeting was adjourned at 2:37 o'clock p.m., February 21, 2013.)

developers could be included as third parties in these consultations. The total costs of these five actions together are estimated to be \$1,900 to \$2,100 annually, including Federal costs.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Austin Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013-09895 Filed 5-1-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 111014628-3329-01]

RIN 0648-BB54

Magnuson-Stevens Act Provisions; Implementation of the Shark Conservation Act of 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the provisions of the Shark Conservation Act of 2010 (SCA) and prohibit any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. NMFS proposes this action to amend existing regulations and make them consistent with the SCA.

DATES: Written comments must be received by June 17, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0092, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit

comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2012-0092 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- *Mail:* Submit written comments to Kim Marshall, National Marine Fisheries Service, NOAA; 1315 East-West Highway, Silver Spring, MD 20910.

- *Fax:* 301-713-1193; *Attn:* Kim Marshall.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available on the Federal e-Rulemaking Portal www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kim Marshall, 301-427-8556.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Shark Finning Prohibition Act (Pub. L. 106-557) (SFPA). Among other things, the SFPA amended section 307 of the Magnuson-Stevens Act to prohibit removing any of the fins of a shark (including the tail) and returning the remainder of the shark to the sea. In addition, the SFPA prohibited any person from having custody, control, or possession of shark fins aboard a fishing vessel without the corresponding carcass, and prohibited any person from landing shark fins without the corresponding carcass. NMFS published a final rule to implement the SFPA on February 11, 2002 (67 FR 6194).

In 2010, the President signed into law the Shark Conservation Act of 2010 (Pub. L. 111–348, Jan. 4, 2011) (SCA). The SCA amended two existing acts, the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), 16 U.S.C. 1826d *et seq.*, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA), 16 U.S.C. 1801 *et seq.*, to improve the conservation of sharks.

In particular, the SCA amended the Magnuson-Stevens Act to prohibit any person from: (1) Removing any of the fins of a shark (including the tail) at sea; (2) having custody, control, or possession of a fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; (3) transferring a fin from one vessel to another vessel at sea, or receiving a fin in such transfer, unless the fin is naturally attached to the corresponding carcass; or (4) landing a fin that is not naturally attached to the corresponding carcass, or landing a shark carcass without its fins naturally attached. For the purpose of the SCA and these regulations, “naturally attached,” with respect to a shark fin, means to be attached to the corresponding shark carcass through some portion of uncut skin.

This proposed action would amend NMFS’ regulations to implement these provisions of the SCA. Specifically, the proposed rule would amend regulations at 50 CFR Part 600, Subpart N to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. NMFS notes that it interprets the prohibitions in that section as applying to sharks, not skates and rays, and solicits public comment on whether clarification is needed in the regulatory text on this or any other issues (see **ADDRESSES**).

NMFS also proposes here to adopt language from section 103(b) of the SCA regarding individuals engaged in commercial fishing for smooth dogfish. While this proposed rule adopts the statutory text, NMFS intends to further develop those provisions in a subsequent rulemaking. This rule would also combine the existing sections §§ 600.1203 and 600.1204 into one section. The text in all sections would be amended to implement the provisions of the SCA.

The MSA authorizes the Secretary to regulate fisheries seaward of the inner boundary of the EEZ, which is defined as a line coterminous with the seaward

boundary of each U.S. coastal state. 16 U.S.C. 1802(11). Thus, the SCA provisions apply to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, engaging in activities prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. Federal regulations pertaining to the conservation and management of specific shark fisheries are set forth in Parts 635, 648 and 660 of Title 50 of the Code of Federal Regulations. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel’s fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements). This rule amends 50 CFR part 600, subpart N, and does not supersede or amend any other federal regulation or requirement related to the conservation and management of sharks.

The SCA also amended the Moratorium Protection Act, which provides for identification and certification of nations to address illegal, unreported, or unregulated fishing; bycatch of protected living marine resources; and, as amended by the SCA, shark catches. 16 U.S.C. 1826h–1826k. With regard to sharks, the Moratorium Protection Act provides for identification of a nation if its fishing vessels have been engaged during the preceding calendar year in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for sharks that is comparable to the United States, taking into account different conditions. 16 U.S.C. 1826k(a)(2). NMFS published a final rule that amends the Moratorium Protection Act regulations consistent with the SCA on January 16, 2013 (78 FR 3338).

Relationship of Regulations With Current State Rules

Several states and territories have enacted or are considering enacting statutes that address shark fins. Each statute differs in its precise details, but generally most contain a prohibition on possession, landing or sale of, or other activities involving, shark fins. Depending on how they are interpreted and implemented, these statutes have the potential to undermine significantly conservation and management of federal shark fisheries.

Under the Magnuson-Stevens Act, the United States claims sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the U.S. exclusive economic zone (EEZ) and also claims exclusive fishery management authority for specified resources beyond the EEZ. 16 U.S.C. 1811. To conserve and manage fishery resources and promote domestic commercial and recreational fishing under sound conservation and management principles, the Magnuson-Stevens Act authorizes NMFS and Fishery Management Councils to develop and implement federal fishery management plans, which must be consistent with ten national standards and other mandatory provisions set forth in the statute. 16 U.S.C. 1801, 1851(a) and 1853(a). The Magnuson-Stevens Act defines “conservation and management” as including measures “which are designed to assure that . . . a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis.” 16 U.S.C. 1802(5). National Standard 1 requires that conservation and management measures under a fishery management plan, plan amendment or implementing regulations “prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” 16 U.S.C. 1851(a)(1). Obtaining optimum yield, which includes providing the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, is a fundamental principle under the Magnuson-Stevens Act. State prohibitions on possession, landing, transfer, or sale of sharks or shark fins lawfully harvested seaward of state boundaries constrain the ability of federal fishery participants to make use of those sharks for commercial and other purposes.

Neither the SFPA nor the SCA suggest that Congress intended to amend the Magnuson-Stevens Act to prohibit the possession or sale of shark fins. Rather, Congress chose to prohibit discarding shark carcasses at sea, and required that fins be naturally attached to the carcass of the corresponding shark. The SCA therefore reflects a balance between addressing the wasteful practice of shark finning and preserving opportunities to land and sell sharks harvested consistent with the Magnuson-Stevens Act. Although state shark fin laws are also intended to conserve sharks, they may not unduly

interfere with the conservation and management of federal fisheries.

The Magnuson-Stevens Act preempts state regulation of fisheries in waters outside the boundaries of a state, except according to the narrow opportunities for state regulation specified at 16 U.S.C. 1856(a)(3). Within the U.S. EEZ, a State may regulate a fishing vessel only where: (1) The fishing vessel is registered under the laws of that State, and there is no federal fishery management plan or regulations for the fishery, or the State's laws and regulations are consistent with the applicable federal plan and regulations; or (2) the applicable federal plan delegates management of the fishery to the State, and the State's laws and regulations are consistent with that plan (16 U.S.C. 1856(a)(3)(A–B)). "State" means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States (16 U.S.C. 1802(41)).

State or territorial shark fin laws are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. If state or territorial laws are construed or interpreted so they are consistent with federal law, fishery management plans and regulations, those laws are not preempted. For example, if a state law prohibiting the possession, landing, or sale of shark fins is interpreted not to apply to sharks legally harvested in federal waters, the law would not be preempted. On the other hand, a state law that interferes with accomplishing the purposes and objectives of the Magnuson-Stevens Act would be preempted. As described above, promoting commercial fishing under sound conservation and management principles is a key purpose of the Act. If sharks are lawfully caught in federal waters, state laws that prohibit the possession and landing of those sharks with fins naturally attached or that prohibit the sale, transfer or possession of fins from those sharks unduly interfere with achievement of Magnuson-Stevens Act purposes and objectives.

