

Advisory Council on Tidal Finfisheries Minutes of January 21, 2004

A scheduled meeting of the Council on Tidal Finfisheries was held on January 21, 2004 at 7:30 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were Chairman Dan Seamans, Lawrence Foley, Bernie Pankowski, Clyde Roberts, and Holly Ann Firuta. Staff members present were Roy Miller, Patrick Emory, Craig Shirey, Desmond Kahn, and Kim Records. There were approximately 10 members of the public in attendance.

The Council approved the minutes of the last meeting held October 23, 2003. **Mr. Seamans** began by referring to an article that recently appeared in The News Journal about diseased striped bass. He then introduced Roy Miller to go over the specifics of this disease and why the article appeared in the newspaper. **Mr. Miller** took the floor and said that he will give a preliminary report tonight. He stated that this disease, Mycobacterium infection, was actually discovered from disease testing done in 2002, in the Chesapeake system. Mr. Miller said that Craig Shirey collected 30 male striped bass from the spawning grounds for the U.S. Department of Agriculture to study. These test results showed 1 out of 30 fish testing positive for a “probable infection”. The newspaper, he said, stated that up to 70% of the striped bass in the Chesapeake Bay could be infected. Mr. Miller went over the likely circumstances for the spread of this outbreak, and the symptoms to look for on striped bass and some other species, since it could spread to the Delaware Bay. He said that during the December gill net fishery, Chris Ottinger with the U.S. Geological Survey went out with the commercial waterman Larry Voss and caught approximately 70 striped bass from the Woodland Beach and Bowers Beach areas (for the U.S. Fish & Wildlife Service follow-up). These fish are currently being tested, so we do not know the results as of yet, but there were no external signs of any infection. Mr. Miller said that infected fish can cause “fish handlers disease”, which would be transmitted via an open wound, and causes an itchy rash that will take several rounds of antibiotics to get rid of. **Ms. Firuta** asked why any fish caught with a possible case of Mycobacterium infection would be put back into the population, as Mr. Miller had advised. **Mr. Miller** said that there is no evidence the fish transmit this disease by contact; it is believed they become infected from ingestion of infected food. **Mr. Roberts** commented that he does not believe there is a problem; he’s seen nothing suspicious in the large numbers of fish he has caught. **Mr. Robert Piascinski** stated that he does not understand why the newspaper published an article that made this problem seem so alarming. **Mr. Miller** responded that the Department, of course, has no control over what the newspapers publish, or when they publish, but tends to agree with this audience member. **Mr. Pankowski** stated that this is the first time he has heard of this disease or that there may be a problem. **Mr. Seamans** asked how the Division is proceeding. **Mr. Miller** responded that, as he stated before, there are some Delaware fish being tested right now. **Dr. Kahn** said that testing is taking place coast-wide to see how far the problem spreads.

Mr. Seamans moved on to the next agenda item-circle hooks for striped bass. **Dr. Kahn** summarized a study done in 2002 on landings for striped bass caught with circle hooks, and the mortality rate, which was considerably lower than striped bass caught with j hooks (7% caught with j hooks died, 1% caught with circle hooks died). **Mr. Miller** said that the Division is considering having a circle hook regulation for striped bass caught in the Delaware River spawning grounds. He said that the Division discussed this subject with Pennsylvania and New

Jersey, and NJ now has a regulation effective for April and May, stating a requirement for use of these hooks when catching striped bass with natural bait. Mr. Miller asked the Council if this is something they would like the Division to pursue. **Mr. Pankowski** said that he is very much in favor of the use of circle hooks. **Mr. Miller** stated that the Division, thus far, has only encouraged the use of circle hooks. **Mr. Roberts** commented that he is in favor of using circle hooks. **Mr. Foley** stated that he favors Delaware having the same law as NJ for enforcement purposes. An **audience member** agreed that the NJ and DE laws should be the same. **Mr. Seamans** motioned that the Division move ahead with wording for a proposed regulation for circle hooks to be presented at the next Advisory Council meeting-motion passed.

Mr. Seamans went on to the next agenda item-the approved regulatory options for striped bass fishing. **Dr. Kahn** said that Delaware is allowed the same 193,447 pound commercial quota and 20 inch minimum size for the spring gill net fishery for 2004. The fall gill net fishery now has a 28-inch minimum size limit, as well as for commercial hook & line. He then went over the statistics that lead to the three recreational options (Option 1= 2 fish at 28" , Option 2=one fish 24"-32", one fish greater than 41", Option 3= a significant season closure coupled with the present size limits of 1 fish 24-28" and one fish over 28"). **Mr. Miller** mentioned that there is a public hearing scheduled for Jan. 29th on this subject. **Mr. Piascinski** asked why the watermen seem to be more and more restricted, even though the striped bass population is considered a recovered fishery. **Dr. Kahn** responded that there is a possibility that in the near future Delaware could get a different set of options for the Delaware Bay. **Mr. Piascinski** suggested that Delaware have a regulation similar to Virginia, which has different size limits for the bay, and the ocean. **Mr. Seamans** asked about the discussion that occurred during the last Advisory Council meeting, regarding the Department asking the ASMFC for a larger Delaware quota, or additional leniency. **Mr. Miller** said that Delaware's target mortality rate is right about where it is expected to be or slightly higher, by the ASMFC, and this makes it difficult to argue for additional leniency for Delaware. He said that the biomass statistics are averaged out coast wide; therefore if the biomass keeps increasing he expects there will be a push for more liberalization among the coastal states, and vice versa. **Dr. Kahn** said that there is definitely the potential for a harvest increase. **Mr. Miller** said that the spawning grounds will continue to be monitored. **Mr. Piascinski** asked if the Division will consider allowing a longer hook and line season since Delaware currently is not landing the entire quota allowed. **Mr. Miller** said that the Division can consider expanding the commercial hook and line season. An **audience member** suggested having a split season similar to the spring and fall gill net seasons. **Mr. Piascinski** then offered the idea of starting the season earlier, for instance April, and allowing it to remain open right through December. **Mr. Seamans** asked the Division to add the topic of extending the season to the next meeting agenda. He then made a motion to favor the striped bass option of 2 fish at 28 inches, and the motion passed.

The next item on the agenda was then introduced by Mr. Seamans-the possible need for additional regulations for harvesting river herring at spillways. **Mr. Shirey** said that Pennsylvania now has a regulation to protect river herring at their tributaries in order to head off over exploitation of this resource. The Department is concerned that residents of Pennsylvania or New Jersey may come to Delaware to harvest river herring, and then take them home to sell for bait. **Mr. Miller** said that currently there is nothing in Delaware Code to prevent someone from New Jersey coming to one of Delaware's ponds, such as Craig's Pond, and literally taking hundreds of river herring and transporting them back to New Jersey to sell, which one of our Enforcement Officers would have to observe to be able to make a case. He said that this is a potential problem, which some of our Enforcement Officers have discovered there is some

interest in. **Mr. Miller** asked the Council if they had any advice as to whether or not the Division should pursue some kind of regulation to prevent over harvesting of river herring. **Mr. Seamans** responded that the Division should prepare 2 or 3 options to present at the next meeting.

Mr. Seamans then asked for suggestions for agenda items for the next Council meeting. The topics of potential over harvesting of river herring, commercial hook and line and gill net season extensions, the conch fishery impact, and by-catch mortality rate all came up. **Mr. Foley** said that he doesn't look to discuss the by-catch mortality rate at the next meeting, but he would like to visit this subject at a future meeting. **Mr. Seamans** asked if anyone would experience a hardship if future meetings started at 7:00, instead of 7:30-no one spoke up. Meeting was adjourned at 9:35.

Respectfully submitted,



Kim Records

**Advisory Council on Tidal Finfisheries
Minutes of February 18, 2004**

A scheduled meeting of the Council on Tidal Finfisheries was held on February 18, 2004 at 7:30 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were Chairman Dan Seamans, Brian Hoffecker, Lawrence Foley, Clyde Roberts, and Holly Ann Firuta. Staff members present were Roy Miller, Rick Cole, Craig Shirey, John Clark, and Kim Records. There were approximately 25 members of the public in attendance.

The Council approved the minutes of the last meeting held January 21st. **Mr. Seamans** began the meeting by asking the council members to introduce themselves, and then welcomed Mr. Hoffecker, who is new to the Council. He then introduced Mr. Shirey to go over the draft regulation regarding river herring harvest at spillways. **Mr. Shirey** stated that the Department is concerned that over-exploitation of river herring may occur in the near future, or may already be occurring since some citations have been issued by Fish and Wildlife Enforcement officers. He said that our herring stocks are considered depleted to some extent, and are also under restoration. Mr. Shirey explained that the draft regulation he has prepared for the Council to consider tonight is meant to head off any problem by setting a creel limit of 25 fish per day. A discussion followed regarding the definition of "bait fish", and who would be allowed to catch and sell herring as bait fish. **Mr. Roberts** expressed concern over the enforcement of this drafted regulation. **Mr. Shirey** said that any dealer who purchases bait fish would be responsible for verifying the seller is legitimate. **Mr. Miller** clarified that Title 7, Del. C. defines certain species of fish that are considered bait fish and stipulates that they are up to seven inches long, with anything over seven inches considered food fish. He also went over the regulation for minimum mesh size for a recreational net. Mr. Miller answered another question from an audience member stating that anyone who has a commercial gill net license is not, according to regulation, allowed to purchase a recreational permit. **Mr. Seamans** made a motion to endorse the draft regulation-motion passed.

