

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF JANUARY 18, 2012



Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware 19901
Phone: 302-739-9914, Fax: 302-739-6157

ADVISORY COUNCIL

Dewayne Fox, Ph.D., Chairman
Bernie Pankowski
Brian Hoffecker
James "Jay" Little
Marvin Kahl, Jr.
Ken Logan
P. "Wes" Townsend

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
David Saveikis, Division Director
Lacy Nichols, Jr.
Scott Newlin
Lt. David Blaasch
Kim Stangl

PUBLIC

9 Visitors

Agenda Item 1. Welcome

The meeting was called to order at 6:00 PM and **Dr. Fox** welcomed and thanked everyone for their attendance.

Agenda Item 2. Approval of minutes from 10/19/11

A motion passed to approve the meeting minutes from October.

Agenda Item 3. Introduction of new Fisheries Administrator

Mr. Saveikis explained that since Craig Shirey's retirement back in July, John Clark has recently been selected as the new Environmental Program Administrator for the Fisheries Section. **Mr. Clark** thanked the Director for the official announcement and added that he is honored to serve in this position. He stated that he has many years of experience with the Fisheries Section of DE DFW and welcomes anyone needing answers to questions, or discuss any fishing issues, either recreational or commercial. Mr. Clark can be reached by phone at (302) 739-9914 or via email at john.clark@state.de.us.

Agenda Item 4. Net Marking Sub-committee update

Dr. Fox explained that the sub-committee adjourned just prior to this meeting and so he gave a summary from his notes. The commercial fishing representatives serving this sub-committee and DFW Enforcement staff agreed to try to resolve some of the discrepancies in 7 *DE Code* relating to gill net marking (§920). The objective in doing this is to standardize commercial fishing enforcement and increase boater safety. There were four proposed changes that were agreed upon and will need to be formalized. First, it was decided that there needs to be standardization for all heights for gill net flags. Second, the words "anchor", "stakes", and "floats" will be added to the "equipment" definition in order to clarify where flags can be affixed. Third, "shared rigging" will now be defined as "multiple nets attached in a continuous series sharing of one or more anchors, lines, stakes or floats." And last, the float size diameter will be changed from 4 inches to 5 inches in order to increase its visibility. A more detailed presentation of the proposed changes will take place at an upcoming Council meeting. **Mr. Michels**

reminded everyone that for these proposed changes to be implemented, legislative support will be needed, because this would affect state law as opposed to Department regulation. Once the changes are implemented, the DFW will work hard at outreach and education of the public with pamphlets, website updates, incorporation of changes into boater education classes, etc.

Agenda Item 5. Summary of ASMFC annual meeting in November

Mr. Clark stated that the Atlantic Menhaden Board approved addendum 5 to Amendment I which means that fishing mortality will be cut by nearly half. Obviously, this will cause a large decrease in the harvest. Virginia is trying to fight this since they harvest the majority of menhaden along the entire Atlantic coast. **Dr. Fox** asked how DE voted and **Mr. Clark** responded that DE voted for the 15% threshold and 30% target option. Regarding striped bass, there was an attempt by some of the New England states to have landings cut by 40%. Delaware voted against this proposal because the most recent assessment showed the stock is still well above the threshold. The 40% cut was not approved. **Mr. Michels** explained the Horseshoe Crab board approved draft addendum 7 which proposes using an Adaptive Resource Management model to combine both shorebird and horseshoe crab abundance levels in order to set optimized horseshoe crab harvest levels for the DE Bay area. The ASMFC held its DE public hearing on Jan. 6, which was very lightly attended, and comments will be accepted on this draft addendum until 5 PM on Jan. 31. More information can be obtained from www.asmfc.org. The Shad and River Herring Board approved the American shad sustainability plans for the states, SC through FL. Delaware's plan has just passed the Technical Committee review and will be considered by the board in Feb. This plan, which allows status quo, is collaborative between NJ, DE, NY and PA. The National Marine Fisheries Service was petitioned to list river herring as threatened or endangered. NMFS concluded that there is sufficient information to suggest that listing may be warranted for river herring and they will be conducting a status review. All states were found to be in compliance with current FMP's. **Mr. Michels** continued with winter flounder

explaining that the Board was presented with the stock assessment review results which found that the stock is over-fished. The maximum sustainable yield estimate was revised. In Feb. the Board will consider possible management measures for state waters.

Agenda Item 6. Regulations update (tautog, black sea bass, summer flounder, spiny dogfish)

Mr. Michels stated that river herring will be closed to harvest effective (tentatively) on Feb. 11. The FMP required each state to develop, for approval, a sustainable fishery management plan by Jan. of 2010 to remain open. States that could not meet this requirement are forced to close their river herring fishery Jan. 1, 2012. Regarding tautog, states were required to reduce harvest by 53% and the DFW presented 4 options to achieve this level of reduction. At the public hearing in October, option 3 was favored, and then submitted for publication in the Feb. Register of Regulations. The new regulation includes 4 yearly open seasons, a minimum 16-inch size limit for all seasons, and a daily limit of 5 fish for 3 of the seasons and a limit of 3 fish from Apr. 1-May 11. Spanish mackerel regulations are expected to change due to the Omnibus Amendment to the Interstate FMP's for Spanish Mackerel, Spot, and Spotted Seatrout. This amendment brings management of these species under the authority of the Atlantic Coastal Fisheries Cooperative Management Act. In both the commercial and recreational fisheries, the size limit will be 14 inches, there will be a 15-fish recreational creel limit and a 3500-lbs commercial trip limit. **Mr. Clark** went over proposed black sea bass regulations. The ASMFC is considering regional management of this species but he expects that DE will remain status quo. Regulations for summer Flounder may remain the same as 2011 in DE, since DE's landings were below the allowable quota even though, due to finalized coastwide landings data, the stock is not in as good a shape as previously thought. The spiny dogfish commercial fishery is now closed in federal waters. Smooth dogfish may be limited by quotas in the near future.

Agenda Item 7. Fisheries legislation initiatives for 2012

Mr. Saveikis updated the audience regarding the recommendation to the Recreational Fishing Funding Advisory Council by the Ad Hoc Committee on License Agent Service Fees. This Committee sought approval from each of the Division's Advisory Councils to increase the fee license agents are allowed to charge customers for purchasing fishing and hunting licenses. Each of the Advisory Councils gave their approval for an increase of up to \$1 and the RFFAC then made this recommendation to the DFW. The Committee explained that this increase will help cover the costs of the necessary required equipment the license agents must now purchase on their own in order to sell the fishing and hunting licenses. The DFW will propose clarification and updates to the code for scientific collection permits. This proposed legislation should help better protect resources and provide equity for agencies, colleges, businesses and individuals requesting

to collect various fish and wildlife species for scientific purposes. **Mr. Saveikis** also explained the DFW's intent to modify legislation regarding invasive species, specifically the method of take. This is, in part, due to the discovery of Northern snakehead in both tidal and non-tidal waters of DE. Current legislation does not specifically allow for various methods of take, such as bow and arrow, and it does not specifically list northern snakehead as an invasive species. Allowing invasive species to be taken by various means can help to benefit the environment and provide more sporting activity to anglers, etc.; however the DFW needs to make various methods of take legal in order for the public to partake. With this legislation, the DFW will also seek regulatory authority to manage and be more responsive as future invasive species may be discovered. The Council requested proposed legislation be presented at the next meeting.

Agenda Item 8. Construction update

Mr. Nichols said that the Cedar Creek boat ramp reconstruction project is on schedule. The statewide parking lot rehabilitation project has been put on hold until the weather improves, however the Milton access area was completed just after the Thanksgiving holiday. The Garrison's Lake footbridge project is also running on schedule. He explained that he is currently awaiting the on-site arrival of piles, expected next week, and shop drawings of the bridge are due to him tomorrow. Manufacturing of the actual bridge will begin soon thereafter. To answer the question "when will the Cedar Creek project be done", **Mr. Nichols** replied that they've been very lucky with the weather and are on schedule and hope to be done by the end of the spring fishing season, however he cannot make any guarantees.

Agenda Item 9. Status of Atlantic sturgeon NOAA ESA listing

Dr. Fox stated that there is no update. As soon as something changes he, or **Matt Fisher** of DFW, will provide the update.