The Magnuson-Stevens Act generally does not preempt a state's laws applicable to its fisheries in state waters and states that, "Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries." 16 U.S.C. 1856(a)(1). Regulations issued in 2002 at 50 CFR 600.1201(c) provide

that: "Nothing in this regulation supersedes more restrictive state laws or regulations regarding shark finning in state waters." The intent of this provision was to affirm that the regulations would not infringe on a state's jurisdiction or authority. It was not intended to imply that states may interfere with or impede accomplishment of fishery management objectives for federally-managed commercial and recreational fisheries. NMFS' view regarding state and federal authority has not changed since 2002, but the agency believes that section 600.1201(c) could be clarified. Thus, this proposed rule would revise section 600.1201(c) to state that the subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the other provisions of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are included at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS proposes this action to implement the SCA. This proposed action would revise existing regulations that implement the SFPA, which banned "shark finning" (the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea). The proposed rule would amend regulations to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. The SCA applies to any person subject to the jurisdiction of the U.S., including persons on board U.S. and foreign vessels, who engages in activities

prohibited under the statute for sharks harvested seaward of the inner boundary of the EEZ. For Atlantic highly migratory species fisheries, as a condition of its federal permit, a vessel's fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements).

This rule is expected to directly affect commercial and for-hire fishing vessels that land sharks harvested seaward of the inner boundary of the U.S. EEZ or possess permits which allow them to land sharks harvested seaward of the inner boundary of the U.S. EEZ. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

Sharks are harvested in several commercial fisheries that occur in the U.S. EEZ, including the spiny dogfish fishery in the northeast United States, the Atlantic HMS fishery in the northeast and southeast United States, the west coast HMS and groundfish fisheries, and the Hawaii and American Samoa-based pelagic longline fisheries, which allow retention of incidentally caught sharks. In addition, groundfish vessels in the Gulf of Alaska and Bering Sea and Aleutian Islands can retain sharks, although there are no directed shark fisheries and the vast majority of incidentally caught sharks are discarded.

In 2011, 2,743 vessels were issued federal spiny dogfish permits, but only 326 of these vessels actually landed spiny dogfish. The total ex-vessel value of commercially landed spiny dogfish in calendar year 2011 was about \$4.646 million. Thus, average ex-vessel revenue per vessel from spiny dogfish was approximately \$14,250 in calendar year 2011. Based on these figures, all spiny dogfish vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of October 2011, NMFS had issued 217 directed shark permits and 262 incidental shark permits in the Atlantic

highly migratory species fishery. In 2011, the ex-vessel revenues for all sharks landed in the Atlantic highly migratory species fishery totaled \$3,067,116. Thus, the average ex-vessel revenue per permitted vessel was approximately \$6,400 in 2011. Based on these figures, all Atlantic highly migratory species shark vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Most sharks on the west coast are caught in the drift gillnet component of the HMS fishery and the northwest groundfish fishery. In 2011, 243 commercial vessels had shark landings on the west coast and total ex-vessel revenue for west coast shark landings was \$349,634. Thus, in 2011, average ex-vessel revenue per vessel from shark landings was approximately \$1,450. Average total ex-vessel revenue per vessel was about \$107,000 in 2011. The maximum total ex-vessel revenue for a single vessel that commercially harvested sharks on the west coast was approximately \$1.48 million in 2011. Based on these figures, all west coast commercial fishing vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Entry into the Hawaii-based pelagic longline fishery is limited, with a maximum of 164 vessels allowed. As of March 2012, 132 vessels held Hawaii longline limited entry permits (out of 164 total permits). NMFS estimates the 2010 ex-vessel revenue of pelagic fish landed by Hawaii-based longline vessels to be about \$70 million, or approximately \$427,000 per vessel. In addition, in 2010, 267,000 pounds of sharks were landed by Hawaii-based longline vessels, and the average price for these sharks was \$0.50 per pound in 2010. Thus, ex-vessel revenue from shark landings was \$135,000 and average revenue per vessel was approximately \$1,020. Thus, shark landings represent a very small portion of the ex-vessel revenue for the Hawaii-based longline vessels. In 2009, 50 vessels obtained American Samoa longline limited entry permits, and 26 of those vessels actively fished. These vessels' operations are economically smaller than those based in Hawaii. Based on these figures, all Hawaii and American Samoa-based pelagic longline vessels that might be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

As of 2009, approximately 867 vessels operated in the Bering Sea/Aleutian Islands (BSAI) or Gulf of Alaska (GOA)

groundfish fisheries, with some vessels operating in both. Approximately 97% of shark catch in Alaska groundfish fisheries is discarded. The other 3 percent is retained and largely processed into fishmeal. Both large and small fishing entities operate in the BSAI groundfish fisheries. In 2008, 215 small groundfish entities operated in the BSAI, with estimated average 2008 gross revenues from all sources of about \$1.53 million. Most of these (204) are catcher vessels, with estimated average gross revenues of \$1.49 million. About half of the catcher-vessels (103) are trawlers with average gross revenues of about \$1.71 million, 46 are hook-and-line vessels with average gross revenues of about \$0.58 million, and 62 are pot vessels with average gross revenues of about \$1.70 million. There were 11 small catcher-processors, seven of which were hook-and-line vessels with average gross revenues of about \$2.65 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. The key fleets harvesting shark are the Pollock trawlers and the hook-and-line vessels fishing for Pacific cod. All of the Pollock trawlers are believed to be large entities, either because the vessels themselves gross more than \$4 million or because they are members of American Fisheries Act cooperatives that gross more than that. The BSAI hook-and-line vessels targeting Pacific cod are predominately large vessels, though two are considered small.

In 2008, 702 small groundfish entities operated in the GOA groundfish fisheries, with average revenues from all sources of about \$0.60 million. Almost all of these vessels (697) are catcher vessels with average revenues of about \$0.60 million. A majority of the catcher-vessels (520) use hook-and-line gear and have average revenues of about \$0.49 million, while 73 are trawlers with average revenues of about \$1.27 million, and 142 are pot vessels with average revenues of \$0.85 million. There were five catcher-processors, mostly hook-and-line vessels, with average gross revenues of about \$1.52 million. These figures may overstate the number of small entities since it considers individual vessel gross revenues, but does not capture affiliations among vessels. Halibut hook-and-line vessels took a significant proportion of the shark catch. There were an estimated 270 small sablefish hook-and-line vessels with an estimated average gross revenue from all sources of \$0.77 million, an estimated 128 Pacific cod

hook-and-line vessels with an average gross of \$0.59 million, an estimated 21 small pelagic pollock trawlers with average gross revenues of about \$1.02 million, five non-pelagic trawlers targeting arrowtooth flounder with average gross revenues of about \$0.58 million, and five non-pelagic trawlers targeting shallow water flatfish with average gross revenues of about \$0.65 million.

Owners of charter boats or headboats (*i.e.*, for-hire vessels) that are used to fish for, take, retain, or possess Atlantic tunas, sharks, swordfish, or billfish must obtain an Atlantic HMS Charter/Headboat permit. As of October 2011, NMFS had issued 4,194 Atlantic HMS Charter/Headboat permits. No information is currently available regarding the number of for-hire vessels that specifically land sharks in the Atlantic, Gulf of Mexico, or Caribbean Sea. However, in 2010, average annual gross revenue for headboats and charter vessels in the Northeast were approximately \$214,000 and \$27,650, respectively. In the South Atlantic, average annual gross revenue for headboats and charter vessels in 2009 were approximately \$187,500 and \$106,000, respectively. In the Gulf of Mexico, average annual gross revenue for headboats and charter vessels were about \$230,000 and \$45,500, respectively. According to these studies, no individual for-hire vessel had annual gross revenues exceeding \$7 million. Thus, all for-hire vessels that may be affected by this proposed rule are determined for the purpose of this analysis to be small entities.

Party and charter boats target sharks on the west coast as well. In 2011, about 620,256 west coast recreational trips (days) by party and charter boats retained about 16 metric tons of sharks. Similarly, an estimate of about 778,798 recreational trips (days) by west coast private or rental boats retained about 48 metric tons of sharks in 2011. In 2011, only 13 for-hire vessels were known to land sharks in California that were harvested from the EEZ. In 2000, the average annual gross revenue for a large or medium size charter vessel on the west coast was approximately \$401,000, while the maximum annual gross revenue for one of these vessels was \$7 million. In 2007, the average annual gross revenue for a charter vessel in Washington and Oregon was approximately \$70,600. Based on these figures, all for-hire vessels that land sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small entities. Based on these figures, all charter boats, headboats, and that land

sharks and might be affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

NMFS does not have information on types of small entities other than those discussed above. However, other types of small entities may exist. In addition, NMFS has little information on the number of transshipment vessels that would be affected by this rule. However, it is likely that the number of vessels would be small.

