

# 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 7<sup>th</sup> 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