Agenda Item 10. Agenda items for February 15 meeting

After some discussion took place regarding dredging Bowers Beach access area, and that this area is actually a federal waterway and therefore under the jurisdiction of the Army Corps of Engineers, **Dr. Fox** requested items for the next meeting's agenda:

1. Dredging at Bowers Beach access area
2. Invasive species legislation draft

This meeting adjourned at 7:22 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF MARCH 21, 2012



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Dewayne Fox, Ph.D., Chairman (absent)
Bernie Pankowski
Brian Hoffecker (absent)
James "Jay" Little
Marvin Kahl, Jr.
Ken Logan
P. "Wes" Townsend (Acting Chairman)

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
Chuck Williams (Div. Watershed Stewardship)
Capt. John Rutherford
Kim Stangl

PUBLIC

8 Visitors

Agenda Item 1. Welcome

The meeting was called to order at 6:00 PM by Acting Chairman Townsend, who thanked everyone for their attendance.

Agenda Item 2. Approval of minutes from 1/18/12

A motion was made, seconded & carried to approve the January meeting minutes.

Agenda Item 3. Bowers Beach dredging update

Chuck Williams of the Division of Watershed Stewardship (DWS) introduced himself and stated that he has been with the Department for 37 years and works for the Shoreline and Waterway Management Section. He oversees the Waterways side of the section and his colleague, Dan Brower, manages the Shoreline side. He gave a brief history of the state's waterways management, which began in 1970 with dredging operations. Dredging was the main focus from 1970-96. In 1972 the State Legislature passed the Beach Preservation Act which mandated that the Shoreline Section preserve and maintain the public beaches of the state. An annual appropriation of \$1-million was provided for this purpose through the Bond Bill. In addition, the state's hotel accommodations tax provides about \$2-million annually. Mr. Williams explained that management of the state's waterways has not been blessed with such a steady, reliable source of funding. He said that in 1970, the legislature appropriated \$400,000 to Waterways management, directed the DWS to purchase a dredge and other equipment, and assigned five dredging projects to complete in Sussex County. After the first two projects were complete, the funds were depleted, and staff was forced to divert remaining funds to other projects. He stated that this has continued to be the normal operating procedure for the last 40 years. There has continued to be a small, annual general fund appropriation of approximately \$170,000, and occasionally, the DWS receives Bond Bill funds for specific projects. There is no state law directing the Waterways Section of DWS to conduct dredging, channel-marking or macro algae harvesting. In regard to the Murderkill River, it is a federally authorized waterway since 1892, so dredging responsibilities fall on the Army Corps of Engineers (the

Corps). In the more recent past, when the Corps denied having funds available for dredging this area and the DWS did have funds available for maintenance dredging, Mr. Williams said he and his staff dredged, in 1987, '91, '92 and 1996 with the two state-owned dredges. The last time this area was dredged by the Corps was 2002. Based on recent discussions with the Corps, any navigational channel dredging project that does not carry at least one million tons of commerce per year will not be funded. The Corps will investigate emergency maintenance channel dredging only after the state has determined it does not have the necessary resources to do so. Mr. Williams referred to a waterway atlas he prepared that shows federally maintained channels. Budget cuts and staff shortages have impeded the DWS's ability to perform any dredging of the Murderkill waterway. The Waterway Management Section's staff has been cut from 16 full-time employees back in 1991 to a total of 5 full-time employees today (1 employee is currently on active duty with the military). He stated that the DWS has been working toward getting a law passed to provide a steady source of funding for waterways management activities. Audience member, **Capt. Dave Russell** commented that he has been pursuing the Corps and the State of DE to resolve this serious problem since 2004. He stated the reason cited for no action having been taken to date is lack of funding. After some discussion, and the majority in agreement that dredging needs to be done as soon as possible, **Mr. Pankowski** suggested drafting a letter to present to Delaware's Congressional delegation while attending the upcoming ASMFC meeting, which will be held in Alexandria, VA, near Washington, DC. With further discussion, it was determined that approval should also be sought from the other two Fisheries Advisory Councils (the Shellfish and the Recreational Fishing Funding Advisory Councils).

Agenda Item 4. Winter ASMFC meetings summary

Mr. Clark gave a brief summary of pertinent board meetings from the most recent ASMFC meeting. The American Shad and River Herring Management Plan for the Delaware River Basin was approved by the Board. This plan will keep the fishery open in DE. The American shad harvest in DE has been minimal for the

past five years. The Law Enforcement Task Force presented their findings to the Striped Bass Management Board and made recommendations for steps the states should take to prevent poaching in commercial fisheries. These recommendations are common-sense methods, some of which DE has already implemented, and more will be introduced during the coming seasons. From the Summer Flounder, Scup & Black Sea Bass Board; the summer flounder regulations will stay the same as in 2011 (18-inch/4 fish/open Jan. 1-Oct. 23), and for black sea bass DE's regulations will be the same as the federal regulations (12.5-inch/25 fish/open May 19-Oct. 14 and Nov. 1-Dec. 31 and 12.5-inch/15 fish/open Jan. 1-Feb. 28). The Atlantic Menhaden Board approved the Public Information Document to reduce fishing mortality, which may result in significant cut-backs to the menhaden fishery, and so there will be a Public Hearing in Lewes (at the DNREC facility at the end of Pilottown Rd. near Massey's Landing boat ramp) on March 28 at 7:30 PM to gather public input. The Horseshoe Crab Management Board approved the Adaptive Resource Management Plan which may lead to liberalization of allowable quotas. The South Atlantic States Federal Fisheries Management Board approved the Black Drum Public Information Document which is a step toward implementing a black drum fishery management plan. This would allow the black drum fishery to continue with responsible catch limits. The Policy Board met to discuss the Endangered Species Act listing of Atlantic sturgeon which goes into effect on April 6. Mr. Clark explained that this could present some serious problems for the commercial gill net fishery since there is a good chance for interaction with sturgeon using this type of gear. It is very likely that DE will be required to obtain "incidental take permits" to cover its commercial gill net fisheries. These permits require on-board observers to witness and report the numbers of incidental take of a particular species, and then once a pre-determined amount of incidental takes is reached, the fishery is shut down for the season. The rules are yet to be discussed and determined but this is a rough scenario of what to expect.

Agenda Item 5. Fisheries legislative initiatives: invasive species, new collecting permit

Hand-outs of proposed legislation changes were made available. Mr. Clark explained that the Department is looking for a broader scope of authority to better manage invasive species, such as northern snakehead and Chinese mitten crabs. Some nuisance species might be better managed through the passing of this bill. Mr. Clark remarked that several people have inquired about "fishing" for snakeheads with bow and arrow. It is highly unlikely that the northern snakehead will ever be totally eradicated from Delaware waters, but allowing fishermen to legally take these fish using bow and arrow would only help in managing this nuisance species. Passage of this proposed bill would allow the DFW to legalize bow and arrow fishing for snakehead. Mr. Clark then explained that the proposed legislation changes for the scientific collecting permits would modify the language and widen the scope of the permit. Changes include; collection for

educational purposes, a requirement that specimens collected be held under humane and sanitary conditions, and that permittees file a report within 30 days after expiration of their collection permit. After a few questions and answers, the Council made a motion to approve both of the proposed legislative initiatives, and the motion was seconded and passed.

Agenda Item 6. Regulatory update: Spanish Mackerel, highly migratory species, non-tidal freshwater

Mr. Michels explained that, as required by the ASMFC's Omnibus Amendment for Spanish mackerel, a 14-inch minimum size limit for commercial and recreational fishing, 15-fish creel limit, 3500 lbs/vessel/day commercial fishing limit, and a requirement that fish are to be landed with the head and fins intact, are being proposed for DE. This amendment brings plans under the authority of the Atlantic Coastal Fisheries Management Act. The hearing record opened on March 1 and the public hearing will take place in this auditorium at 6 PM on April 19. He is preparing a Start Action Notice (SAN) on Highly Migratory Species (tunas, billfish and shark) which will adopt the federal size and catch limits established in the federal code and would prohibit the sale of recreational catch (except for-hire vessels with necessary state/federal permits to sell the recreational limits). He gave a heads-up that DE will probably have to amend the black sea bass regulations to be consistent with the federal regulations once they go into effect June 1. The size and creel limit should remain the same, but three more days will be added to make the season end on October 14. Another SAN is being prepared to amend non-tidal trout regulations to prevent harvest of trout stocked prior to the opening day. He mentioned that otoliths, scales and genetic samples were collected from two snakeheads recently caught by bow anglers. The snakehead caught on March 15 was 26 inches long and weighed 6.3 lbs. The second snakehead was immature.