The SCA and this proposed rule would not allow fins to be removed from sharks at sea. Shark fins from for-hire vessels generally are not removed from the carcass and not sold in commerce, so for-hire vessels are not expected to experience any economic effects as a result of this proposed rule.

In many commercial fisheries across the country, such as Atlantic HMS and Northeast spiny dogfish, SCA provisions are consistent with current federal regulations. Further, directed fishing for sharks is prohibited and incidentally harvested sharks are largely processed as fishmeal in the BSAI and GOA groundfish fisheries. As a result, commercial vessels in these fisheries are not expected to experience any economic effects as a result of this proposed rule.

The implementation of state shark fin laws in Washington, Oregon, California, Hawaii, and American Samoa, raises concerns about potential negative economic effects on some entities in West Coast, Western Pacific and other fisheries. State or territorial shark fin laws are preempted under the Supremacy Clause of the U.S. Constitution if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations. The clarification provided in this proposed rule may have positive economic effects on these fisheries. Therefore, the effect of this proposed rule on the commercial vessels in these fisheries is expected to be non-existent or potentially positive.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

One alternative, the status quo, was considered for the proposed action. This alternative would maintain the current regulations under the SFPA. Under this alternative, any person may remove and retain on the vessel fins (including the tail) from a shark harvested seaward of the inner boundary of the U.S. EEZ; however, the corresponding carcass

must also be retained on board the vessel. It would be a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of the regulations if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel. This alternative was rejected because it would not comply with the requirements of the SCA. No other alternatives meet the statutory requirements, and so none were considered.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: April 26, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON—STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Subpart N is revised to read as follows:

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

Sec.

600.1200	Purpose and scope.
600.1201	Relation to other laws.
600.1202	Definitions.
600.1203	Prohibitions.

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

§ 600.1200 Purpose and scope.

The regulations in this subpart implement the Shark Conservation Act of 2010.

§ 600.1201 Relation to other laws.

(a) Regulations pertaining to conservation and management (including record keeping and reporting) for certain shark fisheries are also set forth in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), 660 (for

fisheries off West Coast states), and 665 (for fisheries in the western Pacific) of this chapter.

(b)(1) This subpart does not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

(2) *State*, for the purpose of paragraph (b)(1) of this section, means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.

(c) This subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

(d) State and territorial statutes that address shark fins are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the Shark Conservation Act of 2010, regulations under this part, and applicable federal fishery management plans and regulations.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Fin means any of the fins of a shark (including the tail) or a portion thereof.

Landing or landing means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shore side location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Naturally attached, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) It is unlawful for any person to do, or attempt to do, any of the following:

(1) Remove a fin at sea.

(2) To have custody, control, or possession of a fin, aboard a fishing vessel, unless the fin is naturally attached.

(3) Transfer a fin from one vessel to another vessel at sea unless the fin is naturally attached.

(4) Receive a fin in a transfer from one vessel to another vessel at sea unless the fin is naturally attached.

(5) Land a fin unless the fin is naturally attached.

(6) Land a shark carcass without all of its fins naturally attached.

(7) Possess, purchase, offer to sell, or sell fins or shark carcasses taken, transferred, landed, or possessed in violation of this section.

(8) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator, or by the Director of the Office of Sustainable Fisheries in the case of the Atlantic Highly Migratory Species, access to or inspection or copying of any records pertaining to the landing, sale, transfer, purchase, or other disposition of fins or shark carcasses.

(b) For purposes of this section, it is a rebuttable presumption that:

(1) If a fin is found aboard a vessel, other than a fishing vessel, without being naturally attached, such fin was transferred in violation of this section.

(2) If, after landing, the total weight of fins landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of this section.

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Atlantic States Marine Fisheries Commission

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MEMORANDUM

April 19, 2013

To: ISFMP Policy Board

From: William Horn, Chair, Artificial Reefs Technical Committee

Subject: MARAD's New Policy Regarding Use of Ex-Vessels for Artificial Reefs

The Artificial Reef Technical Committee and Habitat Committee request the ISFMP Policy Board consider sending the attached letter to the Administrator of U.S. Department of Transportation's Maritime Administration to rescind a recent policy change. In September 2012, the Maritime Administration implemented a new policy to restrict the use of vessels constructed prior to 1985 from being used in artificial reef projects. The policy change was made in consideration of a state's time and cost to obtain a MARAD non-retention vessel for reefing. This vessel construction date restriction is arbitrary, too restrictive, and serves to limit the state's options for vessels available for use as artificial reefs.

Several recent successful artificial reef projects have been completed with the MARAD or Navy vessels constructed prior to 1985 and were successfully remediated of all regulated PCBs during the clean-up process (e.g. Ex-Texas Clipper, Ex-Vandenberg, Ex-Mohawk, and Ex-USS Radford). All states represented by the Artificial Reef Technical Committee have committed to removing all regulated PCBs greater than or equal to 50 parts per million (ppm) to the satisfaction of the EPA for any new reefing projects. Further, all new reefing projects will require a complete removal of all regulated levels of PCB to the greatest extent possible according to the EPA/MARAD Best Management Practices (BMPs) for Preparing Vessels as artificial reefs. States and local sponsors are able to commit to cleaning and preparing vessels to meet BMP standards, regardless of vessel age. Precluding vessels for reefing based on construction date is not necessary to ensure compliance with EPA/MARAD BMP vessel preparation standards.

Socioeconomic surveys have determined that a large ship with a storied history and interesting features are among the qualities that attract divers and enhance the dive experience. The economic benefits derived by the states from reefing older vessels more than offsets the costs associated with completing regulated PCB remediation. The committee members feel that the very vessels being prohibited by the new MARAD policies are the ones that stakeholders and local communities are the most interested in preserving as artificial reefs for eco-tourism.

The attached letter requests MARAD review the new policy of not allowing pre-1985 vessels to be candidates for use as artificial reefs, and rescind this portion of the MARAD's reefing policy and allow all vessels slated for disposal and safe to transport to become candidates for artificial reef use by the states.

May XX, 2013

David Matsuda
Administrator
United States Department of Transportation
Maritime Administration
West Building
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Matsuda:

The Atlantic States' Marine Fisheries Commission acknowledges receipt of an official copy of a document entitled "**MARAD Artificial Reefing Program, Frequently Asked Questions, June 2012**" published by the US Maritime Administration (MARAD). Although this publication is dated June of 2012, and was referenced in news articles in September of that year, it was not available in writing to the states until January of 2013. The Commission realizes that this is an updated version of an earlier MARAD Frequently Asked Questions (FAQs) document dated January of 2010. That document provides excellent information about MARAD's programs to utilize vessels slated for disposal as artificial reefs, and related policies. However, we have major concerns over some of the new language inserted into the revised 2012 document that relates to future large military vessel artificial reef projects developed and managed by individual states.

Specifically, the language on page 7, third bullet, prohibits new applications to the MARAD for ships with initial construction dates prior to 1985 to be used for artificial reefs. The vessel construction date restriction is arbitrary, too restrictive, and serves to limit the state's options for vessels available for use as artificial reefs. The Commission requests this provision be repealed for the following reasons.

There have been several recent successful artificial reef projects completed with the MARAD or Navy vessels constructed prior to 1985 that were successfully remediated of all regulated PCBs during the clean-up process. Texas sunk the *Ex-Texas Clipper* in 2006 and Florida has deployed the *Ex-Vandenberg* in 2009 and the *Ex-Mohawk* in 2012. Through a joint multistate effort, Delaware, Maryland, and New Jersey deployed the *Ex-USS Radford* in 2011. All of these vessels were constructed prior to 1985 and these artificial reef projects were successfully

completed in full compliance with all federal and state cleanup requirements, including the complete removal of regulated Polychlorinated Biphenyl (PCB) materials with concentrations at or above 50 parts per million (ppm) to the satisfaction of the US Environmental Protection Agency (EPA). The recent record of successful PCB remediation of ships older than 1985 for shallow water artificial reef use should be taken into account in the MARAD's future reefing policies. Although the cleanup and PCB remediation work activities can be complex and difficult, they can be overcome with sufficient funding, planning, and cooperation with regulatory authorities.