Mr. Seamans then moved on to the next agenda item, circle hooks for striped bass. **Mr. Miller** summarized the reasons for Delaware to consider passing one of the two draft regulations presented. He explained that using circle hooks greatly decreases mortality of striped bass. Mr. Miller presented version one of the draft regulations, which would restrict recreational fishermen to the use of non-offset circle hooks while fishing with any natural bait within the designated striped bass spawning areas on the Delaware River or its tributaries during the spawning seasons. He then presented version two, which is basically the same except it includes all the spawning areas (Nanticoke River, Delaware River north of the C & D Canal, and the C & D Canal itself) during the spawning seasons. **Mr. Seamans** made a motion to endorse version two of the regulations-motion passed.

Extending the hook and line commercial season for striped bass was item number five on the agenda, and opening the commercial gill net season earlier in the year was item number six (these two items were inadvertently reversed). **Mr. Miller** said that the Department would have to get permission from the Atlantic States Marine Fisheries Commission, but he does not anticipate that they would have any problem with extending the season for commercial gill net. He explained that some of the commercial watermen requested that the hook and line season be

extended and that the gill net season begin earlier in the year due to different reasons, one being that this is the last year for ocean fishing for shad. **Mr. Foley** expressed concern with the watermen being able to get the best price for their landings, and sometimes this does not occur during the current gill net season. **Mr. Clark** mentioned that everyone should keep in mind that if anchor nets are able to be kept out for longer periods of time with an extended season, it will lead to an increase in the number of discards. He also mentioned that the price of striped bass in February would not be very high in Delaware due to Maryland's higher quota and surge of landings being sold at that time. **Mr. Roberts** said that he has spoken with some fishermen from New Castle County who would prefer ten days during May because the striped bass are available in the Bay long before they get up to the Delaware River. **Mr. Miller** said that he believes the ASMFC would approve any reasonable recommendation as long as Delaware did not exceed its quota or violate our spawning ground closures, etc. He pointed out one potential downside that **Mr. Clark** already mentioned regarding higher discards, and stated that the Department would experience another downside due to having to run the data collection system longer, which we certainly would be willing to do since we're obligated anyway. **Mr. Seamans** made a recommendation that the Department present some draft regulations at the next meeting. **Mr. Miller** asked which season extensions the Council would like to see in these drafts, since several were suggested tonight. **Mr. Seamans** answered that he would like to see each of the suggestions made tonight included in the future presentation of these draft regulations (i.e. February, April, May, and June scenarios). **Mr. Seamans** also asked that someone volunteer to research the prices for striped bass during February and March of each year for the past ten years so that this history can be taken into consideration before the Council would provide its endorsement of a particular draft regulation. **Mr. Foley** volunteered to provide this information at the next meeting.

Mr. Miller moved on to the subject of extending the commercial hook and line season. He said that there was no suggestion for how or when to extend the season when the idea was brought up, so he welcomes any suggestions. An **audience member** suggested that he would like to see a split season similar to the gill net seasons. **Mr. Miller** said that the Department fears problems with submission of inaccurate and/or dishonest reports from watermen if a commercial spring hook and line season ran concurrently with the commercial spring gill net season. He said that history shows some watermen who possess both a gill net and a hook and line license have illegally reported catching both allocations using just their gill net during the fall fisheries. There is a regulation, he continued, that states if a commercial fisherman is hook and line fishing he is not allowed to have a gill net in the boat. **Mr. Seamans** asked that the Department draft some regulations to present at the next meeting.

Mr. Seamans then moved on to the seventh item on the agenda, which was the impact of conch dredging on the Bay. **Mr. Cole** stated that he wanted to update the Council on the effects conch dredging has on some fish habitats in Delaware Bay, since some members of the fishing community have expressed concern. He said that about this time last year the Department had started a review of the scientific literature. **Mr. Cole** said that there is documented evidence that this type of gear has caused loss of structure forming habitats, and the literature states that the viability of the fish populations that are dependent on these features may be compromised. He stressed to the Council that none of the work that provided the data for this literature was done in Delaware Bay, and most of the work pertained to the effects of bottom trawls and other types of bottom tending gear, other than the dry dredges that are used in Delaware Bay (of which there is very little literature). **Mr. Cole** said that the question of whether there is any impact to Delaware Bay still remains. He said that he has asked some of the commercial conch dredgers their

opinion on this issue, and the majority was adamant that they avoid these types of live-bottoms for various reasons. He then mentioned a meeting scheduled for February 26th between the Divisions of Fish and Wildlife, and Soil and Water Resources to go over electronic survey equipment that Soil & Water has that could be helpful in providing the kind of electronic gear needed to look at various bottom types in Delaware Bay. Mr. Cole stated that the two divisions will look into scheduling time for possibly using some of this equipment for preliminary samples or surveys to see if it can provide the type of data needed to research the effects of conch dredging in the Delaware Bay. He warned the Council that there is the possibility of scheduling problems due to trawl survey commitments Fish & Wildlife has, and commitments Soil & Water Resources already has for this year. Another problem, he said, is that there are no dedicated funds for this program. **Mr. Miller** responded to an audience member's comment regarding the reason for going over this subject by stating that the concern is due to the record high levels of conch landings in Delaware since 2001. Landings will probably increase in the future since there is no limit or cap on licenses; there is a five-year waiting list.

Mr. Seamans summarized the items tentatively scheduled to appear on next month's meeting agenda and asked for any other ideas for topics from the audience. Someone asked if a discussion would be possible regarding the reason for only one commercial hook and liner being allowed on a vessel at a time. **Mr. Miller** said that he would have to check to see whether this rule is a statute or a regulation. **Mr. Seamans** expressed gratitude to Dan Dugan from the Recreational Fishing Alliance for leaving pamphlets on circle hooks. Meeting adjourned at 9:10 PM.

Respectfully submitted,



Kim Records

**Advisory Council on Tidal Finfisheries
Minutes of March 17, 2004**

A scheduled meeting of the Council on Tidal Finfisheries was held on March 17, 2004 at 7:00 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were **Brian Hoeffcker, Clyde Roberts, and Bernie Pankowski**, whom Dan Seamans had asked to serve as Chair in his absence. Council member **Larry Foley** joined the meeting at 7:30, so until this time there was not a quorum. Staff members present were **Roy Miller, John Clark**, and Kim Records. There were approximately 12 members of the public in attendance.

The meeting began with Council members approving the minutes of the last meeting held February 18th. **Mr. Miller** opened with an update on striped bass regulations. He said that effective March 10th, a recreational fisherman in Delaware is allowed two striped bass at 28 inches with a year round open season, except on spawning grounds which are closed from April 1st through May 30th. The commercial regulation will be 28 inches statewide, except for commercial gill netters, who will be allowed to stay at the 20 inches minimum size limit during the spring, for the Delaware River and Bay.

Mr. Miller went over the final draft regulation for river herring harvest at spillways. He said that this regulation is designed to compliment the New Jersey and Pennsylvania regulations, in that it is meant to prevent NJ and PA bait dealers from coming to Delaware's various spillways and wiping out the river herring runs. **Mr. Miller** said that a public hearing will be announced in the near future.

Mr. Miller then went over the final draft regulation for the use of circle hooks when fishing recreationally with natural bait within the designated striped bass spawning areas, during the spawning season. He said the purpose of this regulation is to decrease the likelihood of catch and release mortality on spawning striped bass. The State of New Jersey has already adopted a similar regulation. **Mr. Miller** said that a date will be announced soon for the public hearing on this proposed regulation (it will probably be included in the public hearing for the proposed river herring regulation).

Mr. Miller then presented draft regulations extending the commercial gill net season for striped bass-agenda item 6. [**Mr. Foley** came in at this point.] **Mr. Miller** went over each proposed regulation option and asked for input from the Council members and the audience. He pointed out that certain options were marked for support by DNREC because they are by-catch neutral. **Mr. Foley** said that he was not able to gather specific prices from the past ten years from buyers, as he stated he would at the last meeting. However, he did say that he knows some buyers willing to write a statement that prices are higher in the month of February. **Mr. Pankowski** asked why this subject has come up. **Mr. Miller** answered by saying that a few watermen had requested an extended season in hopes of being able to get a better, or the best, price for their catch. **Mr. Miller** then summarized a memo sent to the Advisory Council from Division staff members John Clark and Des Kahn regarding their opposition to the extension of the spring striped bass gill net season. The memo explains their concern that the discard mortality rate would increase, especially if anchor netting is allowed. Several audience members stated that they prefer Option 3a, because it seems to cover all the bases. **Mr. Pankowski** suggested re-

visiting this topic at the next meeting in April. **Mr. Foley** said that the options should be mailed out to all of the commercial gill netters. **Mr. Miller** agreed to this; however he stated that he will not mail the options out with the intent of conducting a survey. He said that before the Department reaches the point of conducting a public hearing, he would like to have a preferred position/option. He said that he will prepare a cover letter to go with a copy of these options to be mailed out to all commercial gill netters. **Mr. Miller** said that in the letter he will advise everyone to attend the next Advisory Council meeting to discuss these options.