Agenda Item 7. Agenda items for April 18 meeting

Mr. Townsend requested items for the next meeting's agenda:

1. Atlantic sturgeon update

This meeting adjourned at 7:13 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF APRIL 18, 2012



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DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
Desmond Kahn
Scott Newlin
David Saveikis
David Small, DNREC Deputy Secretary
Lt. David Blaasch
Capt. John Rutherford
Kim Stangl

PUBLIC

7 Visitors

Agenda Item 1. Welcome

At 6:00 PM the meeting was called to order by **Chairman Fox**, who thanked Councilman Townsend for acting in his place at the March meeting. He stated that the March meeting minutes are not yet ready for approval but the Recording Secretary should have them completed for the May meeting.

Agenda Item 2. HSUS shark finning proposal

Dr. Fox introduced Ms. Hetti Brown, Delaware State Director for the Humane Society of the United States (HSUS). **Ms. Brown** gave a Power Point presentation on the cruel and wasteful practice of shark finning. She explained that this practice happens worldwide and it is spurred by the industry specifically for selling fins for soup that is sold for hundreds of dollars per bowl. In China and Asia, shark fin soup is a sign of prestige and wealth, and Hong Kong is the hub of the industry. Sharks are fished only for their fins, which are cut off, and then the sharks are dumped back into the water-still alive-and suffer a slow, cruel death. The industry is highly unregulated, therefore allowing endangered and threatened shark species to be finned. The Convention on International Trade in Endangered Species (CITES) has determined that more than 100 of 400 species suffer from this form of cruelty/poaching. Ms. Brown said that the U.S. and DE have been leaders in acting to prohibit this practice. Wherever regulations and laws have been implemented, there are noticeably fewer cases of sharks being finned, but she added that there is more work to be done. The HSUS proposes to introduce legislation to prohibit possession, sale and distribution of shark fins in DE. This would take away the ability of DE to serve as a pass-through state (for shark fin markets in Philadelphia and New York City) for the distribution of shark fins coming in from other countries. There is already a shark fin ban in place on the west coast. She stated that the proposed bill would not interfere with legal shark fishing in DE. She also researched the possibility of a commercial market price reduction for legally caught sharks fished for their meat, if this legislation passed, and she determined that there would be no negative financial loss for DE commercial watermen. She explained that she used National Marine Fisheries Service reports as a

basis for this determination. **Mr. Pankowski** commented that it may be more prudent for the HSUS to seek federal legislation as opposed to seeking it from the individual states and he suggested that they speak with the DE Restaurant Association. **Ms. Brown** responded that the HSUS is pursuing federal legislation, but because that process tends to be lengthy, they are seeking legislation from individual states. She said the DE Restaurant Association has not been approached as of yet. In order to answer **Mr. Little's** question, **Ms. Brown** stated that the reason she was asked to speak tonight was for clarification to clear any confusion about the proposed legislation and also to be transparent regarding their intent. She added that approval from this Council on this proposal would be welcome. **Deputy Secretary, Dave Small** commented that after being approached by Ms. Brown about this issue, and then speaking with DFW staff, they concluded that it would be prudent to get input from this Council in order for the Department to take a formal position. **Dr. Fox** suggested that HSUS keep the shark population rebuilding plans in mind with respect to the commercial fishermen. He said that if this law does pass, it will have an economic impact on commercial fishermen 20+ years in the future, when the shark populations are projected to be back to normal. **Mr. Logan** stated that as a commercial fisherman, once he sells a whole shark to a buyer, he has no say in how that buyer chooses to sell the shark. **Mr. Rob Piascinski** pointed out that one of the slides in the presentation stated that possession of fins would be prohibited with passage of the proposed law. So, he asked how commercial fishermen would go about legally landing sharks if possession of fins is prohibited. **Ms. Brown** reassured everyone that the law would specify possession of "detached shark fins" as being prohibited. After some debate regarding the effects of this proposed law on commercial shark fishing, Ms. Brown stated that in the interest of time, she would like to gather more input from some commercial fishermen at another time.

Agenda Item 3. American shad plan for the Delaware Basin

Dr. Kahn gave a power point presentation to explain the recently approved American shad fishery management

plan. About 2 years ago, the ASMFC mandated states come up with either a rebuilding plan or a sustainability management plan if they wanted to continue to allow an American shad fishery. Dr. Kahn went over a brief history of this stock, including possible impacts from nearby industrial plants, and historical and recent fisheries data from surrounding states, PA, NJ, and NY. These states had some conflicting agendas and ideas on how to proceed. He stated the main question he had to consider was whether or not the stock is reproducing successfully or if the fishery is interfering with reproduction. In plotting the young of the year index (YOY) against the index of adult spawning size during the 2000's, there was no decline in reproduction shown as the adult run size declined. The states then agreed to move forward with a sustainable fishery management plan, but with implementation of such a plan, there would have to be monitoring of the indexes of YOY, spawning adults and landings data. Discussion briefly turned to other species and the possibility of similar data comparisons in order to determine if changes in commercial landings should be reconsidered and possibly liberalized.

Agenda Item 4. Bowers Dredging letter

Mr. Clark stated that he drafted a letter which is being reviewed by the Council. **Mr. Pankowski** stated that he and Mr. Roy Miller will present the finalized letter to DE's legislative body in Washington, DC, in May when they attend the upcoming ASMFC meeting. He added that it is important to verbally stress the urgent need for funds to have Bowers Beach dredged, not only for recreational boating safety, but also for commercial boaters and emergency vessels. During discussion, **Mr. Logan** suggested for future reference that the state look into requesting unused funds from Homeland Security, although matching funds are often required, which may hamper any DNREC efforts. A motion was passed to approve the letter (with minor revisions) and that it be presented to DE legislators in May.

Agenda Item 5. Atlantic sturgeon ESA permits

Mr. Clark explained the listing of Atlantic sturgeon on the Endangered Species Act became effective April 6. Based on ESA rules, DE will be required to obtain incidental take permits for fisheries that have the potential to catch Atlantic sturgeon. These permits require on-board observers and getting the state set up for this new system will be a lengthy process which will mostly affect the commercial gill net fishery. He stated that the DFW will keep everyone informed on this progress.

Agenda Item 6. Fisheries legislative initiatives update

Mr. Saveikis expressed appreciation for the Council's input and endorsement of the proposed amendments to scientific collecting legislation and invasive species legislation. In regard to scientific collecting, the amendments are meant to revise and clarify the permits, and for invasive species, the proposed changes would allow the DFW the ability to be more responsive to threats from aquatic invasive species (such as snakehead fish). As an update, he stated that after some very minor

revisions were just made, both pieces will be run through the administration and legal counsel, and then within the next few weeks they should be introduced to the General Assembly.

Agenda Item 7. Regulatory update: tautog and black sea bass

Mr. Michels stated that a Start Action Notice (SAN) will be filed soon to change the black sea bass regulations in order to be consistent with federal regulations which were not set at the time of the meeting. **Mr. Newlin** stated that another SAN will be filed for tautog due to the finding of a slight error in the last stock assessment. Recently, states were required to make reductions of 53% to their landings, but now only a 39% reduction is needed. He explained that after re-evaluating, the 2 options for DE will be: 1) 15-inch size limit, 5-fish creel limit, and July 17 summer season start, 2) 16-inch size limit, 8-fish creel limit, and a July 1 summer season start (other season dates would remain status quo). These changes would not become effective until Sept. or Oct. Mr. Newlin mentioned that the next stock assessment may not occur for 5 years.

Agenda Item 8. Agenda items for May 16 meeting

Dr. Fox requested items for the next meeting's agenda:

1. Enforcement update: role of State Police Marine Unit
2. ASMFC updates

This meeting adjourned at 7:29 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF JUNE 20, 2012



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ADVISORY COUNCIL

Dewayne Fox, Ph.D., Chairman
Bernie Pankowski
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James "Jay" Little
Marvin Kahl, Jr.
Ken Logan (Absent)
P. "Wes" Townsend

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
David Saveikis, Director
David Small, DNREC Deputy Secretary
Sgt. Tim Pritchett
Kim Stangl

PUBLIC

6 Visitors

Agenda Item 1. Welcome

Chairman Fox called the meeting to order at 6:00 PM and welcomed everyone in attendance.

Agenda Item 2. Approval of 3/21/12 & 4/18/12 meeting minutes

A motion was made, seconded and carried to approve both the March and April meeting minutes.