The *ex-USS Oriskany*, sunk off Pensacola back in 2006, is not the deployment model that should be used for determining future reefing projects. The Commission is concerned that selective raw data from analyzed PCB concentrations in skin-on tissue fillets of reef fish caught at the Oriskany Reef (sink site of the ex aircraft carrier U.S.S. Oriskany (CVA-34)) is being used by the MARAD as a basis for its new policy position. The Oriskany Reef project was authorized through an EPA issued risk-based PCB bulk product disposal permit issued jointly to the Navy and the Florida Fish and Wildlife Conservation Commission (FWC) that allowed for the retention of some regulated PCB containing materials on board (primarily wire insulation and bulkhead insulation) at the time of sinking. The Oriskany Reef was a pilot project that has no direct comparison to the other recent military ships-to-reefs projects with regards to the handling and removal of onboard PCB materials. All known regulated PCB materials were removed from the four vessels referenced above, while the ex- Oriskany was deployed in 2006 with known quantities of regulated PCBs aboard. The risk-based PCB bulk product disposal permit issued by the EPA to the US Navy and FWC for the Oriskany reef project was based on extensive peer reviewed modeling data and programs developed by the US Navy to predict the fate and transport of PCBs on the vessel and leaching over time into the marine environment after the vessel was deployed. It is the understanding of the Commission that there is no intention by the US NAVY, the MARAD, or the states to request a similar risk-based PCB bulk disposal permit for any ship deployed for use as an artificial reef nor is it likely that EPA would issue, even if requested, another such risk-based disposal authorization for a shallow water artificial reef project.

All states represented by the Atlantic States Marine Fisheries Commission Artificial Reef Committee have committed to removing all regulated PCBs greater than or equal to 50 parts per million (ppm) to the satisfaction of the EPA for any new reefing projects. It was postulated back in the early 2000's by the US Navy that the EPA issued risk-based PCB bulk product disposal permit option would be a useful tool to allow large military ships to be deployed in the future with known quantities of regulated PCBs aboard, thereby saving some of the costs of PCBs removal. However, based on the experiences with the Oriskany Reef project, no state is considering requesting a risk-based PCB bulk product disposal permit from US EPA to sink a vessel as an artificial reef. Rather, all new reefing projects will require a complete removal of all regulated levels of PCB to the greatest extent possible according to the EPA/MARAD Best

Management Practices (BMPs) for Preparing Vessels as artificial reefs. This policy by the states is based on the successful completion of several projects that completely removed the PCBs (>50 PPM) according to the BMPs, including the Ex-Texas Clipper, Ex-Vandenberg, Ex-Mohawk and Ex-USS Radford described above, combined with the fact that any future PCB bulk product risk-based disposal authorizations by the EPA for shallow water artificial reef vessel projects to any states is unlikely.

The reefing of large military vessels is very different from other artificial reef projects managed by the states. Often a primary objective for developing a large ship reef is for eco-tourism by scuba divers. The states' experiences with larger military ship reef projects confirm that scuba divers are willing to travel large distances and pay for the opportunity to dive on these reefs. Socioeconomic surveys have determined that a large ship with an interesting history and interesting features to observe underwater are among the qualities that attract divers and enhance their dive experiences. Older vessels that perhaps have been involved in previous military action and ships that have a colorful history are preferred over newer vessels. Most scuba divers are very informed about marine issues and maritime history and appreciate visiting vessels underwater that offer unique insights into the past. The states feel that the very vessels being prohibited by the new MARAD policies are the ones that stakeholders and local communities are the most interested in preserving as artificial reefs for eco-tourism. While the history or uniqueness of a ship may not be of concern for SINKEX¹ exercises or the scrapping of these vessels, maritime history is an important factor for tourism-based large ship reefing projects.

The positive economic impact generated from diving on the interesting and historic older vessels has been documented. The *Ex-Spiegel Grove* deployment in 2001 created 68 jobs and \$2.6 million in additional local recreational expenditures for the Key Largo area of Florida. Also the economic impact associated with the *Ex-Vandenberg* off Key West in 2009 created an even higher number of jobs (105) and local recreational expenditures (\$6.5 Million), and totally revitalized the scuba diving industry in Key West. Unlike the short-term economic benefits associated with scrapping or vessel preparation necessary for a SINKEX project, the long-term economic benefit of a diving reef continues year after year, with the potential to increase scuba diving activity as the reef matures and hosts more diverse marine life. In short, the economic benefits derived by the states from reefing older vessels more than offsets the costs associated with completing regulated PCB remediation.

States and local sponsors are able to commit to cleaning and preparing vessels to meet BMP standards, regardless of vessel age. Precluding vessels for reefing based on construction date is not necessary to ensure compliance with EPA/MARAD BMP vessel preparation standards. The states have repeatedly demonstrated that compliance with PCB BMP standards can be accomplished successfully, mostly through removal of all gaskets, wiring, and other materials

¹ US Navy's sink at-sea live-fire training exercises.

known to contain PCBs. We concur with the MARAD's opinion that it can be more expensive to prepare older vessels (pre-1985), due to the possibility of elevated PCB's. However, if the state and local sponsors have the ability to fully fund the preparation and cleaning tasks to EPA's satisfaction, past or present levels of regulated PCBs on a vessel should have no bearing on the MARAD's decision for vessel disposition. MARAD should continue their "AS-IS WHERE-IS" policy and maintain all other requirements of cleaning and vessel preparation to make sure these are environmentally friendly reef projects, regardless of ship age.

The Atlantic States Marine Fisheries Commission requests that the MARAD review the new policy of not allowing pre-1985 vessels to be candidates for use as artificial reefs. Please rescind this portion of the MARAD's reefing policy and allow all vessels slated for disposal and safe to transport to become candidates for artificial reef use by the states.

Sincerely

The Atlantic States Marine Fisheries Commission



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfc.org

MEMORANDIUM

May 5, 2013

TO: Shad and River Herring Board

FROM: Kate Taylor, Senior FMP Coordinator

SUBJECT: Research proposals for American shad and river herring

Two research proposals have been submitted to the Shad and River Herring Technical Committee for review. Per Amendments 2 and 3 to the FMP, these proposals require Board review prior to implantation.

The first proposal is from the state of Georgia to conduct an American shad stocking program in the Ogeechee River. This five-year experimental stocking program would help to determine the effectiveness of increasing the American shad population through a stocking program and increase the number of adult shad by complimenting recent closures to the American shad fishery. The Board has previously approved a similar stocking program in the Altamaha River.

The second proposal is from the state of Maine for the University of Maine to collect juvenile river herring (~620 alewife and ~620 blueback herring) in conjunction with the NOAA-NMFS trawl survey in Penobscot Bay. The purpose of the study is to perform diet analysis on the juvenile river herring, and also collect otoliths for microchemistry and ageing work. The current approved Sustainable Fishing Plan for Maine only includes adult river herring, therefore this juvenile sampling cannot be collected through the existing harvests. The NOAA-NMFS survey uses a trawl and high mortality is already observed among juvenile river herring, so this proposed study would simply be collecting more information from these individuals. The Department of Marine Resources supports this work and has approved amending the current state Special License issued to NOAA-NMFS for the trawl survey to include this study, contingent upon ASMFC approval.

The Shad and River Herring Technical Committee will be meeting via conference call on May 14th to review these proposals and develop a recommendation to the Board.