Mr. Miller then moved on to the draft regulations for extending the commercial hook and line season for striped bass. **Mr. Greg Jackson** commented that he would like to see the season open in April. A couple of audience members favored Option 2. **Mr. Miller** commented that it would be difficult for the Department to have both the gill net and hook & line seasons running at the same time, but it is possible. **Mr. Foley** stated that he would like this list of options to be mailed out to all commercial hook and liners, but suggests adding language to include an opening in April. He would also like the Department to prepare a draft regulation where the season would open in April, but it would only pertain to hook and line license holders.

The next item on the agenda was this year's flounder, scup, and sea bass regulations. **Mr. Miller** said that he can only summarize the draft regulation that Rick Cole will be presenting at the public hearing coming up on March 25th. He said that it is the same set of options that were available last year, but because we were under our recreational quota, the Department is proposing allowing six flounder per day at 17.5 inches for 2004. He said there is no change from last year for the scup regulation. Black sea bass, he continued, will remain the same 12 inches minimum size limit, but the season closure will be adjusted to accommodate the Labor Day weekend.

Mr. Pankowski asked about the agenda item regarding the University of Delaware fish studies at Assawoman Canal. **Mr. Miller** said that Dan Seamans inquired about having someone from the University speak on this subject at an upcoming Council meeting, so he has set it up for June. Meeting adjourned at 8:30.

Respectfully submitted,



Kim Records

Advisory Council on Tidal Finfisheries Minutes of April 21, 2004

A scheduled meeting of the Council on Tidal Finfisheries was held on April 21, 2004 at 7:00 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were **Chairman Dan Seamans, Holly Ann Firuta, Bernie Pankowski, Larry Foley, and Clyde Roberts**. Staff members present were **Roy Miller, Rick Cole, Craig Shirey, John Clark,** and Kim Records. There were approximately 15 members of the public in attendance.

Mr. Seamans began the meeting by making a motion to approve the minutes of the last meeting held March 17th - motion passed. He then introduced Mr. Miller to go over the next agenda item, options to extend the striped bass gill net season. **Mr. Miller** summarized what was discussed at the last meeting on this topic, and presented options to be considered that include previously made suggestions. He pointed out that some of the options will not increase by-catch or will decrease by-catch losses, and some other options will limit additional by-catch losses. Mr. Miller said the Division anticipates that if the season is extended, there will be some fishermen who will fish during the early extended period and, even if they fill their quota, will leave their anchor nets out for the rest of the season. This, he continued, could thereby increase striped bass by-catch. **Mr. Foley** commented that he favors Option 3a because it gives the fishermen a chance to see how they will fair with drift nets earlier in the season (February), and in May. He said that this might lead to the drift net becoming the commercial fishing gear of the future. Mr. Foley also stated that he believes a lot of by-catch could be eliminated if the line for drift netting only was extended to Cape Henlopen. **Mr. Miller** agreed that more drift netting, instead of anchor netting, would reduce by-catch losses. He also stated that if this proposal were to become effective, and the quota was exceeded, Delaware would have to pay for the overage the following year. **Mr. Seamans** made a motion to support Option 3a-all were in favor, motion passed.

Mr. Miller went over the next agenda item, striped bass commercial hook and line season extensions. He presented the three options to be considered, and summarized the discussion that took place at the last meeting in March. One **audience member** said that he favored Option 2, because it gives everyone a fair chance. **Mr. Robert Piascinski** stated that he holds both gill net and hook and line licenses, and he feels that he should be able to get his hook and line tags as soon as he turns in his gill net report and not have to wait until the spring gill net season is over. **Mr. Greg Jackson** stated that he favors Option 1. **Mr. Miller** said that with either Option 1 or Option 2, no fisherman who holds both a gill net and a hook and line license would be allowed to collect his allocation of hook and line tags until he has turned in his spring striped bass gill net report. He also said that if there were a re-allocation of hook and line poundage in the fall, there would have to be some kind of seasonal closure to collect catch reports, and start the next fishery. **Mr. Piascinski** suggested the Department consider allowing those fishermen who possess both gill net and hook and line licenses decide for themselves how they will catch their own individual quotas. **Mr. Seamans** asked for a show of hands from those who support each option at this point, and the audience was split evenly between Option 1 and 2. **Mr. Foley** said that he has spoken with many of the hook and line license holders and they seem to favor Option 2 considerably. He stated that he plans to make a motion to support Option 2 at the next Advisory Council meeting in May.

Mr. Cole then went over the summer flounder and black sea bass regulations for the 2004 fishing season. He summarized the results of the public hearing held in March. His Hearing Officer's report to the Department Secretary showed seven out of the eight people who commented on summer flounder, supported keeping the size and creel limit for 2004 the same as 2003. He said there is fear that a six-fish creel limit may lead to the statewide quota being exceeded and then Delaware would be penalized in 2005. Mr. Cole stated that the reason this topic was put on the agenda is the Department hopes to get the word out regarding this regulation (effective May 10th), because the 2004 Fishing Guide was printed with the expectation that the creel limit would be six fish (this information was printed in a subject to change format). Mr. Cole said the black sea bass regulation for 2004 is a twelve inch minimum size limit with a creel limit of twenty-five fish. He also gave the closed seasons of September 8th to 21st, and December 1st through 31st.

Mr. Seamans moved on to the next agenda item, Senate Bill 80-Freedom to Fish Act. **Mr. Pankowski**, a member and legislative chairman for the Recreational Fishing Alliance (RFA), went over the purpose of this legislation. He stated that the Freedom to Fish Act is sponsored by the RFA. He gave the names of other clubs/associations who are advocates of this bill. Mr. Pankowski summarized the reason this bill was introduced, and explained that this legislation would prevent closures of recreational fishing areas without good reason. Recreational fishermen are important to Delaware, he continued, and therefore deserve protection from unwarranted closures of productive fishing areas. He stated that as long as there is a scientific reason which necessitates a closure of a specific area to fishing, the RFA and other supporters of this legislation would not be opposed. The RFA's main concern is that an area could be closed to fishing without a legitimate scientific reason, as the law currently stands. Mr. Pankowski said that Senate Bill 80 specifies that the Department of Natural Resources and Environmental Control is the entity which would determine if a fishing area needs to be closed, via specific guidelines. He said that the RFA is sponsoring this legislation throughout the United States and Rhode Island has already made it law. The Division of Fish and Wildlife, he said, currently has no questions regarding the wording of this bill. **Mr. Miller** said that the Division of Fish and Wildlife has reviewed the present wording of SB 80, and doesn't believe it decreases their powers to manage fish. "That was an initial concern" he said, "but our reading of it (this latest version) we don't think it restricts our abilities to manage fish." **Mr. Pankowski** stated that he is asking for the Council's support of this legislative bill. **Mr. Alan Muller** of the Coastal Ocean Coalition said that his organization has basically been at war with the RFA over Senate Bill 80 in Delaware and similar legislative bills in other coastal states. He stated that his organization has met with Senator Simpson and Secretary Hughes, and nothing has happened, to his satisfaction. He said there are a lot of problems with this bill, and many objections to it. One problem, he said, is with the idea that hook and line fishing could be the one and only cause for closing an area to fishing (line 22 of the current draft). He stated that it would be almost impossible to prove that hook and line fishing is the cause of a specific conservation problem, and he believes the real intent of this bill is to make it impossible to create protected areas where an individual could not fish. Mr. Muller urged everyone to not support this bill. **Mr. Pankowski** commented that in essence, this legislation is meant to protect the right of a recreational fisherman to fish, and specifies a need for scientific data in order to close a particular area to fishing. **Mr. Roberts** stated that the Department employs experts to collect and analyze fisheries data and they are worthy of respect and trust from the citizens of Delaware, in the management of fish. **Mr. Muller** said that there are experts whose primary concern is the preservation of the resource, and they see this bill as a threat. He said that in the future there may be a need to create protected areas, and it should not be made impossible now to do this. **Mr. Seamans** asked Mr. Muller to

articulate his position. **Mr. Muller** answered by saying that the bill specifies the hook and line fishery would be the specific reason by itself for a closure, when pollution may be the reason a closure is needed. He said there are many other factors that can impact a fish population. **Mr. Pankowski** stated that this bill is only intended to protect the recreational fisherman, and does not warrant any opposition from environmental groups. **Mr. Andy Diehel**, also with the RFA, commented that he does not understand Mr. Muller's opposition to SB 80. **Mr. Foley** stated that he would definitely support this legislation. An **audience member** commented that she is concerned with Delaware's pollution problem, and wonders what comes to her table when consuming fish caught in Delaware waters. **Mr. Piascinski** stated that he believes this legislation is a good idea. Another **audience member** stated that he is a sport-fishing charter captain, and he urged the Council members to support this bill. **Ms. Firuta** asked Mr. Muller for a specific example of recreational fishermen acting in a detrimental way. **Mr. Muller** said that he did not understand the question, but comprehends the closure of a particular area to fishing would remove any stress put on the fish population, and the overall productivity would be greatly increased. **Ms. Firuta** stated that seasonal closures for certain species of fish have been, and are being, used for this specific purpose, as are other management methods. **Mr. Roberts** stated that he believes Mr. Muller's fears and apprehensions are unfounded. **Mr. Foley** made a motion for the Council to support SB 80-motion passed.