Agenda Item 3. Update on Enforcement Officer salary

Deputy Secretary Small briefly reviewed the history of concern regarding salaries for the Department's Enforcement Officers (i.e. DFW, Parks & Recreation and Environmental Protection Officers). The DNREC recognizes the substantial and wide variety of responsibilities and duties given to these sworn officers. Within the last couple of years, there was a DNREC Leadership Academy Program, which included a team of Enforcement Officers, who gathered salary information of similarly functioned officers from across the nation. The data showed that the salaries of Delaware's Enforcement Officers are below the national or regional average, sometimes woefully below average. Legislation was introduced last year by the General Assembly that would have increased boat registration fees in DE and those increases would have been used to fund some level of salary increase for certain Enforcement Officer positions within DNREC. This legislation did not pass. Mr. Small pointed out that concerns were raised regarding using legislation to increase fees (which come from appropriated special funds-ASF) for salaries, since most state government agencies do not have access to ASF. The Office of Management and Budget (OMB) took notice of these events and conducted an analysis to compare DNREC's Officer salaries with other sworn and non-sworn classes within the state's system. The salary comparison analysis included some other municipalities, since DNREC is frequently faced with cases of Officers attending the Police Academy, coming on-board with DNREC, and then moving on to a municipality whose salary structure blows DNREC's away. This is extremely frustrating from a management point of view. From this analysis, OMB prepared a proposal which has been voted on by the Joint Finance Committee (JFC). This proposal will raise the entry-level salary, approximately 8-9%, for Enforcement Officers from Trainee positions up to Chief positions. For existing Officers, the proposal also includes some level of salary increase for approximately half of the positions. Various factors will be considered, such as

the number of years of service, in determining the salary increase (to range from 2-11%) for existing Officers. Mr. Small commented that he feels this is a step in the right direction toward equalization of this career class. He added that improvements and updates are beginning to be considered for the career advancement procedures, which for this career class, is a proficiency step system.

Agenda Item 4. Role of State Police Marine Unit

Sgt. Jeff Giles and Cpl. Thomas Guarini of the Delaware State Police Maritime Unit gave a power point presentation. The Maritime Unit, which became operational in August of 2011, was created by Delaware State Police and the Dept. of Safety and Homeland Security and is funded through the federal Port Security Grant. This Unit is staffed with 3 full-time Troopers and an additional 3 Troopers trained to assist on a part-time basis. There is currently 1 marine vessel dedicated to this Unit's mission, which is primarily to provide homeland security. The focus is on critical infrastructure and key resources along the waterways, investigation of suspicious activity and community outreach. The Unit works closely with other agencies, including; the US Coast Guard, NJ State Police, PA State Police, Wilmington Police, Delaware River and Bay Authority, the Federal Bureau of Investigation and DNREC. The Unit is co-located with the Delaware Information Analysis Center (DIAC). Citizen complaints/tips go to the Joint Terrorism Task Force (1-800-FORCE12), who have the first right of refusal. **Mr. Kahl** asked whether or not Troopers from this Unit will be patrolling Delaware's waters for fishing violations and they responded "no". The **Troopers** added that if someone is stopped for a safety issue or suspicious activity and the individual(s) is in possession of possible undersized fish, crabs, etc., DFW Enforcement Officers will be called to investigate.

Agenda Item 5. Bowers dredging letter update

Mr. Pankowski explained that the meeting he and Mr. Roy Miller recently had with staff from Delaware's Congressional Delegation went very well. Their goal was to present the letter and explain the urgent need for funds to dredge Bowers Beach, not only for recreational boating safety, but also for essential passage of commercial and emergency vessels. He commented that although they felt very welcomed, and allowed sufficient time to explain their objective, a resolution was not offered. **Mr. Small** reminded everyone that the Army Corps of Engineers has responsibility for the majority of

waterway maintenance in DE. However, it has become evident that the only areas getting attention from the Corps are: the mouth of the Christina River (Port of Wilmington), the C and D Canal and the Nanticoke River. The Legislature is aware of the problems at other waterways but, since budget discussions are now over, the focus shifts to the Bond Bill Committee from which funds could be allocated to DNREC for purposes of dredging. **Mr. Pankowski** asked for an update in this regard at the next meeting. **Mr. Small** agreed and then commented that MD has recently increased their boat registration fees, which is something DE DFW has considered in the past, but MD has targeted the funds from this increase to go toward dredging, channeling marking, waterway navigation, etc. He said this is something DE should seriously consider. **Mr. Little** asked if the Bond Bill Committee meetings are open to the public and **Mr. Small** replied that they are, however the public is not allowed to comment. He added that the public is permitted to comment on the Governor's recommended budget during the Bond Bill hearing process which occurs in the spring.

Agenda Item 6. ASMFC Spring Meeting summary

Mr. Clark gave a brief summary of the relevant actions from the ASMFC meeting. The Striped Bass Management Board approved draft Addendum 3 which deals with tagging and tracking in the commercial fishery. The American Eel Board approved the benchmark stock assessment but took no action except to ask the Am. Eel Technical Committee to develop some proposed management actions. The South Atlantic State/Federal Fisheries Management Board approved the Black Drum Public Information Document for public review and comment. This is the first step in the development of an Interstate Fishery Management Plan for black drum. Delaware held its public hearing just last week but only one member of the public attended. **Mr. Clark** mentioned that since DE already has a joint management plan for black drum with NJ it's assumed the public is comfortable with management of this species. Although the 2012 benchmark stock assessment for river herring showed that the population is depleted, no votes for action were taken by the Management Board. The Mid-Atlantic Fishery Management Council is considering measures to reduce river herring by-catch. The Atlantic Menhaden Board met to consider options to include in the management plan. They discussed several options for measures to implement over various time frames (1-year, 2-year, 3-year, etc.). The Board did not make any final decision on new measures, other than to exclude a one-year time frame, since this would have basically caused a complete closure. The Atlantic Sturgeon Management Board met to consider strategies for states to comply with the recent Endangered Species Act listing of Atlantic sturgeon. **Mr. Michels** said the Spiny Dogfish and Coastal Sharks Management Boards increased the 2012-13 coastwide quota from about 30 million pounds to 35.6 million pounds which is consistent with the National Marine Fisheries Service. Delaware's 2012-13 quota, including roll-over from 2011-12, is 323,734 pounds. The Board approved a draft addendum to the Spiny Dogfish Management Plan to go out for public comment. The Horseshoe Crab Board met to discuss plan compliance and all states were found to be in compliance. The updates for the horseshoe crab Adaptive Resource Management model were

not yet available due to the lack of some of the shorebird data, so this information should be presented at the annual meeting coming up in the fall. **Mr. Michels** stated that he attended his first Atlantic Coastal Cooperative Statistics Program and they approved the Atlantic coast fisheries data collection standards.

Agenda Item 7. Regulatory update: tautog and black sea bass

Mr. Michels stated that the latest Addendum to the Summer Flounder, Scup and Black Sea Bass FMP requires that states from DE to NC adopt black sea bass regulations consistent with those required in federal waters. The federal rule was published on May 18, which opened the season in federal waters on May 19, so the DFW issued an emergency order on May 18 to open the fishery in DE waters on May 19. The normal regulatory process must now begin in order to implement the necessary measures for seasons, size and creel limit. The Start Action Notice has been issued and the public hearing is scheduled to take place in this auditorium on Aug. 30 at 7:00 PM. There are no options available since DE must comply with federal regulations for this fishery. There will be two options presented at this Friday's (June 22, 7:00 PM in this auditorium) tautog public hearing. These options were developed to handle the error recently found in the latest stock assessment. Instead of a required 53% harvest reduction, the new options reflect the revised 39% harvest reduction.

Agenda Item 8. Streamline regulatory changes to match Federal rules

Mr. Clark explained that, due to the lengthy regulatory process, it is sometimes impossible for the DFW to comply with some newly implemented federal regulations unless steps are taken to carry out an emergency order. A recent example occurred with black sea bass (see Agenda Item 7). Once an emergency order has been implemented, the DFW is still required to follow the usual regulatory development process in order to meet state regulation requirements. **Mr. Clark** stated that the DFW would like to have Proclamation Authority similar to MD which would allow immediate compliance with federal regulations for species managed jointly with individual states.

Agenda Item 9. Change weakfish net closure days

Mr. Clark gave a power point presentation explaining the history of the weakfish net closure. This measure was implemented in 1997 and the intent has been to reduce weakfish mortality since the stock has seen serious declines from the late 1980's. The 34 closure days from May through June require that all gill nets be removed from the DE Bay and ocean. The days mostly include weekends defined as Friday through Sunday. The DFW would like to change the weekend closures to run from Saturday through Monday in order to better serve netters wanting to catch and sell bunker (menhaden) as bait to recreational anglers. This would be a regulatory change and approval is not required from the ASMFC. **The Council** made, seconded and passed a motion to approve this change.