American Shad Stocking Plan for Georgia

Ogeechee River

Introduction: Stocks of American shad *Alosa sapidissima* have decreased along the Eastern United States due to habitat degradation as well as overfishing (ASMFC 2010; Limburg et al. 2003). American shad populations had reached record low numbers with no signs of recovery as of 2007 (ASMFC 2010). Although the most current commercial landing data cannot be publicly reported due to confidentiality agreements, fishing effort, CPUE and fish harvested have declined on the Ogeechee River since its peak in the early 1970's. The Georgia Department of Natural Resources (GADNR) has closed approximately 66% of the waters that were previously open to commercial fishing and reduced the number of days that commercial fishing can take place to 1-day/week (a 50% reduction) as part of the American shad sustainable fishing plan for Georgia.

The Ogeechee River originates in the Georgia piedmont and flows approximately 425 km to Ossabaw Sound. There are no barriers to upstream migration for the entire length of the black water river system. In May 2011, the Ogeechee River experienced a large-scale fish kill that affected multiple species including American shad. It is not fully known what the effects of this fish kill were on the American shad population. Cultured fish have been used successfully in the restoration of depleted American shad populations in several drainages and stocking efforts are now underway in several Atlantic Coast states (Cushman et al. 2012, Hendricks et al. 1994; Hendricks et al. 2002; Latour et al 2012; Moyer and Williams 2012).

Goal: The objective of initiating this 5-year experimental stocking program is to determine the effectiveness of increasing the American shad population through a stocking program and increase the number of adult shad by complimenting recent closures to the American shad fishery.

Brood Source: An attempt will be made to collect all broodfish from the Ogeechee River during their annual spawning run via electrofishing. Currently all sampling efforts of adult fish have been targeted in the lower reaches of the river but adult males tend to precede adult females in the migration and it is often difficult to collect both sexes simultaneously (Andrews et al. 1978; Joel Fleming, GADNR, 2013, personal communication). Low water flows in the upper reaches of the Ogeechee River preclude the use of electrofishing boats while high water flows push the river into the flood plain making fish collection difficult. Should it become necessary, broodfish will be collected from the adjacent Savannah River Basin at the base of the New Savannah Bluff Lock and Dam.

Target Number of Broods: The number of broods to be used will be ≤ 300 adults, maintaining a broodfish sex ratio no greater than 1:3 female/male.

Spawning Methods: All broodfish will be spawned using the tank spawn method. Approximately half of the broodfish will be injected with Ovaplant hormone to induce ovulation. The remaining broodfish will be induced to ovulation through manipulation of tank water temperature. This will be done in an effort to compare efficiency of both spawning methods.

Marking Methods: Fry will be marked with oxytetracycline (OTC) in accordance with ASMFC requirements. GADNR has two fisheries biologists that have joined the OTC Marking Task Force and will be working with the group to ensure all marking protocols are followed.

Location to be Stocked: It is not known where American shad concentrate their spawning efforts on the Ogeechee River. Out-migrating juveniles have been collected as far upstream as GA Hwy 78 (Brett Albanese, GADNR, 2013, personal communication). Sampling efforts will be targeted at upstream sites in an effort to locate potential spawning sites and provide additional guidance as to potential stocking locations. Restocking efforts will occur at sites between GA Hwy 78 (RM 185.8) and GA Hwy 88 (RM 221.5) and would be determined based upon amount and quality of available habitat. Water quality sampling will be conducted when considering potential stocking locations and also just prior to stocking.

Stocking Rate: A target of 200,000-500,000 fry will be stocked annually for a period of five years. Applying Hendricks (2006) model of approximately 300 fry stocked per return of one adult American shad would result in an additional 667-1,667 returning adults per year.

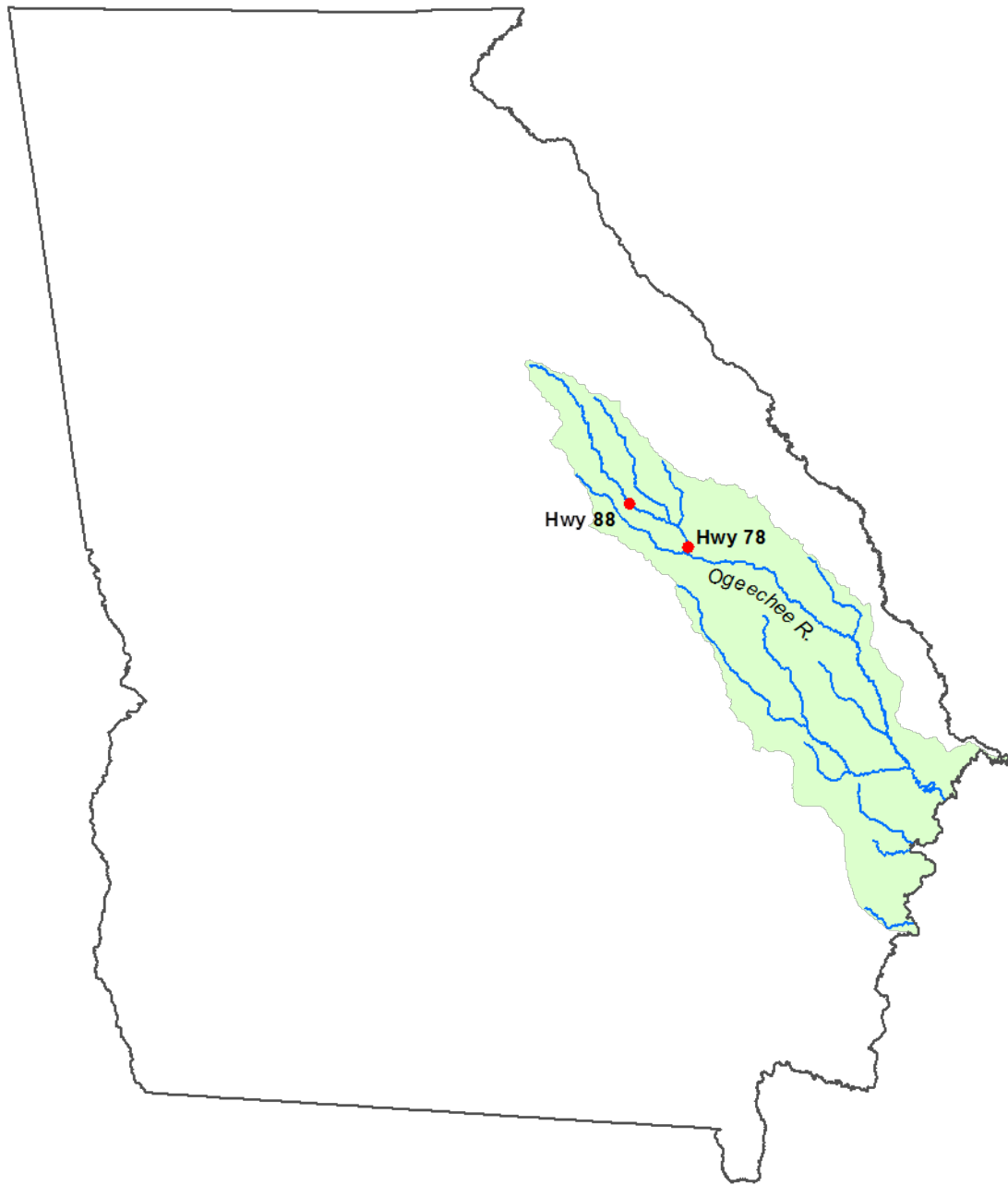
Evaluation: Information gathered during the culture phase will be used to refine and evaluate culture techniques. Sampling for YOY shad by use of 50' bag seines will occur in downstream river sections. As a part of Georgia's sustainability plan, seining has been ongoing in the Ogeechee River for the past two years with good success. Otoliths will be examined for OTC marks to evaluate success of stocking efforts and to evaluate downstream migration patterns. In addition to YOY sampling, adult shad electrofishing surveys were implemented in 2010 as part of the sustainability plan. This sampling will continue to be conducted twice monthly for a three month period during the spawning migration. Data collected from these experimental stocking efforts will provide useful information towards determining the feasibility of stocking efforts and will be used to guide future shad management efforts in Georgia.

Targeted Start Date: The Georgia Fisheries Management Section would like to begin experimentation with shad culture and stocking in the Ogeechee River system in 2014.