Mr. Seamans asked for agenda items for the next meeting. **Mr. Roberts** suggested having a discussion on the subject of Senate Bill 241. This is an act to amend sections 914 and 915 of the Delaware Code relating to five nonresident individuals (who are not required to pay the nonresident fee) in possession of Delaware commercial gill net licenses. Senate Bill 241 also proposes allowing these individuals to pass their licenses on to a spouse, or child, or someone who has completed the commercial fishing apprenticeship program. **Mr. Roberts** said that he believes this bill is unfair to Delaware's commercial fishermen because it keeps them from getting approximately thirty thousand dollars worth of tags for the gill net fisheries. He said that the original reason these licenses were sold to these individuals in 1984 was to allow them to catch shad for a New Jersey festival, and as he recalls from being a member of the Finfish Advisory Council at that time, there was a stipulation that they would not be allowed to pass these licenses on. Mr. Roberts said that he does not understand how these individuals were ever allowed to participate in the Delaware striped bass gill net fisheries, but he believes all the commercial fishermen should have the chance to voice their opinion on this proposed legislation. **Mr. Seamans** asked Mr. Miller if he had any insight into this bill. **Mr. Miller** said that he knows it is in the form of a bill, but does not know if it has gone before any committees yet. He said that the primary sponsor is Senator Still. **Mr. Pankowski** asked Mr. Miller for a brief synopsis, as he has never heard of this proposed legislation. **Mr. Miller** summarized the history leading up to the original seven individuals (five remain) from New Jersey being grand-fathered into Delaware Code to obtain these licenses at the resident fee. He said that at the time their argument was the new Delaware law relating to the total number of commercial gill net licenses allowed, and the qualifying criterion for possession of this license, had cut them out of their traditional shad fishery. In 1990, they were successful in getting "special interest" legislation passed granting them a Delaware commercial gill net license at the resident fee. Mr. Miller said that he does not have any recollection or understanding as to how they first received gill net tags for Delaware's striped bass fisheries. **Mr. Foley** asked Mr. Miller if Senator Still understands that these fishermen do not even use their license. **Mr. Miller** responded that he did not know. **Mr. Shirey** commented that he knows of at least one of them who does indeed use his license, as he has corresponded with him over the years. **Mr. Foley** asked if these fishermen's individual allocations of striped bass are filled for the different gill net fisheries. **Mr. Shirey** stated that he

is quite sure the fisherman he has been in contact with participates in the striped bass gill net fisheries, however, he does not know who actually lands these striped bass (tags can be transferred). **Mr. Foley** commented that he believes these five individuals are taking money out of the pockets of Delaware commercial fishermen. **Mr. Piascinski** stated that he knows for a fact that these New Jersey fishermen transfer their allocations of gill net tags to Delaware licensed gill net fishermen, and he understands that these five licenses were included in the cap of 111 commercial gill net licenses issued in 1999, which means that they would be included in any future lotteries for the apprenticeship program. He said he believes these individuals should have the same rights as any other Delaware commercial waterman. **Mr. Roberts** commented that apparently there are a couple of Delaware watermen benefiting from these licenses, instead of the possibility of over one hundred commercial fishermen receiving a greater allocation of striped bass to land for their own profit. **Mr. Foley** said that young men/women in the state of Delaware do not stand a chance of ever getting a commercial gill net license, if not for the apprenticeship program. And, as far as he's concerned, since these New Jersey residents are not permitted to land Delaware striped bass in New Jersey, they should never have been issued tags for the striped bass fisheries; a mistake which needs to be corrected. **Mr. Miller** stated that the Attorney General was asked whether these individuals could pass their license on to a child, and the Attorney General's opinion was that they could not. He continued by saying that the AG was not asked whether these licenses would go into the apprenticeship pool, should they decide to give them up. **Mr. Seamans** suggested wrapping this discussion up, finding out where the bill stands in the legislative process, and adding it to next month's agenda (depending on its status). He stated that he would like further discussion on this topic so that the Council will better be able to endorse or decline to endorse the bill (SB 241). He said that another item on May's agenda will be to re-visit the striped bass commercial hook and line season extension. Mr. Seamans stated that he would like to have a discussion on the fish consumption advisories, and especially as it may relate to the proposed release, by DuPont, of VX nerve gas into the Delaware River. **Mr. Miller** suggested inviting someone from the DuPont Company to speak on this topic. **Mr. Foley** asked Mr. Miller if he ever found out the results of our Mycobacterium study. **Mr. Miller** stated he did not have the results, but will check into it for next month's meeting.

Meeting was adjourned at 9:34 PM.

Respectfully submitted,



Kim Records

Advisory Council on Tidal Finfisheries Minutes of May 19, 2004

A scheduled meeting of the Council on Tidal Finfisheries was held on May 19, 2004 at 7:00 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were **Chairman Dan Seamans, Bernie Pankowski, Brian Hoffecker, Clyde Roberts, Larry Foley**, and **Holly Ann Firuta**. Staff members present were **Roy Miller, Craig Shirey, John Clark, Kevin Donnelly (Director, Division of Water Resources)**, and Kim Records. There were approximately 20 members of the public in attendance.

Mr. Seamans began the meeting by making a motion to approve the minutes from the last meeting held April 21st -motion passed. He then introduced Mr. Miller to go over the next agenda item regarding striped bass commercial hook and line season extensions. **Mr. Miller** reviewed the discussion from last months meeting and presented the same three options available for a commercial hook and line season extension. **Mr. George Larock** stated that he believes Option 2 would make it easier to fill an individual allocation, but either Option 1 or 2 would be good. **Mr. Greg Jackson** commented that he would like to see either Option 1 or 2 be approved, but prefers Option 1. He said he believes this would allow a fisherman to sell his catch when the price is better. Mr. Jackson also said that if Option 2 is approved by the Council, he hopes that the Department will over-allocate as they do with the gill netters. **Mr. Roberts** stated that he believes Option 2 would give the hook and liners the most time to catch, and to sell their catch for the best price. **Mr. Miller** stated the Department would prefer Option 1 over 2 because it would be easier to administer. **Mr. Foley** made a motion to endorse Option 2, motion passed.

Mr. Seamans went on to the next agenda item-an update on the proposed Freedom to Fish legislation (Senate Bill 80). **Mr. Pankowski** stated that at the moment the bill is in the Senate Department of Natural Resources Committee where sponsors of the bill and environmentalists are trying to find a comfort level by making some language changes to the current draft. He said there is opposition from environmental groups which have lead to some discussions that, so far, have proven to be unproductive. **Mr. Miller** said the Department Secretary, John Hughes, expressed concern with the original wording of SB 80. Secretary Hughes, Mr. Miller continued, was worried that the bill would “tie the hands” of the Department to be able to respond in a timely manner to a major pollution event. Mr. Miller said that the Secretary urged the Recreational Fishing Alliance (RFA) to consider some alternative wording that would be more specific to allowing the Department to determine if there is an actual or imminent danger to a fish species or habitat necessary for the fish species recovery, which would result in the closing of an area to fishing. He also said verbiage should be added stating that the Department shall determine the amount of time necessary for a fish species or habitat to recover during a closure. Mr. Miller explained the Secretary’s intent is to enable the Department to act quickly in the event of a potential catastrophe (like a chemical or oil spill). In answer to an audience member’s question, Mr. Miller clarified that the Department already has emergency closure powers, but Secretary Hughes’ concern was that the original wording of SB 80 could make the Department’s power to close a specific area to fishing debatable. **Mr. Pankowski** stated that Maryland’s equivalent legislation is expected to pass on May 26th and become effective June 1st. He said that in spite of the environmentalists’ opposition, there are many groups, businesses, and