Agenda Item 10. Director's update

Mr. Saveikis stated that Senate Bill 255, authorizing DNREC to manage invasive species in tidal water through the

regulatory process, passed the Senate yesterday. The bill dealing with changes to scientific collection of fish and wildlife species has been postponed based on the scope of the bill and structural reasons. The DFW plans to pursue introduction of this bill during the next legislative session. House Bill 343, which streamlines the transferability of commercial fishing licenses, has passed both chambers. Mr. Saveikis mentioned that promotion for the 2nd Annual Fishing Guide Photo Contest has begun and the theme again this year is youth-oriented; "Carrying on the Tradition". Interested individuals may get information on this contest by visiting the DFW website at www.fw.delaware.gov.

Agenda Item 11. Agenda items for Sept. 19 meeting

Dr. Fox requested items for the next meeting's agenda:

1. Dredging update
2. Atlantic sturgeon incidental take permits for commercial fishermen

This meeting adjourned at 7:52 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF SEPTEMBER 19, 2012



Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware 19901
Phone: 302-739-9914, Fax: 302-739-6157

ADVISORY COUNCIL

Dewayne Fox, Ph.D., Chairman
Bernie Pankowski
Brian Hoffecker (Absent)
James "Jay" Little
Marvin Kahl, Jr. (Absent)
Ken Logan (Absent)
P. "Wes" Townsend

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
David Saveikis, Director
Lt. David Blasch
Sr. Cpl. Drew Aydelotte
Kim Stangl

PUBLIC

8 Visitors

Agenda Item 1. Welcome

Chairman Fox called the meeting to order at approximately 6:05 and he thanked everyone present for their attendance. He announced that the meeting will be informational only (no Council motions or approvals) due to the lack of a quorum of council members.

Agenda Item 2. Approval of 6/20/12 meeting minutes

A quorum of council members was acknowledged mid-meeting and, at that time, a motion was made, seconded and carried to approve the June meeting minutes.

Agenda Item 3. Bowers Dredging update

Chuck Williams from the Waterway Maintenance Section of the Division of Watershed Stewardship (DWS) had informed Mr. Clark that \$627,000 of the Bond Bill was ear-marked for dredging. **Mr. Clark** stated that Mr. Williams has requested proposals to solicit qualifications from engineering consultant firms to assist the DWS with contractual dredging projects over the next five years. The proposals will be reviewed to select the best firm(s) to handle the job tentatively by the end of October. The Murderkill/Bowers dredging project will be handled first with the intent to complete dredging before the next boating season begins. Several firms are expected to submit proposals.

Agenda Item 4. Addressing public inquiry regarding increasing fishing violations fines to deter illegal fishing

Dr. Fox stated that he added this topic to the agenda in response to several requests from the public. **Lt. Blasch** of the DFW Enforcement Section explained that in general, fines for boating, fishing and hunting violations equate to a minimum of \$25 plus court costs, with a few exceptions. Current court costs of \$51.50 are actually higher than most of the violation fees. Boating under the influence carries a minimum \$200 fine (mail-in violation). Any striped bass violation is an automatic minimum fine of \$100. This exception to the violation fee structure is due to the coast-wide striped bass population decline in the late 1970's to early '80's. In 1985, DE and surrounding states imposed a 5-year fishing moratorium and restoration efforts began, so DE was able to pass a higher fine to better deter fishing violations of this species. **Lt. Blasch** commented that his experience has shown that higher fines definitely deter illegal activity. Both **Lt. Blasch and Sr. Cpl. Aydelotte** stated that they have had non-resident and resident anglers, hunters and boaters

comment that the DE DFW's penalty fines are not high enough to adequately deter illegal fishing, hunting and boating in DE. Judges often dismiss or reduce the number of violations an offender has been charged with, which may lead offenders and the general public to believe that the courts don't take fishing and hunting violations as seriously as other violations of the law. During discussion, **Lt. Blasch** relayed that there is no threshold for repeat offenders having license privileges revoked and that this particular punishment is carried out at the discretion of the DFW Director. When asked how neighboring states' fine amounts compare to DE, **Sr. Cpl. Aydelotte** responded that 15 years ago when he worked for MD DNR, they were writing \$100-tickets for undersized summer flounder. **Dr. Fox** asked that the DFW look into the disparity of adjacent states' violation fees structure for illegal fishing activity. **He and Mr. Little** also agreed that the DFW should consider a review process or set a threshold where repeat offenders would suffer license revocation. **Dr. Fox** asked that an update on this topic, including the findings regarding other states' violations fees structure, be presented at the next meeting. **Lt. Blasch** stated that two years ago, Park Rangers (Division of Parks & Recreation) and Environmental Protection Officers (Divisions of Water, Waste & Hazardous Substances and Air Quality) were able to get their minimum fines raised from \$25 to \$50. At that time, the DFW had recently implemented the general fishing license and had raised some license fees, so members of the general assembly did not want to raise the minimum fines fearing citizens would perceive it as a tax. **Mr. Saveikis**, for purposes of clarification, made an important point using the scenario of a fishing violation caught in a DE state park: a DFW Enforcement Officer would issue a fine in the amount of \$25 outside of a state park, but for this same violation, a Park Ranger would issue a fine in the amount of \$50 in a state park.

Agenda Item 5. ASMFC Summer Meeting summary

Mr. Clark reviewed relevant items from the ASMFC Summer meeting. The Striped Bass Board approved Addendum III to the management plan which requires states to implement a mandatory commercial tagging program. Delaware already requires tagging in the commercial fishery. The Atlantic Menhaden Board selected options for Draft Amendment 2 to the Interstate Fishery Management Plan. The options to be considered for public comment include harvest reductions ranging from 0 to 50% for 2013. The stock assessment was found to be problematic and the Technical Committee

requested a new benchmark; however, the Committee agreed with the assessment's indication that over-fishing is occurring, but the stock is not overfished. The 2012 American eel stock assessment shows the stock is depleted, and the purpose of Draft Addendum 3 is to reduce mortality. The Board discussed options for all eel life stages and a closed season would be the most efficient way to reduce harvest. The USFWS hinted that an "endangered" finding would be more likely if the ASMFC does nothing to try to reduce eel mortality. Addendum 4 to the spiny dogfish ISFMP (which retains 5% rollover, sets a fishing threshold, and comes into compliance with the federal FMP) was approved. Mr. Clark said that discussion took place regarding the shark finning bills that were brought up in many states and a NC commercial shark fisherman stated that 60% of the value comes from the fins. Atlantic croaker recreational landings dropped enough to trigger another assessment, but the Technical Committee recommended holding off since that was the only trigger reached and the Management Board agreed. For black drum, the Plan Development Team requested drafting an ISFMP. Options to be considered are recreational bag, creel and size limits, and a commercial cap and trip limits. The Atlantic Sturgeon Management Board discussed responses to the Endangered Species Listing. They asked for a benchmark assessment to be initiated (1995 was the last stock assessment and a new one will take until 2015) and for the Technical Committee to draft a petition to de-list or down-list sturgeon from the ESA. DE DFW is working on an Atlantic Sturgeon Habitat Conservation Plan which will tentatively be in place by the spring gill net season.

Agenda Item 6. Regulatory update: black sea bass, weakfish and freshwater regulations

Mr. Michels gave a brief summary on regulatory action by the DFW. There were no attendees on Aug. 30 for the black sea bass public hearing. Changes to this regulation will become effective Oct. 11, and are as follows: 12.5-inch minimum size, open seasons Jan 1-Feb 28 with a 15-fish possession limit, May 19-Oct 14 with a 25-fish possession limit and Nov 1-Dec 31 with a 25-fish possession limit. A press release will be issued regarding these changes. A Register Notice should be published Oct. 1 for proposed modifications to weakfish regulations. The definition of a weekend is proposed to be changed from Friday through Sunday to Saturday through Monday. This change would be consistent with ASMFC Addendum 3 to the Weakfish Plan and would allow gill netters to better supply weekend recreational anglers with fresh bunker. The hearing record opens Oct. 1 and the public hearing is scheduled for Oct. 31 at 6 PM in this auditorium. Mr. Michels mentioned that this Council previously endorsed this modification. Proposed changes to the non-tidal regulations were published in the September Register. These changes include designating the two downstate ponds (Tidbury in Dover and Newton in Greenwood) as trout waters with restrictions similar to those for the designated trout streams in New Castle County, specifically allow Northern snakehead to be taken with bow and arrow, and to make some editorial changes in the chapter not intended to change the meaning. The hearing record opens on Oct. 1 and the public hearing is scheduled for Oct. 26 at 6 PM in this auditorium.