Literature Cited

- Andrews, J.W., T. Murai, and M.A. Fleetwood. 1978. Brood stock collecting and hatching techniques for American shad, *Alosa sapidissima*. NMFS, St. Petersburg, Florida.
- ASMFC (Atlantic States Marine Fisheries Commission). 2010. Review of the Atlantic States Marine Fisheries Commission Fishery Management Plan for Shad and Herring (*Alosa* spp.). ASMFC, Arlington, Virginia. Available: www.asmfc.org.
- Cushman, E., C. Tarpey, B. Post, K. Ware, and T. Darden. 2012. Genetic characterization of American shad in the Edisto River, South Carolina, and initial evaluation of an experimental stocking program. *Transactions of the American Fisheries Society* 141:1338-1348.
- Hendricks, M.L., D.L. Torsello, and T.W.H. Backman. 1994. Use of otolith microstructure to distinguish wild from hatchery-reared American shad in the Susquehanna River. *North American Journal of Fisheries Management* 14:151-161.
- Hendricks, M.L., R.L. Hoopes, D.A. Arnold, and M.L. Kaufmann. 2002. Homing of hatchery-reared American shad to the Lehigh River, a tributary to the Delaware River. *North American Journal of Fisheries Management* 22:243-248.
- Hendricks, M.L. 2006. Analysis of adult American shad otoliths, 2005. Restoration of American shad to the Susquehanna River, Annual Progress Report 2005. Susquehanna River Anadromous Fish Restoration Cooperative.
- Latour, R.J., E.J. Hilton, P.D. Lynch, T.D. Tuckey, B.E. Watkins, and J.E. Olney. 2012. Evaluating the current status of American shad stocks in three Virginia rivers. *Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science* 4:302-311.
- Limburg, K.E., K.A. Hattala, and A. Kahnle. 2003. American shad in its native range. Pages 125-140 in K.E. Limburg and J.R. Waldman, editors. *Biodiversity, status, and Conservation of the world's shad*. American Fisheries Society, Symposium 35, Bethesda, Maryland.
- Moyer, G.R., and A.S. Williams. 2012. Assessment of genetic diversity for American shad in the Santee-Cooper River basin of South Carolina prior to hatchery augmentation. *Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science* 4:312-326.

Figure 1. Locations of potential American shad stocking locations in the Ogeechee River, Georgia.



TO: Shad and River Herring Board and Technical Committee
FROM: Maine Department of Marine Resources
RE: River Herring Research Proposal in Penobscot Bay

The state of Maine requests review and consideration of approval for a proposal to collect juvenile river herring for research focused on diet analysis, ageing, and habitat use. Maine DMR supports this research.

River herring runs in Maine, though a fraction of their historical numbers are still viable and present an important opportunity to learn more about the early life stages of these species. In 2012, a series of anecdotal and preliminary observations done by NOAA scientists found that juvenile river herring (mixed ages: YOY, 1+ and 2+) were consistently present from April through November within the Penobscot Estuary, and were often associated with the estuary turbidity zone. This suggests that these species are spending considerable time inshore as juveniles, but almost nothing is known about their food habits, growth rates or food web interactions at this critical stage. This study will be looking at river herring diets in collaboration with the NOAA Penobscot Estuary survey. At the same time, scientists from the University of Maine – Darling Marine Center will be studying the occurrence and food web position of mysids and other zooplankton in the Penobscot Estuary, allowing the calculation of selectivity indexes for river herring diets. The study will also collect otoliths for aging and growth calculations, as well as for use with microchemistry to determine the timing of habitat switches between freshwater and marine. Researchers from the University of Maine propose to take ~620 juvenile blueback herring and ~620 juvenile alewife samples (lethally) from the NOAA Penobscot trawl survey to perform diet and otolith microchemistry analysis to provide more information about the fishes' use of this system.



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

May 6, 2013
SPECIAL LICENSE NUMBER ME 2013-10-02
Amendment #1

Acting under the authority vested in the Commissioner of Marine Resources by virtue of 12 M.R.S. §6074(8)(A), I hereby issue, subject to renewal, a Special License to **OLIVER N. COX**, DMR Bureau of Sea Run Fisheries and Habitat, 650 State Street, Bangor, Maine 04401-5654, and **JOHN KOCIK**, NOAA Fisheries NEFSC Maine Field Station, 17 Godfrey Drive, Suite 1, Orono, Maine 04473. This Special License exempts OLIVER N. COX and JOHN KOCIK and those listed below in the course of research on and/or disease testing of Atlantic salmon smolt and various other species from those portions of 12 M.R.S. and Department regulations listed in Table 1 attached hereto as Page 3. This Special License is issued subject to the following:

- Who:** Oliver N Cox (DMR) and DMR Bureau of Sea Run Fisheries and Habitat project leaders: **DMR SRFH staff:** Joan Trial, Richard Dill, Randy Spencer, Paul Christman, Ernie Atkinson, Peter Ruksznis, and DMR and NGO staff, contract and volunteer, under their field supervision; and John Kocik (NOAA-NMFS) and NOAA project leads: **NOAA NMFS staff:** James Hawkes, Christine Lipsky, Timothy Sheehan, Graham Goulette, Rory Saunders, David Bean, Justin Stevens, Michael O'Malley, Dan Kircheis, Larry Shaw, Mark Renkawitz, and NOAA and NGO staff, contract and volunteer, under their direct supervision. **USM staff:** Karen Wilson, Theo Willis, Molly Payne, Amy Webb, Corey Bryant

Vessels: *R/V Blue Smolt; R/V RamJam/Silver Smolt; R/V Marley; R/V Miss Karen/Odd Ball – all CFVS inspections expire 04/30/14**

- Where:** Piscataquis, Narraguagus, East Machias, Sheepscot, and Penobscot Rivers**, Cove Brook, Sedgeunkedunk, and Hobart Streams, and Penobscot Estuary and Bay
- When:** January 1, 2013 – December 31, 2013
- What, Quantity, Where, How, species per location – see Tables 1 and 2 attached hereto.**

Associated Project A: To assess diet and food web position of juvenile alewife, blueback herring, smelt and tomcod in the Penobscot River Estuary, in collaboration with NOAA-NMFS scientists who are doing the sampling under this special license. Collection of fish for diet analyses as well as stable isotope analyses of muscle tissue to assess food web position. In addition, collection of otoliths and scales for aging (and possible future microchemistry analyses) from each fish. Fish will be collected using a 12 m x 6 m otter trawl modified to sample top 5m at seven fixed stations in the Penobscot Estuary on one day in April, May, June, July, August, October and November 2013. Fish will be collected on the R/V Oddball and will be euthanized using an overdose of MS-222 and frozen in the field and then processed at the University of Southern Maine, Gorham campus. Expected quantities:

Blueback herring: 620 juveniles

Alewife: 620 juveniles

Smelt: 260 mixed ages

Tomcod: 100 mixed ages

5. Conditions:

- Marine Patrol** Division I, west of Port Clyde, tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, **shall be contacted prior to the start up of all activities** to: Coordinate with Marine Patrol their requirements for marking of the fish traps; Make arrangements as to the frequency for persons on this Special License (SL) to contact Marine Patrol to provide the SL number, dates and location(s) of activities and names of all persons field, and names of person(s) who shall be transporting specimens; and Marine Patrol shall be notified when the field work in 2013 has been completed.

- Collection of alewife, blueback herring, and American shad is contingent upon pending approval by the Atlantic States Marine Fisheries Commission. Before collection begins, samplers must clear the work with Claire Enterline at the DMR (207) 624-6341.
- **Reporting:** A report (electronic format) shall be provided to the Department at the project completion and prior to renewal.
- ***SL's are contingent upon all vessels holding current USCG commercial fishing safety inspections. When an inspection is updated forward a copy to Kevin.Rousseau@maine.gov to amend this special license.**
- **Penalty:** Any infraction of these conditions or related Marine Resources laws shall be grounds for the immediate revocation of this Special License. Additional conditions may be added at the discretion of the Commissioner. Pursuant to 12 M.R.S. §6074(9) an individual who fails to comply with the conditions or limitations on the licensed activity under this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.
- **Additional** conditions may be added at the discretion of the Commissioner. This Special License **expires December 31, 2013** and has **two** renewals.