associations that support it, and he is hopeful that eventually Delaware will pass this legislation. The RFA will continue to work on amending the bill because protection for the sport/recreational fisherman is so important. **Mr. Michael Doebley**, RFA Legislative Director, came forward to ask those supporters of SB 80 present to stand and introduce themselves. **Mr. Chris Narwold**, charter sport fishing captain in the state of Delaware, said he believes this bill is very important to the sport fisherman and does not believe it would hinder DNREC's ability to manage fisheries. **Mr. Gordon Hontz, Ms. Kathi Hontz, Mr. Andy Diehel, Mr. Louie Papp, and Mr. Marvin Kahl**, all stood in support of SB 80. **Mr. Roberts** stated that he believes some environmentalists in opposition to this bill are too extreme-he supports SB 80. **Mr. Dan Dugan** asked the Council to support the bill. **Mr. Joe DiBattista**, Delaware Mobile Surf-fisherman, commented that he would like to see the language problems "ironed out", as he supports the bill. **Mr. Miller** stated that he was directed to try setting up a sub-committee made up of representatives of the RFA, recreational fishing industry, and members of some of the environmental groups opposed to SB 80. He said that he attempted to do this with the intention of having the two sides come together with a neutral arbitrator, and modify the wording to satisfy all those concerned. He contacted a local representative of the Sierra Club, who had recently voiced their opposition of this bill to the Department Secretary. Mr. Miller said that this person declined meeting to "word-smith" SB 80, but was willing to meet and discuss the more general topic of Ocean Stewardship (a far more sweeping act of 500 pages). **Mr. Pankowski** stated that the RFA was prepared to discuss this more general topic, however because they are the main sponsors of SB 80, their primary concern is the specific topic of getting protection for recreational fishermen from unnecessary closures of fishing areas. **Mr. Doebley** warned the Department to be careful regarding establishing a "task force" as he believes they tend to consist mostly of environmentalists. **Mr. Rod Smith** said he is concerned that environmentalists and developers are going to take over the state. **Mr. Seamans** reminded everyone that at last month's meeting the Council unanimously voted to endorse SB 80, and encouraged everyone to contact their representative and/or senator to express their own opinion on the bill.

Mr. Seamans moved on to the next agenda item-the status and intent of Senate Bill 241, which is an act to amend § 914 and § 915 of Title 7, Del. C., relating to gill net fishing. **Mr. Miller** summarized the discussion from the April Advisory Council meeting and gave some background on the issues. He said that because this was "special interest" legislation, the Department views this as a people allocation issue, not a fishery resource allocation issue. The appropriate place for discussion of these types of issues is the General Assembly; the Department should not be placed in a decision-making role. **Mr. Foley** asked Mr. Miller what specifically makes these licenses different from those held by current Delaware resident commercial gill netters. **Mr. Miller** said that § 915 (h) Title 7, Del. C. states that the New Jersey residents can fish "no more than 600 ft. of gill net" in only a certain portion of the Delaware River (Delaware commercial gill netters are allowed up to 1000 yards of net). **Mr. Rob Piascinski** wanted verification that the apprenticeship program regulation specifies the point at which the lottery for eligible apprentices would include gill net licenses is when the total number of commercial gill net licenses issued falls below 111 (the number issued in 1999, which includes 5 New Jersey residents). He also said that he interprets the law to allow for these licenses to be passed down to a son or daughter, or anyone who completes the two-year apprenticeship program, including any New Jersey resident. **Mr. Miller** said it is correct that the state can issue a fixed number of 111 gill net licenses, which does include the five New Jersey resident licenses, however, the Attorney General's office was consulted as to whether or not the New Jersey residents would be allowed

to pass their licenses on to their children and concluded that they should not have this right. He explained that to date these five fishermen have been given the same rights as all the Delaware commercial gill net license holders; therefore a precedent has been set. Mr. Miller said the Department generally follows the advice of the Attorney General's office. **Mr. Roberts** said that he was a member of the Finfish Advisory Council in 1984, and he vaguely recalls the governor of New Jersey writing to Delaware's governor requesting that these individuals be permitted to catch shad as they had previously done (i.e. "grandfather" them in). He remembers attending a special meeting to discuss this issue and believes these NJ fishermen are now looking to change the original purpose of these permits to benefit themselves at the expense of Delaware watermen, who could use and benefit from possession of these licenses. **Mr. Leonard "Limbo" Voss** said that he believes the most recent law should supersede previous law, and if this is the case, the apprenticeship regulation should explain why these five gill net licenses should be considered exactly the same as the commercial gill net licenses held by Delaware residents (because there is no language stating they are any different). **Mr. Hoffecker** asked what would happen if one of these licenses should become available via the apprenticeship lottery-will it be considered a commercial gill net license with no more than 600 ft. allowed, or one with 1000 yards of net. **Mr. Miller** stated that he doesn't have an answer-the Attorney General would need to be consulted. **Mr. Voss** asked Mr. Seamans if it would be possible for the Council to postpone any motions and request the Department to consult the Attorney General regarding getting an opinion on these issues, but with consideration to the apprenticeship regulation. **Mr. Seamans** verified with Mr. Miller his willingness to proceed with seeking advice from the Attorney General's office-**Mr. Miller** agreed, but stated that he can not guarantee the Attorney General would have sufficient time to deal with this issue before the Legislature comes out at the end of June. **Mr. Foley** said these NJ fishermen never should have been issued tags for the striped bass fisheries and he thinks their license should terminate at their demise. **Mr. Roberts** motioned that the Council not support SB 241. **Mr. Pankowski** stated he is not familiar with this issue, but his feeling is that it should not be supported because it does not favor Delaware commercial fishermen. **Mr. Seamans** ended the discussion for the purpose of getting to the rest of the agenda, but said that he and Mr. Miller would work on drafting a letter to the Attorney General's office.

Mr. Seamans introduced Mr. Donnelly, the Director of the Department's Water Resources Division to go over the U.S. Army's proposed release of VX nerve gas into the Delaware River via DuPont's Chambers Works facility in New Jersey. **Mr. Donnelly** said the Department became aware of the Army's proposal late in 2003 and summarized the entire plan. He said there was a conclusion of Finding of No Significant Impact (FONSI) issued in support of this proposal. The Delaware DNREC, NJ Department of Environmental Protection, and the Delaware River Basin Commission reviewed and assessed the technical data and information provided by the Army and DuPont and concluded that this data does not support a FONSI. Mr. Donnelly said that the plan calls for release of approximately 2.3 tons per day over a two-year period (worst case scenario) of these treated materials, for which there is not much information, into the Delaware River. A letter was sent to The Honorable Les Brownlee, Acting Secretary of the Army at the Pentagon, expressing the concerns associated with this plan, and it was signed by Ruth Ann Minner, Governor of Delaware, and James E. McGreevey, Governor of New Jersey. Mr. Donnelly stated that there is data from a 1970's study that estimated the release of VX nerve gas into water (at 20 parts per billion), then adding fish, could kill 14 of 20 juvenile striped bass in 15 hours. He said that the Department can use this study as an indication for concern to the

Army and DuPont, and until such time as they can provide documented proof that the VX has been eliminated from these treated materials planned for release, we will be opposed to it (the Cherry Island Flats striped bass fish spawning ground is located across from the Chambers Works Facility). Mr. Donnelly said that at this point, the Army is in the process of preparing a response to the numerous comments they've received on this proposal, the majority of which express opposition to the proposed discharge. Both congressional delegations from New Jersey and Delaware requested that the federal Center for Disease Control (CDC) analyze this proposal. The CDC then requested that the federal Environmental Protection Agency (EPA) also review the project. He said the Department has let the Army and DuPont know that this proposal, as it currently stands, is unacceptable. He said that he expects the Army and DuPont will send another proposal after the reviews from the CDC and EPA are completed (approximately two to four months). Mr. Donnelly answered **Mr. Roberts'** question regarding whether this project had been put up for bids, by stating that he knows there is no contract at this point between the Army and DuPont.

Mr. Seamans introduced Mr. Shirey to give an update on the Mycobacterium study in Delaware striped bass-the last agenda item. **Mr. Shirey** went over the preliminary results of a study conducted by the U.S. Fish and Wildlife Service of fish collected in December 2003, from Woodland Beach, Bowers Beach, and some other Delaware coastal areas. He said that 8 fish of 73 caught had Mycobacterium infection, and further analysis indicated that 33% showed the possibility of any type of bacterial infection (tissue samples). He advised that if someone were to catch a fish with lesions (an indication of Mycobacterium infection), it should be immediately thrown back into the water, and those who handle fish on a very regular basis, such as commercial watermen, should wear gloves. He said it is possible for humans to become infected from handling fish infected with Mycobacterium. Related diseases that humans could contract include leprosy and tuberculosis.

Mr. Seamans asked for topics to be discussed at the next meeting in June. He brought up the topic of updates on Senate Bill 80, and SB 241. **Mr. Pankowski** suggested an update on the decline of the weakfish population he recently read about in the paper. Meeting adjourned at 9:22.