Agenda Item 7. Delaware Bayshore Initiative overview

Mr. Saveikis briefly described this new high profile project which was created from the "America's Great Outdoors Initiative". He explained that it is intended to connect people with the outdoors, promote conservation, recreation and eco-tourism. The kick-off event took place on Slaughter Beach in May with U.S. Secretary of the Interior Ken Salazar, Governor Markell, Senators Carper and Coons, Congressman Carney, and DNREC Secretary Collin O'Mara present among other dignitaries and citizens. Mr. Saveikis then introduced Mrs. Karen Bennett to give more details. Mrs. Bennett, formerly of the Division's Wildlife Section and now the Bayshore Initiative Coordinator, will be defining the various projects that will make up this initiative. **Mrs. Bennett** explained that this project is composed of three "pillars" which are: 1) Conservation & Restoration-to increase protection, conserve land, preserve habitat, 2) Recreation & Connectivity-how to increase recreational access and enjoyment without damaging habitat, 3) Engagement & Marketing-to build stronger communities working with the public with a focus on educational programming (incorporating the "No Child Left Inside" initiative). She added that there are many key partners involved in this project, including the USFWS, Delaware Wild Lands, Inc., Ducks Unlimited, The Conservation Fund, Bike Delaware, DelDOT, Audubon, Sierra Club, and several others, and more are being sought. Several grant proposals have been, and will be, submitted to increase funding. Mrs. Bennett stated that she is completely open to new ideas. She added that she and other staff are visiting towns and communities throughout Delaware's Bayshore, taking comments from land-owners, recreational outdoorsmen, non-profit organizations, etc., regarding their thoughts and ideas on this voluntary program which is still a work in progress. **Dr. Fox** asked if there is an outside steering committee for this project which will provide guidance, oversight and strategic input. **Mrs. Bennett** responded that she is looking into assembling this type of group adding that it may help give project credibility and worth for the general public. **Mr. Pankowski** commented that this project will probably interest most people in some way and he asked if there is more information available to read and peruse. **Mrs. Bennett** replied that efforts are being made to produce informational brochures and pamphlets but more funds are needed to cover production costs. Information is available online at www.dnrec.delaware.gov. Audience member, **Mr. Floyd Morton**, stated that he is an avid fisherman and became very concerned when he read about this initiative and found nothing regarding recreational fishing. He explained that his biggest concern is the idea of more restrictions on habitat and loss of fishing areas and he does not see how there is any way to expand critical habitat and user access at the same time. **Mrs. Bennett** responded that one of the main objectives of this project is to enhance access and promote recreational activities. **Mr. Saveikis** commented that he also is a passionate fisherman and reassured Mr. Morton that recreational fishing will be promoted and enhanced as much as possible through this initiative. **Mrs. Bennett** stated that this is a valid concern she has heard before, so she invited Mr. Morton to speak with her about it further, at a later time. She reminded everyone that this is an evolving project, at the beginning stages, and participation, ideas, comments and feedback are critical to its success. **Mr. Pankowski** praised

Mr. Morton for voicing his concerns and then suggested that Mr. Morton serve on any future steering or advisory panel which may be assigned to oversee this project. **Mr. Little** agreed with this suggestion, along with **Mrs. Bennett and Mr. Saveikis**, and **Mr. Morton** added that if asked he would participate.

Agenda Item 8. Director's update

Mr. Saveikis stated that Senate Bill 255 which proposed to give the DNREC the authority to identify and promulgate regulations on tidal invasive finfish species, including snakeheads, passed both chambers and was signed by the Governor on July 11. House Bill 343 allowing more liberal and easier transfer of commercial fishing licenses was signed by the Governor on June 19. The "shark fin bill" (HB 324) which would forbid possession, sale and distribution of shark fins in DE, passed the House, but did not pass the Senate. The DFW is working with the Humane Society of the U.S. and the ASMFC in trying to develop a regional resolution. He mentioned that the DFW is intending, and currently working hard, to make the 2013 Fishing Guide available at the beginning of the new year. **Mr. Pankowski** suggested adding information about the Bayshore Initiative to the Fishing Guide. **Mr. Saveikis** responded positively adding that the DFW will look into including this information.

Agenda Item 9. Agenda items for Oct. 17 meeting

Dr. Fox requested items for the next meeting's agenda:

1. Discussion of violations/fines increase
2. Commercial hook & line license (suggested by Mr. Larock, commercial fisherman)
3. Fishing access/construction update

This meeting adjourned at 8:02 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF OCTOBER 17, 2012



Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware 19901
Phone: 302-739-9914, Fax: 302-739-6157

ADVISORY COUNCIL

Dewayne Fox, Ph.D., Chairman
Bernie Pankowski (Absent)
Brian Hoffecker
James "Jay" Little
Marvin Kahl, Jr. (Absent)
Ken Logan (Absent)
P. "Wes" Townsend (Absent)

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
Larry Horan
David Saveikis, Director
Capt. John Rutherford
Kim Stangl

PUBLIC

5 Visitors

Agenda Item 1. Welcome

Chairman Fox called the meeting to order at about 6:05 and he noted that a quorum of Council members was not present. He reminded everyone that without a majority of Council members present, the meeting would be informational only, with no motions made or passed. However, the agenda will be slightly restructured, in hopes that another Council member will show up prior to action-items being discussed.

Agenda Item 2. Approval of 9/19/12 meeting minutes

Without a quorum of Council members present, the Sept. meeting minutes could not be approved. This item will be added to the next meeting's agenda.

Agenda Item 3. Addressing public inquiry regarding increasing fishing violations fines to deter illegal fishing

Capt. Rutherford gave a Power Point presentation showing fishing violations fine comparisons between DE and surrounding states. He explained that he contacted MD, NJ and PA in preparation to show comparisons of common recreational and commercial fishing violations. Various violations were shown with brief explanations of how assessments are calculated since each state has various fees, such as court costs, associated with the actual fine amount. One common violation shown was "fishing without a license", which is \$50 in DE; \$75 in MD for residents, \$125 for non-residents and MD has a separate \$50-fee for crabbing without a license; this violation for NJ is not applicable; and PA has a \$50-fine plus a double-the-cost of an annual license assessment fee included in their fee structure for this particular violation. Capt. Rutherford explained that the information shown displayed the minimum fine amounts, but he added that DE's maximum is about \$100, and MD's maximum is about \$1000. He also pointed out that DE's \$100-fine (per fish) for undersize striped bass was set separately in 1990 in reaction to the significant striped bass population decline recorded in the 1980's. He showed several other comparisons, of which, almost all were higher in each of the other states than DE's fines for same or similar charges. Information on Operation Game Theft (OGT), which pertains to the Wildlife Section of the DFW, was presented since it is a fund established to assist in the apprehension and conviction of wildlife game law violators. The DE DFW has the authority through OGT to designate offenses for which rewards will be paid and also the amount of these rewards. Capt. Rutherford commented that since the Enforcement Section receives many calls from

anglers reporting possible violations by other anglers, a comparable law could be established (via the legislative process) for the Fisheries Section. **Dr. Fox** asked if increased fine structures have had any impact on violations, and **Capt. Rutherford** responded that he believes so, adding that he has seen far fewer striped bass violations since this fine was raised to \$100. The Finfisheries Development Fund was also discussed because it is where moneys received from the sale of commercial food fishing licenses and from fines are deposited. This fund may only be used for certain specified purposes (Title 7, Del. C., § 916), including the development and maintenance of finfishing facilities/access areas, travel expenses incurred by members of this Council, etc. Some discussion took place regarding multiple and repeat violations. In both cases, the arresting Enforcement Officer must escort the offender to court and request an increase in the fine amount. Discussion also took place in response to audience member **Mr. Craig Pugh's** question regarding the fishing violations (Environmental Criminal Misdemeanors) included on an individual's permanent criminal record. Decriminalizing these violations would require a change in the statute. **Mr. Saveikis** suggested that any attempt to pursue such a statutory change should be made part of a more comprehensive package since there are so many intricacies and interrelated aspects involved with these laws. **Dr. Fox** commented that this agenda item was prompted by requests he had received from various stakeholders and further discussion should take place at a future meeting so that the DFW can prepare a more specific action plan to present to this Council.