KEVIN J. ROUSSEAU
Administrative Officer,
As Authorized by 12 M.R.S. §6023
For Commissioner Patrick C. Keliher

cc: Marine Patrol Divisions I & II
Claire Enterline
Gail Wippelhauser

TABLE 1

Specimens	12 M.R.S. and DMR Regulation Chapters Exemptions
Common invertebrates/ finfish	§6501, Commercial fishing license to fish for, take, possess or transport marine organisms: for invertebrate and finfish species without specific laws or regulations; and Chapter 8 Landings Program
River Herring	§6131(2A)&(3) river herring fishing closed periods, (72-hr closure/areas not under lease agreement) and Chapter 30 River Herring. Chapter 55.58 Penobscot River Fishing Closure
Atlantic Salmon	§6131(2A)&(3) alewife fishing closed periods, (72-hr closure/areas not under lease agreement) and Chapter 30 §6140-B(4)(C) - allowance for possession of Atlantic Salmon raised by means of aquaculture §§9901, 9902, 9904, 9905, 9907
Jonah crab/ rock crab	§6421 lobster, crab license – section (4) exemption for hand take = no license required) Possession, take, Chapter 25
Lobster (size)	§6431 possession of a lobster less than the minimum size or greater than the maximum size
American eel, elvers	§6575 Method of eel fishing (must use eel pot or hoop net) and Chapter 32.03 method of fishing, Chapter 8 reporting
Groundfish	Chapter 34.10(1)(C)(3), i.e., no cod may be taken in the months of April, May and June; see Chapter 34 for individual species
Herring	Chapter 36
freshwater fish species	Chapter 37
Sturgeon	Chapter 39.02 Sturgeon fishing – Closed area
Smelt	Chapter 40 Closed areas and method of take
Menhaden	Chapter 41 §6501
Striped bass	Chapter 42.01 Striped bass: method of take and size; see 42.02 for personal take (1/day) of legal size
Bluefish	Chapter 43
American Shad	Chapter 44 limits. **30 juveniles and 30 adults in 2013
Northern Shrimp	Chapter 45, season, possession Chapter 55 Gear restrictions; fishing with in 150' of dams

TABLE 2

Sampling location (River or reaches), gear, and dates for Atlantic salmon and Penobscot estuarine and bay fish community assessments being conducted by NOAA Fisheries and DMR Sea Run Fisheries and Habitat staff, with estimated numbers captured, released, and killed.

Location	Sampling Method	Sampling Dates	Target Species	Max. Captures	N Released	N Lethal Sampling
Piscataquis River	rotary screw trap	4/15 - 6/10	ATS smolts	thousands	all	None
Narraguagus River	rotary screw trap	4/15 - 6/10	ATS smolts	thousands	all	None
Sheepscot River	rotary screw trap	4/15 - 6/10	ATS smolts	hundreds	all	None
Hobart Stream	rotary screw trap	4/15 - 6/10	ATS smolts	tens	all	None
Cove Brook	rotary screw trap	4/15 - 6/10	ATS smolts	tens	all	None
Penobscot River	trap at Weldon Dam	4/15 - 6/10	ATS smolts	150	all (150 acoustic tags)	None
Sheepscot River	rotary screw trap	4/15 - 6/10	blueback herring	60	0	60 (otolith extraction; peritoneum)
Sheepscot River	rotary screw trap	4/15 - 6/10	alewife	60	0	60 (otolith extraction; peritoneum)
Sedgeunkedunk Stream	beach seine	4/1 - 7/1	river herring	hundreds	all	None
Penobscot River several sites Hampden – Verona Is	fyke net	3/15 - 11/15	all (community)	hundreds	majority	None
Penobscot River 12 sites btw Hampden – Verona Is	beach seine	3/15 - 11/15	all (community)	thousands	majority	None
Penobscot River many sites btwn Winterport and Islesboro	surface/mid-water trawl	up to 16 days from 3/15 – 11/15	all (community)	thousands	majority	500 river herring (otolith extraction, peritoneum)

Species likely encountered in Penobscot estuarine and bay community assessments: American eel, Atlantic salmon, river herring, American shad, rainbow smelt, menhaden, striped bass, bluefish, Atlantic sturgeon, shortnose sturgeon, lobster, crab spp, shrimp.



Department of Marine Resources

Application for Special License

Send completed applications to:
 Office of Commissioner, attn: Special License, DMR, SHS 21, Augusta, ME 04333-0021 or fax: (207) 624-6024
To allow time for processing submit applications at least 90 days prior to the requested date of issuance.
Amendment requests submit at least 30 days prior. Missing or incomplete applications may be returned.
Enter "NA" for items that are not applicable. Attach separate page(s) if needed. Please type or print.

12 M.R.S. §6074 Special License, web link: <http://janus.state.me.us/legis/statutes/12/title12sec6074.html>

Date of Request: April 18, 2013

1. Type (Check): New application: Annual renewal: * Amendment request: *
 Report required: No Yes (electronic copy)
 *Previous or current Special License Number: ME-2010-72-00

2. Applicant(s)

Primary license holder Name (*first, middle, last*): Karen A. Wilson
 Marine Resources violation in the past 7 years: None If yes attach copy of waiver
 Date of birth (required): Nov. 10, 1970
 Phone(s)/Fax, email address: 207-780-5395(work), kwilson@usm.maine.edu
 Residential Address: 60 Edgeworth Ave.
 City, State, Zip: Portland, ME 04103
 Business Address: University of Southern Maine, Dept of Environmental Science, 37 College Ave.
 City, State, Zip: Gorham, Maine 04038

Secondary license holder Name (*first, middle, last*): Theodore V. Willis
 Marine Resources violation in the past 7 years: None If yes attach copy of waiver
 Date of birth (required): Nov. 11, 1972
 Phone(s)/Fax, email address: 207-210-6016, theowillis08@aim.com
 Residential Address: 60 Edgeworth Ave.
 City, State, Zip: Portland, ME 04103
 Business Address:
 City, State, Zip:

Secondary license holder Name (*first, middle, last*): Molly Louise Payne
 Marine Resources violation in the past 7 years: None If yes attach copy of waiver
 Date of birth (required): April 20, 1988
 Phone(s)/Fax, email address: molly.payne@maine.edu
 Residential Address: 87 Montrose Ave
 City, State, Zip: Portland, ME 04103
 Business Address:
 City, State, Zip:

Secondary license holder Name (*first, middle, last*): **Amy Webb**
 Marine Resources violation in the past 7 years: None If yes attach copy of waiver
 Date of birth (required):
 Phone(s)/Fax, email address: (207) ,
 Residential Address:
 City, State, Zip:
 Business Address:
 City, State, Zip:

Secondary license holder Name (*first, middle, last*): Corey, Jacob, Bryant
 Marine Resources violation in the past 7 years: None If yes attach copy of waiver
 Date of birth (required): 12-21-1982
 Phone(s)/Fax, email address: (207) 240-9614, corey.bryant@maine.edu



Department of Marine Resources

Application for Special License

Residential Address: 66 Kellogg St. #3
City, State, Zip: Portland, Maine 04101
Business: Student
Address: University of Southern Maine
City, State, Zip: Gorham, Maine 04038

3. Fees (check): Maine funded (no fee(s)): List agency/institution source: Univ. of Southern ME

If Not Maine funded check here: and continue with this section:

Payment type: Check Payable to "Treasurer, State of Maine"

Credit card (must submit by telephone, call 207-624-6553)

New application fee (year one): \$100 plus:

Issuance fee (year one) and

Annual renewal fee (years 2-5):

(For more info see FAQ's)

1-2 names: \$50

3-10 names: \$100

11-20 names: \$200 etc.

4. Vessel Safety Inspection report (USCG CFVS) per vessel, attached: Yes

Maine Registration and or Federal Documentation number: **please see RV Oddball under Special License # 2013-10-02**

Vessel Name:

Owner: Issuance date (valid for one year):

If vessel has a USCG Passenger Carrying Certification check , if checked:

List issuance and certification expiration dates:

Name of Vessel:

Owner:

If no vessel or only non-powered vessel(s) is/are used for the exempted activities requested check , and no safety inspection report is required.