Respectfully submitted,


Kim Records

Advisory Council on Tidal Finfisheries Minutes of June 16, 2004

A scheduled meeting of the Council on Tidal Finfisheries was held on June 16, 2004 at 7:00 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were **Chairman Dan Seamans, Bernie Pankowski, Clyde Roberts,** and **Holly Ann Firuta**. Staff members present were **Roy Miller, Rick Cole, Jeff Tinsman, John Clark,** and Kim Records. There were approximately 9 members of the public in attendance. Please note: due to an electronic glitch there is no recording of this meeting available.

The meeting began with the Council approving the minutes from the last meeting held May 19th. **Mr. Seamans** then introduced Mr. Pankowski to update everyone on the Freedom to Fish legislation (Senate Bill 80). **Mr. Pankowski** stated that there has been no action since the last Council meeting-SB 80 is basically pending. However, on June 15th there was a hearing to consider Senate Bill 329, which would establish a Delaware Coastal and Ocean Stewardship policy and Coastal/Ocean Task Force to evaluate the present situation and develop the details for implementation of the new policy. Mr. Pankowski said that SB 329 was drafted by environmentalists in response to SB 80. The intent of the "Coastal/Ocean Task Force" would be to examine existing state rules, laws, and regulations governing Delaware's coastal and ocean resources, and to assess status and trends. One stated objective of this legislation includes marine protected areas, which runs counter to the intent of SB80. The Senate Natural Resources Committee meets next Wednesday (June 23, 2004) to discuss SB 329, and this legislative session ends June 30th.

Mr. Seamans said he would like to move the next agenda item to the end of the schedule because Mr. Foley let him know that he wanted to speak on this topic (SB 241-NJ commercial gill net licenses), however Mr. Foley was not yet there.

Mr. Seamans then introduced Mr. Cole to give a presentation on the status of weakfish stocks. **Mr. Cole** stated that the graphics he was presenting were put together by the Division's Dr. Desmond Kahn, who was unable to attend. He said the data shows recreational and commercial landings have declined in Delaware and coast wide in recent years. Delaware research trawl surveys have also shown a decline in abundance and age structure in this population. Mr. Cole said the coast wide stock assessment last conducted using 2000 data is being updated, but will not be completed until the fall. The Delaware recreational harvest in 2003 was the lowest since 1981, and the 2003 commercial harvest was the lowest since 1985. The trawl survey shows a declining trend in Delaware Bay since 1995. However, the Delaware Bay young of year (YOY) index shows no drastic decline relative to the 1980's. In summary, Mr. Cole concluded, the cause of the decline in weakfish stocks is presently unknown. **Mr. Leonard Voss** asked Mr. Cole about the possibility that this population decline may be due simply to predation. **Mr. Cole** stated this may be a factor, however proving that predation is the cause would be very difficult.

Mr. Seamans introduced University of Delaware staff to give a presentation on their fish studies in the Inland Bays and the Assawoman Canal. **Mr. Damian Brady**, doctoral candidate and graduate student of Dr. Tim Targett at the College of Marine Studies, gave a MS PowerPoint presentation on weakfish and summer flounder growth in relation to water quality in the Inland Bays. He went over the specifics of how this study was conducted and the data collected on the relative abundance and growth rates of juvenile summer flounder and weakfish in relation to

daily fluctuations in water quality in selected tidal creeks of the Inland Bays. One result was that the summer flounder showed a more pronounced growth effect under low dissolved oxygen conditions, than did the weakfish. **Dr. Targett** then discussed a new study that began last month concerning fishes inhabiting the Assawoman canal. These studies will document relative abundance and condition of fishes in the canal prior to it being dredged. Fish and Wildlife will contribute to the funding of these studies. Dr. Targett went over data collected from trawl surveys they have conducted so far. He introduced doctoral candidate **Mr. Brian Boutin**, who will assist in conducting these studies.

For the next agenda item, **Mr. Seamans** introduced Mr. Tinsman to update everyone on the Division's artificial reef program. **Mr. Tinsman** gave a brief history of the program, presently in its ninth year, and, which today made its 100th deployment of reef materials. There are currently 11 permitted sites, 8 of which are in the Bay, 3 in the ocean. Mr. Tinsman informed the audience that another small in-shore site just downstream of Reedy Island is being considered. There are also 2 other tentative sites further out in the ocean where larger surplus ships can be sunk (sites with sufficient depth for sinking larger ships-more required clearance). Some members of the audience sympathetic to commercial shell fishermen expressed opposition to the Department's artificial reef program because reef materials might restrict where they can dredge for crabs and conchs.

Mr. Seamans asked Mr. Miller to speak on the next agenda item regarding possible new interest in fish passage past the dams on the Brandywine. **Mr. Miller** gave a brief history of fish ladders on Brandywine Creek. He informed everyone about new interest for fish passage, particularly on the part of The Brandywine Conservancy, who have acquired a modest grant to pursue and investigate the feasibility of fish passage on the Brandywine. This recent initiative will consider not only ladders, but breaching and/or removal of dams. Some discussion ensued with **Mr. Bill DePace** as to whether shortnose sturgeons use the Brandywine. **Mr. Miller** opined although it is theoretically possible that one or more sturgeon have entered the Brandywine at one time or another, it is unlikely that they were ever abundant since normal range for the shortnose sturgeon occurs further up in the Delaware River system.

Mr. Seamans asked Mr. Miller to continue to the next agenda item on funding for the Division of Water Resources' Delaware Estuary Program. Since Mr. John Kennel of Water Resources was not able to attend, **Mr. Miller** stated that \$20,000 of Delaware fiscal year 2005 General Funds, as part of the federal fiscal year 2005 Delaware Estuary Program budget, are tied to implement the Delaware Bay Horseshoe Crab Egg Abundance Survey. He stated that this is a very "bare bones" budget.

Since Mr. Foley did not show up, at this point **Mr. Miller** presented a quick update on SB 241, which is the legislation dealing with the five New Jersey commercial gill netters. He said that the Senate has taken no action on this proposed legislation since the last Council meeting, and added that the Attorney General's advice to the Department had not changed since the last meeting, in regards to transfers of licenses to heirs. Several members of the audience spoke in favor and against SB 241. One audience member said that he is the son of one of the five New Jersey gill netters licensed to fish gill net in Delaware and that since he (the son) is a Delaware resident, he feels he is entitled to inherit his father's Delaware gill net license.

Mr. Seamans reminded everyone that no scheduled meetings will take place in July and August, and that the next meeting is scheduled for September 22nd. (Note – The DNREC auditorium is scheduled for repairs for a few weeks in September, so the meeting on the 22nd will have to be held at an alternative location to be announced later. Items to be discussed will include an update on any progress made on the feasibility of fish passage improvements on the Brandywine, and he invited anyone with other suggestions for agenda topics contact him or Roy Miller. Meeting adjourned at 9:33.

Respectfully submitted,



Kim Records

Advisory Council on Tidal Finfisheries Minutes of October 20, 2004

After a summer break and the cancellation (due to lack of topics) of the September meeting, the October 20, 2004 scheduled meeting of the Council on Tidal Finfisheries was held at 7:00 PM in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware. Those Council members in attendance were **Chairman Dan Seamans, Bernie Pankowski, Holly Ann Firuta, Larry Foley, and Brian Hoffecker**. Staff members present were **Roy Miller, Craig Shirey, Desmond Kahn, John Clark, and Kim Records**. There were approximately 8 members of the public in attendance.

Mr. Seamans called the meeting to order at 7:00 PM. The minutes from the last meeting, held June 16th, were then approved by the Council. Mr. Seamans introduced Mr. Pankowski to update everyone on the Freedom to Fish legislation (formerly known as Senate Bill 80). **Mr. Pankowski** stated that SB 80 basically died at the end of the legislative session, but when the General Assembly starts again in January, the RFA plans to have a modified or a similar bill ready to submit. **Mr. Miller** commented that the companion legislation to SB 80, which was SB 351 (Ocean Stewardship), also died in committee. He said many of the groups and individuals which supported SB 351 are now urging the Department Secretary and Governor Minner to issue an executive order to establish what they are referring to as a "Governor's Marine Stewardship Task Force". Mr. Miller stated that the potential make-up of such a task force is likely to be very controversial due to opposing view points. He speculates that this task force would include some environmentalists, individuals concerned with safeguarding recreational fishing interests, and individuals interested in preserving the commercial fishing industry.