Agenda Item 4. Commercial hook and line code (requested by Mr. G. Larock)

Capt. Rutherford presented a slide showing 7 Del. C., § 915(m): "A food fishing equipment permit for hook and line shall be deemed invalid when the holder thereof is on board a vessel with more than 1 other person who does not possess a food fishing equipment permit for hook and line." **Mr. Larock** stated that he was interested in having this changed to allow "two other persons" so that the burden of increased gas prices, fishing gear, etc. (since 1996) could be split more affordably between the watermen. Again, any modifications would require following the legislative process. **Mr. Clark** mentioned that he received a call from commercial waterman **Mr. Greg Jackson**, who wanted the Council to know that he would be opposed to any change to the hook and line code.

Agenda Item 5. Introduction of new construction manager; construction update

Mr. Clark introduced Mr. Larry Horan who is the new Construction Manager for the DFW. **Mr. Horan** went over his previous work experience and gave an update on current and upcoming DFW construction projects. He explained that three parking lot repair/maintenance projects will be completed this fiscal year and those lots are at Collins Beach, McGinnis Pond and Rosedale Beach. During fiscal year 2014, eleven other parking lots are planned for repairs/maintenance. Bids have been solicited from engineering services to design improvements for Phillips Landing. Plans will include re-configuring the ramps and dock. There are currently three ramps in a double/single configuration and the new plan will include three side-by-side ramps with additional boarding docks. A bumper will also be added to the bulkhead. This project is planned for 2013 and there should only be minimal impact to boaters since one existing ramp will remain open during construction of the new side-by-side ramps. Another future project is the rehabilitation of the 7th Street Boat Ramp in the City of Wilmington which is contingent on the receipt of remediation funds from the Athos oil spill (Nov. 2004). **Mr. Little** asked, and **Mr. Horan** responded positively, regarding Mr. Horan being the DFW contact person for access area maintenance and repair questions or concerns. Mr. Horan can be reached at 302-739-9914.

Agenda Item 6. Regulatory update

Mr. Michels reviewed the latest, relevant regulatory activities. The register notice for proposed changes to the weakfish regulations were published in the Oct. 1 Register of Regulations. The definition for a weekend is proposed to be changed to allow netters to better supply weekend anglers with fresh bait. The public hearing record is open and the actual hearing will take place in this auditorium on Oct. 31 at 6 PM. A Start Action Notice (SAN) is being prepared to designate snakehead, blue and flathead catfish as invasive species. The taking of snakeheads by bow and arrow in tidal waters will be expressly allowed and there may also be language included to address possession and take of blue and flathead catfish, including by bow and arrow. A SAN is also in development regarding Highly Migratory Species (HMS) which primarily occur in federal waters (3 miles off shore). The DFW anticipates the proposal would adopt federal rules and allow for enforcement and prosecution of HMS infractions at the state level. **Mr. Michels** reminded everyone that the public hearing on proposed changes to the non-tidal regulations will be held here on Oct. 26 at 6 PM. This hearing concerns designated freshwater trout regulations and authorizing harvest of snakehead by bow and arrow.

Agenda Item 7. Preview of ASMFC Annual Meeting

Mr. Clark stated that the Atlantic Menhaden Board will not meet during the Annual ASMFC Meeting scheduled for next week. However, the ASMFC will host a public hearing on Oct. 29 at 7 PM in this auditorium regarding Draft Amendment 2 to the Atlantic Menhaden FMP. Regarding the American Shad and River Herring Board, NMFS will attempt to list river herring as endangered species. NMFS was court-ordered to reconsider whether river herring should be covered by "stocks in the fishery" designation which would require establishment of management measures. Therefore,

management plans may soon be written to manage river herring in federal waters and the ocean in order to decrease the large amounts of by-catch. If this source of by-catch can be reduced, then it should help recovery efforts here in the Mid-Atlantic. The Weakfish Technical Committee (TC) will update management measures but no changes were previously recommended. Both recreational and commercial weakfish landings have shifted from NJ and DE to NC. The Horseshoe Crab Board will approve the TC's recommendation to raise DE's quota to 162,136, still male-only, horseshoe crabs. The ASMFC's South Atlantic State-Federal Fisheries Management Board will vote on the Interstate FMP for Black Drum and make it available for public comment. Discussion will take place regarding allowing management of black sea bass state-by-state (known as "conservation equivalency"), which some states have requested, or to continue with regional management. DE currently matches it's regulations with the federal black sea bass regulations. The Spiny Dogfish Board will discuss possibly removing the commercial quota allocation from the federal fishery management plan in order to allow the states flexibility in allocating commercial quotas in state waters. This option would protect the stock from over-fishing since the federal process for setting the coastwide quota is maintained.

Agenda Item 8. Sturgeon ESA update

Mr. Clark explained that Fisheries Scientist, Desmond Kahn, is currently collecting data in order to prepare a Habitat Conservation Plan (HCP). In order to obtain a Section 10 permit to allow DE's commercial fisheries that have incidental catch of sturgeon to continue operating there must be an HCP approved by NMFS. **Mr. Kahn** received commercial striped bass gill net trip observation data (approximately 5 years old) from the NMFS which showed that 25% of observed trips in DE had sturgeon caught in the fishing nets. **Mr. Kahn** is working on getting the complete details of this data. Some discussion took place regarding the accuracy of this data, where in DE the observations took place, and other details. **Dr. Fox** mentioned that he was not aware of these data. **Mr. Clark** said that all sturgeon data found must be included in the HCP in order to show the various threats to sturgeon in DE. Another staff Scientist, Matt Fisher, is looking into better survival of sturgeon young of the year in the Delaware River and Bay. He and **Dr. Fox** will be researching ship strikes of sturgeon and **Dr. Fox** elaborated on some details of their proposal for funding to conduct ship strike studies and for researching existing and newly collected data. **Dr. Fox** also mentioned that as Chair of the ASMFC Atlantic Sturgeon TC, he will present a petition to down-list and de-list Atlantic sturgeon to the Management Board at the ASMFC meeting next week; however, he does not expect NOAA to overturn this ruling that was just set this year. He added that the purpose of presenting the petition is actually to prompt the Management and Policy Boards to perform a sturgeon stock assessment. The last stock assessment was done in 1998 and they are supposed to be done every five years. The only way to successfully overturn an ESA ruling is to be able to present new data.

Agenda Item 9. Director's update

Mr. Saveikis stated that, on the topic of sturgeon, he has made the Section 10 Permit application a priority and plans for it to

be ready prior to the next spring gill net fishing season. He also mentioned that Governor Markell recently issued Executive Order 36 which requires all state agencies to allow public review of regulations older than 3 years. The Department is also completing a legally required review of its fee structure to include recreational and commercial fishing licenses. This Council will be given presentations on and asked to review these items at some point in the near future.

Agenda Item 10. Agenda items for Nov. 21 meeting

Dr. Fox requested items for the next meeting's agenda:

1. Further discussion of violations/fines increase
2. Regulations review
3. Discussion on commercial fishing infrastructure

This meeting adjourned at 7:40 PM.

Respectfully submitted,



Kim (Records) Stangl
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF *DECEMBER 4, 2012



Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware 19901
Phone: 302-739-9914, Fax: 302-739-6157

*This meeting was rescheduled from Nov. 21, 2012

ADVISORY COUNCIL

Dewayne Fox, Ph.D., Chairman
Bernie Pankowski (absent)
Brian Hoffecker (absent)
James "Jay" Little
Marvin Kahl, Jr.
P. "Wes" Townsend
Vacant-NCC Commercial

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
David Saveikis, Director
Jeff Tinsman
Scott Newlin
Sr. Cpl. Drew Aydelotte

PUBLIC

2 Visitors

Agenda Item 1. Welcome

Chairman Fox called the meeting to order at 6:00 and welcomed those in attendance.

Agenda Item 2. Approval of 9/19/12 & 10/17/12 meeting minutes

A motion was made, seconded and passed to approve both the September and October sets of meeting minutes.

Agenda Item 3. Coast Guard inspections

Mr. Clark stated that the Coast Guard's voluntary dockside safety exams are now mandatory for commercial vessels. Commercial fishermen working in federal waters must call the Coast Guard to schedule their inspection.