5. Briefly describe the purpose of your request (Why):

Research:

To assess diet and food web position of juvenile alewife, blueback herring, smelt and tomcod in the Penobscot River Estuary, in collaboration with NOAA-NMFS scientists who are doing the sampling (**Special License # 2013-10-02**).

6. Protected species interactions (direct or indirect) No Yes if yes, attach a copy of your correspondence. If requesting an exemption for any federally endangered, threatened or listed species of concern, provide in writing information about your contact with the respective federal agency, listing any conditions or requirements by that agency.

7. Describe activity (What):

We will be collecting fish for diet analyses as well as stable isotope analyses of muscle tissue to assess food web position. In addition, we will collect otoliths (and scales) for aging (and possible future microchemistry analyses) from each fish.

8. List species and quantity:

We anticipate that these numbers represent overestimates of the number of fish that will be collected. See Table 1 below for size distributions.

Blueback herring: 620 juveniles

Alewife: 620 juveniles

Smelt: 260 mixed ages

Tomcod: 100 mixed ages



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length	Alewife			Upper Estuary			Lower Estuary		
	0-75 mm	75-100 mm	> 100 <20 mm	0-75 mm	75-100 mm	> 100 <20 mm	0-75 mm	75-100 mm	> 100 <20 mm
(April)	10	10	10	10	10	10	10	10	10
May		20	20		20	20		20	20
June		20	20		20	20		20	20
July	20	20	20	20	20	20	20	20	20
Aug	20	20	20	20	20	20	20	20	20
Oct		20	20		20	20		20	20
Nov		20	20		20	20		20	20
							total ALE: 620		
length	BBH			Upper Estuary			Lower Estuary		
	0-75 mm	75-100 mm	> 100 <20 mm	0-75 mm	75-100 mm	> 100 <20 mm	0-75 mm	75-100 mm	> 100 <20 mm
(April)	10	10	10	10	10	10	10	10	10
May		20	20		20	20		20	20
June		20	20		20	20		20	20
July		20	20		20	20		20	20
Aug	20	20	20	20	20	20	20	20	20
Oct	20	20	20	20	20	20	20	20	20
Nov		20	20		20	20		20	20
							total BBH: 620		
length	Tomcod			Upper Estuary			Lower Estuary		
	<100 mm	100-200 mm	>200 mm	<100 mm	100-200 mm	>200 mm	<100 mm	100-200 mm	>200 mm
(April)	?	?	?	?	?	?	?	?	?
May	?	?	?	?	?	?	?	?	?
June	?	?	?	?	?	?	?	?	?
July	?	?	?	?	?	?	?	?	?
Aug	?	?	?	?	?	?	?	?	?
Oct	?	?	?	?	?	?	?	?	?
Nov	?	?	?	?	?	?	?	?	?
							total Tomcod: 100		
length	Smelt		Upper Estuary	Lower Estuary					
	0-75 mm	> 75 mm	> 75 mm	0-75 mm	> 75 mm	> 75 mm			
(April)	5	5	5	5	5	5			
May	10	10	10	10	10	10			
June	10	10	10	10	10	10			
July	10	10	10	10	10	10			
Aug	10	10	10	10	10	10			
Oct	10	10	10	10	10	10			



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Nov	10	10	10	10
			Total smelt:	260

9. Describe gear type to be used to collect specimens (How): amount of gear; physical description and dimensions; describe biosecurity and handling techniques if applicable; describe disposition of animals if applicable.

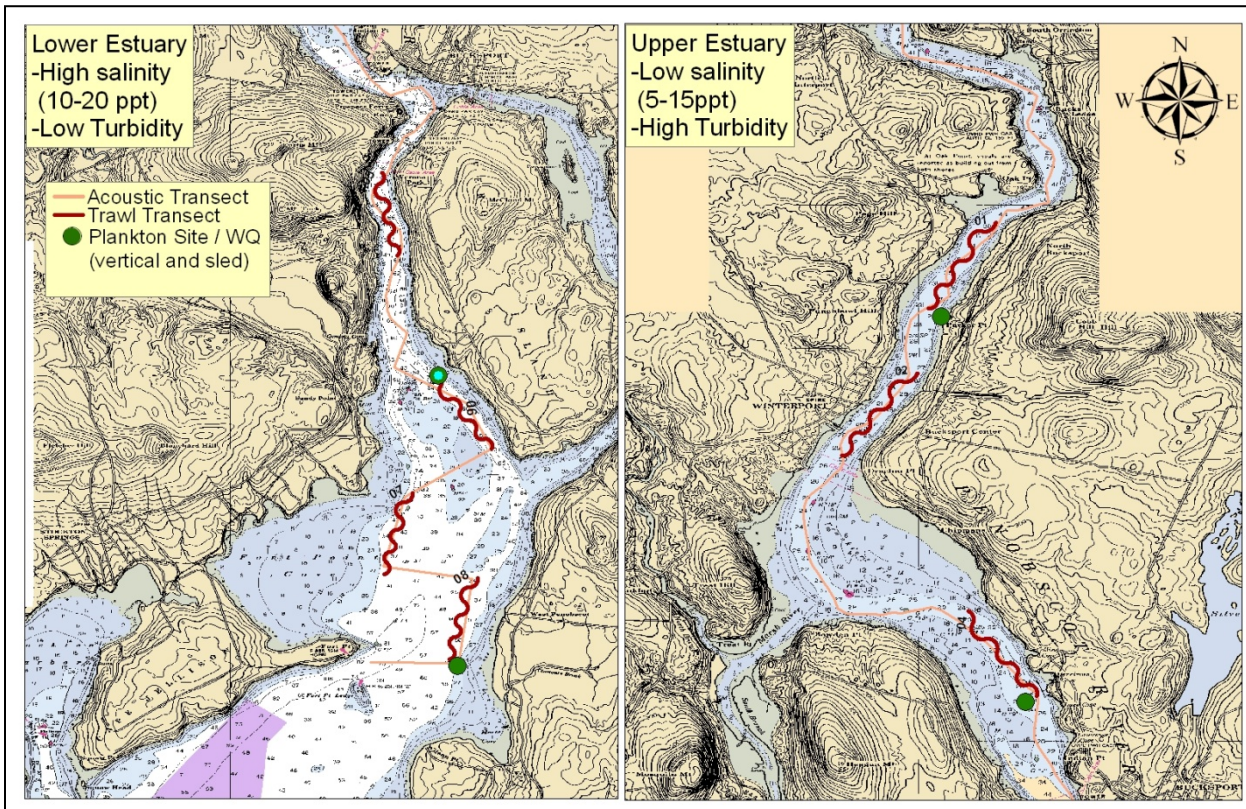
Fish will be collected using a 12 m x 6 m otter trawl modified to sample top 5 m at 7 fixed stations in the Penobscot Estuary on one day in (April), May, June, July, August, October and November 2013. Fish will be collected on the RV Oddball by NOAA-NMFS staff, Special License # 2013-10-02. Fish will be euthanized using an overdose of MS-222 and frozen in the field.

10. Dates, list start and end date for the current calendar year:
(April), May 5 – Nov 30th, 2013.

11. Where

List Site(s) of collection at a cove, bay, region, town(s), etc: Trawls will be conducted from below Verona Island to just above the Marsh River on the Penobscot River (see Special License # 2013-10-02 and Figure 1, below). Housing location (address, laboratory, hatchery, etc): Fish will be euthanized and frozen in the field and processed at the University of Southern Maine, Gorham campus.

Figure 1. 2013 Penobscot Estuary sampling locations; trawl locations are indicated by dark wiggly lines.





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12. Exemptions requested, list Statutes and or regulations (<http://www.maine.gov/dmr/lawsandregs.htm>):
Exemptions include those portions of 12 M.R.S. §6131 (2)(A)&(3) alewife fishing closed periods;
Regulations Chapter 30, Alewife, local restricted areas;
Ch. 55.58 Penobscot River Fishing Closure.

Signed _____ Date: _____