Mr. Seamans moved on to the next agenda item—an update on the New Jersey striped bass minimum size and creel limits. **Dr. Kahn** stated that the NJ Legislature finally passed the recreational minimum size limit option of one fish at 24-28 inches, and one fish over 34 inches, effective now. He mentioned that NJ received a credit from the ASMFC for a commercial fishery they had in the 1970's, which they turned into a recreational bonus program. Fishermen must apply to participate in this harvest, which is very closely monitored. **Mr. Miller** added that he just had a discussion with Bruce Freeman, his counterpart in NJ, regarding this new regulation which passed in September. He was told that NJ's bonus program consists of approximately 29,000 tags for "trophy" fish that must be 28 inches, and after these tags are used, there will be no more issued. He stated that there is also an issue with the possibility of on-the-water enforcement by NJ and by Delaware. There will, no doubt, be some confusion with the difference in the two states' recreational striped bass regulations. Mr. Miller recommends that in order to be safe, a fisherman should only keep one fish over 34 inches (this would be legal on either side) if the fisherman was unsure of which state jurisdiction he or she was in. He commented that Mr. Freeman advised him not to pursue changing Delaware's striped bass regulation to conform to NJ yet, because the NJ Legislature could possibly change theirs next year (the NJ striped bass is the only species of fish regulated by the NJ Legislature). **Ms. Firuta** suggested that if the possibility exists for someone to get ticketed during an on-the-water enforcement check, the Department should make a public announcement advising Delaware residents to follow NJ regulations, if they fish in or near NJ waters (because the guidelines are so unclear, as is the location of the state line while on the water). She stated that to her knowledge, most people abide by the regulations from the port they are coming out of (which is what she has always done). **Mr. Foley** agreed with Ms. Firuta because NJ seems to police their waters much more actively than Delaware. **Mr. Miller** said that he would see to getting an announcement out as soon as possible.

Mr. Seamans introduced the next agenda item—an update on the August Atlantic croaker fish kill. **Mr. Miller** said that the fish kill was first reported on August 2nd, and reports continued for about a week. He said State Parks personnel removed approximately two tons of dead croaker from Delaware beaches mainly from Indian River Inlet south to the Maryland state line. Most of the fish he observed were badly decomposed by the time they reached Delaware beaches—he was only able to see one fresh killed fish. He said that some MD colleagues had observed some fish before they died and noticed bleeding from the gills, which made them very suspicious. At first, he stated, the popular theory on the cause of this kill was a large upwelling of cold water in the pathway of this very large school of croaker. There were wreck divers off the coast of Ocean City who reported to the MD Department of Natural Resources that they saw dead croaker on the ocean bottom and stated the water

temperature was in the low 40's-the prior week the water temperature was in the high 60's. After verifying these water temperatures via satellite data and identifying croaker as a more southern species sensitive to cold water, he said the cause of the kill seemed to clearly be a cold water event. However, since bleeding from the gills is not a symptom from cold water shock, there was concern as to whether this theory was accurate. Mr. Miller said a fish pathologist (Wolf Vogelbine) at the Virginia Institute of Marine Science, who happened to be away during this fish kill, determined from the examination of fish that were put on ice, that an unknown bacterial gill disease was the cause of the kill. Mr. Miller stated his theory as to what may have happened is that these fish were exposed to some kind of bacteria, swam into the upwelling of cold water, and then began dying after having been physically weakened from the bacterial infection. He said this very unusual fish kill moved further south, as there was a small croaker kill off the coast of North Carolina and then another small kill off the coast of Florida. He estimates that somewhere between 1 and 5 million croaker were killed, and after checking the standing stock assessment (100 million adult croaker), believes this fish kill will not have a great impact on croaker stocks.

Mr. Seamans moved on to the next agenda item-fish passage past the dams on the Brandywine. **Mr. Shirey** gave a brief history of the Brandywine Creek dams and presented an overview of specifics, including their location, ownership, function, and height. He said the Brandywine Conservancy received a grant from NOAA and is looking into fish restoration in the Brandywine Creek. The problem is that there are too many dams in this small area to adequately allow successful spawning of the species native to these waters to achieve proper restoration. The Brandywine Conservancy is looking into political and public support, support from the different agencies and companies involved, and, funding for removal, breaching, or modification of some of the dams. The Pennsylvania Fish Commission was contacted and they indicated that they would be interested in "seeding" larvae and juveniles into the upper part of the Brandywine, but only when the issue of fish restoration in Delaware's part of the creek is addressed. Mr. Shirey said that a final report on the feasibility of dam removal is due from the Brandywine Conservancy at any time. **Mr. Miller** commented on funding issues and some of the engineering challenges associated with removal or breaching of some of the dams. **Mr. Seamans** asked what the cost benefit of successful fish restoration is estimated to be. **Mr. Shirey** said that the Brandywine Conservancy has estimated that this particular area, with all eleven dams removed, would be capable of supporting a population of 26,000 adult shad, so he can foresee towns along the Brandywine having shad festivals, fish rodeos, etc. (as in the past), which may give people an idea of the monetary value attainable. **Mr. Pankowski** invited Mr. William DePace, Jr., President of the Delaware Striper Club, to give a presentation in favor of removing all dams on the Brandywine. **Mr. DePace** handed out copies of his report titled, "An Assessment of the Impact of the Dams on the Brandywine River". He went over his six-page report hi-lighting historical references to the different species of fish (including shad, striped bass, shortnose sturgeon, and salmon) which may have been indigenous to the Brandywine at one time, and would have used these waters as their spawning grounds. He said that these fish species would be a valuable resource and believes they could all be restored if the dams were removed. **Mr. Miller** commented that the shortnose sturgeon is a federally endangered species and will not likely be removed from this status in any of our lifetimes, so he wanted everyone to understand that there will never be a fishery for this species should it be restored. Furthermore, he said, the Atlantic sturgeon, which is a state endangered species, is currently undergoing restoration efforts. Mr. Miller conveyed his view on the likelihood of Atlantic salmon in the Brandywine by saying that he knows of one reference which states this species was stocked in the 1880's when some adults survived, came back, and were captured, however the record is unclear as to whether this species' natural range comes down this far south. **Mr. Pankowski** asked if this project is a worthy goal, to which **Mr. Miller** replied positively and stated that there is a national trend for this.

Mr. Seamans asked Mr. Miller to go over the next agenda item regarding late catch reports from commercial fishermen. **Mr. Miller** briefly went over the state laws regarding late submission of finfish catch reports. He said that over the years the Department has been very lenient enforcing these laws, and a large number of the watermen have been lax in reporting. It is becoming increasingly more critical that the Division receive catch reports on time because some of the species management plans (such as striped bass and black sea bass) require real-time estimates of the harvest to track quotas. Mr. Miller said to give everyone an idea of the scope of the problem, there are currently 36 commercial watermen who have not turned in one report for this year, and it is

fairly safe to say that the majority of watermen are late reporting one, or more, months out of the year. He commented that there is a chance some environmental group could try to take legal action against the Department for not enforcing the law. He asked the Council for advice or suggestions to improve this situation. **Mr. Pankowski** suggested reporting via electronic mail or the internet. **Mr. Miller** said that has been considered, however, not everyone owns or has access to a personal computer. **Mr. Foley** admitted that he is one of the violators on crab reporting, but said he would not be if the Division informed him that he would lose his license. **Mr. Hoffecker** also said he's guilty of being behind sometimes. **Mr. Seamans** asked Mr. Miller if the Department could prepare potential solutions to this problem for the Advisory Council to consider at the next meeting. **Mr. Miller** said the law is very clear that the Department does not have to give warning before revoking a license; however, he feels at least one letter of warning should be sent.

Mr. Seamans then asked Mr. Shirey to speak on the next agenda item-snakehead regulatory ban. **Mr. Shirey** briefly went over the discovery in 2002 of a northern snakehead in Maryland and showed pictures of juvenile and adult snakeheads. He stated that our Department has received several calls regarding possible snakehead captures and sightings, all of which have been disproved. There have been over 20 reports, which were verified snakeheads, in the Potomac River in 2004, and some were captured in the Schuylkill River in 2004. Mr. Shirey said that in order to take up where this summer's snakehead emergency order ends, the Department has proposed new regulation to permanently ban the transportation, purchase, possession, or selling (amendment to Non-Tidal Finfishing Regulation NT-7. Fish Stocking Practices) of snakeheads in Delaware. The Council endorsed this proposed regulation.

Mr. Seamans said that Mr. Foley had requested making a comment on SB 241 (regarding five New Jersey fishermen with DE commercial fishing licenses), which has been a previous topic on the agenda, but was not listed for tonight's meeting. **Mr. Foley** stated that he was sorry he missed the last meeting, but feels this issue needs further discussion. He wants to be able to give everyone an update, since he spoke to Senators McDowell, Still, and Vaughn, and some other legislators. He believes that the Senators have not been completely informed of all the details regarding the original issuance of these licenses. **Mr. Lawrence "Limbo" Voss** said SB 241 died without being acted on and would have to be re-introduced to the General Assembly next year. He said he hopes there will be a solution to this problem before then.

Mr. Seamans went over agenda topics for the November 17th meeting, which were; an update on the Senate Bill formerly known as 241, Brandywine Conservancy report overview by Robert Lonsdorf, possible solutions to the issue of late reporting by commercial watermen, weakfish stock update, and an update on Division large projects. Meeting adjourned at 8:41 PM.