Agenda Item 4. Update on the USS Radford artificial reef site

Mr. Tinsman gave a Power Point presentation documenting the steps that the DFW followed to obtain the USS Radford for sinking as an artificial reef site and the lengthy clean-up process to prepare the vessel prior to sinking. He explained that a 5-year monitoring program has begun in order to study the marine species expected to make use of this artificial reef which broke into 3 separate pieces. He showed video of various species found at the site during a dive in October. Some species seen on the video include thousands of blue mussels (outside and inside the structure), schools of bluefish, and numerous black sea bass.

Agenda Item 5. Fisheries damage from Super Storm Sandy

Mr. Clark explained that Councilman Townsend had called the DFW after super storm Sandy and indicated that he lost a great deal of fishing gear as a result of the storm. He had inquired about similar cases of missing or damaged fishing gear after the storm. Mr. Clark researched the availability of funds to reimburse commercial fishermen for this type of storm damage. He contacted Delaware Emergency Management Agency (DEMA), who in turn contacted the Federal Emergency Management Agency (FEMA), but the response was that lost or damaged commercial fishing gear is not covered through these agencies. Mr. Clark found out that the only option open to commercial fishermen who suffer damages from these storm events would be from instances when the Governor declares a "fisheries disaster". He added

that damages appeared to be limited only to some commercial vessels that go out to the ocean. The National Marine Fisheries Service (NMFS) definition of a "commercial fishery failure", which would prompt a declaration of a "fisheries disaster", requires a fishery to suffer a revenue loss of at least 35% for the year (based on a 5-year average). Due to this requirement, and no other known commercial losses in DE, the DFW is not able to seek any funds for commercial fishing damages suffered from Sandy.

Agenda Item 6. Spiny dogfish quota for 2013

Mr. Newlin stated that the most recent stock assessment for spiny dogfish shows that the stock is not being over-fished and over-fishing is not occurring. This population is doing very well. In response to the data, the NMFS and ASMFC have increased the coastwide quota by about 5-million pounds. Delaware receives about 1% of the mid-Atlantic quota. This 1% allocation will be approximately 365,000 pounds. The Fishery Management Plan allows the Mid-Atlantic States to adjust their trip limits, so a 10,000-lbs. commercial trip limit is being proposed for DE, up from the current 3,000-lbs trip limit. Some discussion took place regarding the increased risk to sturgeon and other species that may be caught as by-catch with the proposed trip limit increase. The Council passed a motion to approve the quota increase.

Agenda Item 7. Regulatory update

Mr. Michels reviewed several DFW regulations currently in the process of proposed changes. The weakfish public hearing was held on Oct. 31 and there were no attendees from the public. The Dept. received a faxed written comment signed by 11 members of the commercial fishing sector expressing opposition to the proposed change of the definition of a weekend. Concerns were based on possible impacts of the proposed changes to foodfish sales. Mr. Michels stated that unless the Council urges the DFW to continue to move forward, the issue will be put "on hold" until the Commission can be contacted to inquire about other options to accommodate Friday or weekend menhaden fishing by the commercial fishermen. The Council had no comment on the weakfish issue. Mr. Michels continued, stating that a Start Action Notice (SAN) proposing to designate snakehead, blue catfish, flathead catfish, walking catfish and grass carp as invasive in tidal waters, is currently going through Departmental review. This proposed regulation would

expressly allow invasives to be taken by bow and arrow in tidal waters. Language will likely be included to make it unlawful to possess, transport, purchase or sell live invasives without the written permission of the Division Director. The public hearing is tentatively scheduled for Jan. 24, but once the date is set, notice will be posted to the Statewide Public Meeting Calendar (*web address: <http://egov.delaware.gov/pmc/#agency114>*) and the newspapers. A SAN is being developed regarding Highly Migratory Species (HMS – tuna, billfish, some coastal sharks) found in state and federal waters. This proposal would most likely adopt the federal rules and allow for enforcement and prosecution of HMS infractions at the state level. A public hearing took place on Oct. 26 regarding non-tidal regulation changes, mostly pertaining to freshwater trout and invasive finfish in non-tidal waters, and there were no attendees from the public. Mr. Michels expects the changes to be published in the Jan. 1 Register of Regulations as “Final”. A Horseshoe Crab SAN is currently under Departmental review to allow the quota to be adjusted annually according to the outputs of the ASMFC’s Adaptive Resource Management Model or Board action. Delaware’s quota for 2013 should be 162,136 male horseshoe crabs, which is an increase of 62,136 males. The DFW is seeking the ability to close this fishery predictively upon reaching 95% of the quota to prevent overages. Hopefully the proposed regulations will be published in the Jan. 1 Register of Regulations and a Jan. 23 public hearing date is tentative.

Agenda Item 8. Summary of ASMFC Annual Meeting

Mr. Clark explained that the ASMFC Annual meeting took place in Philadelphia, PA, Oct. 22-25. He went over the DE-relevant Board actions. New York reported that recreational fishermen there are catching tautog in federal waters and selling them live in NYC. There is a loophole allowing this activity, but they were warning other states of the premium paid for live tautog in Asian fish markets, so they can be on the lookout for similar activity. There is no word yet on the timing of a decision regarding the potential Endangered Species Act (ESA) listing of river herring. Some indices suggest that the weakfish population may be recovering. Delaware inquired about changing the current 34-day annual net closure in May and June to a seasonal closure similar to NJ. This results in 34 fewer days to catch weakfish in DE. The Weakfish Board did not act on this request due to demands for various changes (that are deemed restrictions in the Fishery Management Plan [FMP]) from other states. The Striped Bass Board discussed the Terms of Reference (TOR) to be used in the upcoming benchmark stock assessment. The American Eel Board discussed the status of ESA listing for American eel. A petition to add Am. eel to the Convention on International Trade in Endangered Species (CITES) list of species requiring import and export controls was also discussed. Management measures to be included in the draft Addendum were reviewed but no decisions were made in this regard. The Draft Interstate FMP for Black Drum was approved for public comment. The Atlantic Sturgeon Management Board tasked the Technical Committee with developing a delisting and/or down-listing petition to either remove Atlantic sturgeon Distinct Population Segments (DPS) from the ESA list or lower the DPS status from “endangered” to “threatened”. The Board approved prioritizing a new

benchmark Atlantic sturgeon population assessment. The Spiny Dogfish & Coastal Sharks Board approved increasing the quota for the 2013 fishing season. The Board also approved a 2013 36-fish possession limit for sharks in the Large Coastal Sharks (LCS) species group, which includes; silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks. The Horseshoe Crab Management Board approved the harvest specifications for horseshoe crabs of DE Bay origin. Delaware’s quota will increase from 100,000 males last year to 162,136 males for 2013. Summer flounder landings estimates for 2012 are below the 2012 landings target. Black sea bass 2012 harvest estimates have exceeded both the harvest target and the Annual Catch Limit (ACL), which triggers a closure of the recreational fishery in federal waters. NOAA Fisheries announced this closure on Oct. 23, 2012. State water fishing seasons will remain as published at the start of each state’s fishing season, and in DE, black sea bass is currently open in DE waters until Dec. 31.

Agenda Item 9. Sturgeon ESA update

Mr. Clark stated that DFW Biometrician Des Kahn is continuing to work on the Section 10 permit. Data from all of DE’s fisheries that might have sturgeon interactions is being included. Observer data has been received from NMFS that covers 31 gill net trips between 1999 and 2009. From these trips (in the mid-bay, inshore area), 23% had Atlantic sturgeon in the gill net.

Agenda Item 10. Director’s update

Mr. Saveikis stated that he will have Fisheries-related press releases forwarded to Council members along with the agenda for upcoming meetings. This will be a regular occurrence. He mentioned the article on shad in *Outdoor Delaware* magazine (www.dnrec.delaware.gov/Admin/Pages/OutdoorDelaware). When the 2013 Fishing Guide is published, hopefully by the end of January, the cover will be the winner of the 2nd Annual Photo Contest featuring children anglers and the theme “carrying on the tradition”. There will be an update in January on Executive Order 36 (EO36), which requires all state agencies to review regulations older than 3 years. The Department’s fee structure analysis is on-going and a presentation and opportunity for review will be provided as soon as possible. Mr. Saveikis also mentioned legislation the DFW is currently considering proposing, including violation fee increases and promoting license sales.

Agenda Item 11. Agenda items for Jan. 16, 2013 meeting

Dr. Fox requested items for the next meeting’s agenda:

1. EO36
2. Shark finning
3. Bowers dredging update
4. Council by-laws
5. February meeting—postpone or cancel?

This meeting adjourned at approximately 7:15 PM.

Respectfully submitted,



Kim Stangl
Recording Secretary