Respectfully submitted,


Kim Records
Recording Secretary

ADVISORY COUNCIL ON TIDAL FINFISHERIES
MINUTES OF NOVEMBER 17, 2004

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ADVISORY COUNCIL

Dan Seamans, Chair
Clyde Roberts
Larry Foley
Bernie Pankowski (*absent*)
Holly Ann Firuta (*absent*)
Brian Hoffecker (*absent*)
Acie Mankins (*absent*)

DIVISION OF FISH & WILDLIFE

Roy Miller
Craig Shirey
Lacy Nichols, Jr.
Desmond Kahn
John Clark
Kim Records

PUBLIC

8 Visitors

Guest speaker: Robert Lonsdorf – Brandywine Conservancy

Agenda Item 1. Introduction

Mr. Seamans informed everyone that this meeting would strictly be informational in its intent, due to the fact that there was not a quorum of council members present.

Agenda Item 2. Approval of Minutes from October 20, 2004 Meeting

A motion was made and seconded that these minutes be approved, however **Mr. Seamans** stated this approval would be placed on the next meeting's agenda, since the Council is acting in an unofficial capacity tonight.

Agenda Item 3. Update on Brandywine Fish Passage Initiative (moved up from item # 5)

Mr. Lonsdorf briefly went over the history of the Brandywine Conservancy and its mission. He said that his organization recently received a grant from the National Fish & Wildlife Foundation to study the feasibility of restoring American shad and other migratory fish to the Brandywine River. There are 11 dams located on the Delaware portion of the Brandywine River. He went through his MS Power Point presentation covering the locations of all the dams, specifics, history, and function of each dam, funding issues, and engineering challenges to breach or remove some or all of the dams. **Mr. Lonsdorf** went over different options available, and cost estimates to attain improved fish passage. He then discussed the many benefits associated with fish restoration in this river and stated that any offer of support would be welcome. He is in the process of completing a report on this project, in which he concludes that it is technically and financially possible to restore American shad to the Brandywine River.

Agenda Item 4. Update on Weakfish Stock Assessment (originally item # 3)

Dr. Kahn stated that the update on weakfish stock was a compilation of 3 years of data, and includes eight states with significant fisheries and varied regulations, so it was a very large-scale project with some conflicting information. He presented charts and models reflecting

the collection of data from 200 to 300 spreadsheets of information. One particular model showed total coast wide harvests from 1981 to 2003 have hit an all-time low, which suggests that the abundance of weakfish has declined severely. Surveys performed by the Division show that weakfish abundance has declined, and weakfish catch reports are very low. **Dr. Kahn** tried to explain how and why the collection of data seems so diverse and difficult to interpret. He said some of the trawl surveys conducted outside of Delaware waters included in this analysis are not very reliable sources and discussed different scenarios that could produce contradictory data, including; variances in migratory patterns, dates and times of trawl surveys, frequency of surveys, locations of surveys, etc. He also mentioned that the average size per given age of a weakfish is several inches shorter than 15 years ago.

Agenda Item 5. Update on Major Construction & Acquisition Projects (originally Item # 4)

Mr. Nichols stated that other than the Division's purchase of the Mispillion light house property, he did not have any recent acquisition information. He went over recent construction activities, such as; the Indian River Marina upgrade in which we partnered with the Division of Parks and Recreation. He said Phase I of the project is complete (two-lane boat ramp, boarding and courtesy dock) and Phase II (parking lot) is underway. He reported that plans are in the works to repair and rebuild the 7th Street boat ramp in Wilmington after this year's flooding caused an undermining, which lead to a 20-foot section of the ramp dropping off and becoming lost. **Mr. Nichols** said the Division, in partnership with the city of Milford, just completed a new boat ramp and fishing platform on the Mispillion (located directly behind the Milford Police station). This past September the States Organization for Boating Access (SOBA) awarded the Division the Mid-size Access Category project award of excellence for Newport boat ramp. In August, Korman-Imbach Marine, Inc. out of Baltimore was awarded the contract for the re-building of the Woodland Beach fishing pier, which

should be completed in spring of 2005. Mr. Nichols said the Division has also recently partnered with the town of Laurel to place a single-lane boat ramp in River View Park on Broad Creek. He said that data should be received at the beginning of the new year from monitoring wells placed on site at the end of Pilot Town Road in Lewes for the planned new boat ramp facility. The Site Investigation and Restoration Branch (SIRB) is close to determining a course of action to follow at this site to allow moving forward with the design for a new facility. We recently entered into an agreement with DelDOT to upgrade the spillway and bridge at Chipman Pond, which should start around April of 2005. He said the only solution to proceed with improving problems at Records Pond is to harden the downstream side of the dam. He reported that we are also at the beginning stages of working on a dam safety program to analyze watersheds and assess impoundments. Mr. Nichols concluded by briefly going over site plans for an interpretive center at the newly acquired Mispillion Harbor property. He answered a few audience questions regarding concerns about specific areas, by stating that there are funding and priority issues which generally determine what projects will be executed.

Agenda Item 6. Discussion of Issues with Gill Net Licenses and Striped Bass Tags for Five NJ Residents

Mr. Seamans asked Mr. Miller to give a brief history of this topic. **Mr. Miller** explained that these five New Jersey residents (originally 7) obtained gill net licenses back in 1990 through pursuit of special interest legislation to allow them to continue to fish for shad in the Delaware portion of the Delaware River. They were granted these commercial gill net licenses at the resident fee, as specified in the legislation. Mr. Miller said that at some point, over the years, they were given striped bass tags allowing them to participate in the striped bass gill net fishery. He said he does not know exactly when this practice started, or who permitted them to receive the tags. These five individuals asked the Department if they would be able to will, or pass on, their licenses to their heirs since they have now reached retirement age. Since the legislation is not clear on this issue, the Department sought an opinion from the Attorney General's office. The Attorney General advised the Department that these individuals do not have the right to pass this license on to their heirs. Mr. Miller stressed that this is just the Attorney General's opinion. After the Department denied transferring their licenses to heirs, they again pursued special interest legislation, leading to the formulation of a bill. This bill never got out of committee, but the interest to see this bill be re-introduced to the next General Assembly remains. Mr. Miller said members of the Advisory Council have expressed an interest in whether or not these individuals are entitled to pass on these gill net licenses. **Mr. Roberts** declared that he remembers these licenses were granted specifically for the purpose of continuing a traditional shad fishery, and does not understand how these license holders ever received striped bass tags. He believes the licenses should terminate with the passing of each license holder. **Mr.**

Foley stated that he has expressed his concerns on this issue with various legislators and will pursue legislation to deny these New Jersey residents passing their licenses on to family members, and to terminate the license at the demise of its holder. He said he would like to see the licenses become available in the apprenticeship program, so that Delaware residents will get the full benefit of these licenses. **Mr. Leonard "Limbo" Voss** said that he will pursue a judge's opinion on this matter in the coming new year. **Mr. Miller** stated that there are basically two options for resolving this matter; one is to go through the court system, the other is to pursue legislative action via the General Assembly. **Mr. Seamans** stated that Council needed to move on. He urged Council and audience members to pursue setting up meetings with their legislators, which will allow their opinions on this matter to be heard.

Agenda Item 7. Possible Dept. Actions Concerning Chronic Late Finfish Catch Reports

Mr. Seamans reminded Mr. Miller that because there is not a quorum, any options presented cannot be endorsed officially. **Mr. Miller** read the statute which directs commercial finfishermen on reporting requirements to the Department. It states that the Division Director has the authorization to revoke a license from a commercial waterman violating the reporting requirements. Mr. Miller went over three options which the Division can pursue in order to improve this problem. The first option is to continue as the Division has done for years, option 2 would be to send written notice by certified mail giving the receiver a specified period of time to turn in their reports or their license will be revoked until they come in to compliance, and option 3 would be to implement a new system requiring Delaware licensed foodfish dealers to do the reporting, which would obviously be a major change and would entail foodfish dealers obtaining free dealer permits and maintain log books supplied by the Department. Any watermen selling their catch to out-of-state dealers would be required to obtain a dealer permit for themselves and fulfill the reporting requirements. **Mr. Roberts** expressed his disdain of the third option. **Mr. Seamans** stated that Council will save discussion of this topic for the next meeting.

Agenda Item 8. Update on Recent ASMFC Board Meetings for Menhaden, Striped Bass, Others

Mr. Miller briefly went over the concerns expressed by the ASMFC's Menhaden Board, Winter Flounder Board, and Striped Bass Board, and their respective actions and recommendations. He said the Division presented proposals on changes to Delaware's striped bass fishery made by this Advisory Council to the ASMFC, who approved them.

Agenda Item 9. Agenda Items for Next Meeting and Meeting Date

1. The issue of late reporting.
2. The New Jersey gill netters.
3. Next Meeting-January 19th, 2005.

There being no further business, a motion was made,
seconded and carried that the meeting be adjourned at
9:26 PM.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kim Records". The signature is written in a cursive, flowing style.

Kim Records
Recording Secretary