

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF MARCH 20, 2013



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

ADVISORY COUNCIL

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

DIVISION OF FISH & WILDLIFE

John Clark
Stewart Michels
David Saveikis, Director
Desmond Kahn
Sr. Cpl. Jeff Howell

PUBLIC

12 Visitors

Agenda Item 1. Welcome

Chairman Fox called the meeting to order at 6:00.

Agenda Item 2. Approval of 12/4/12 and 1/24/13 meeting minutes

A motion was carried to approve both the December and January meeting minutes.

Agenda Item 3. Sturgeon ESA Section 10 permit update

Dr. Kahn went over the status of the Section 10 permit application which was prepared in response to the listing of Atlantic sturgeon under the Endangered Species Act (ESA). The Section 10 Incidental Take Permit (ITP) requires an associated Habitat Conservation Plan which would allow sturgeon to be caught and released as by-catch in DE's commercial gill net fishery. Under conditions of the ESA, the National Marine Fisheries Service (NMFS) will require on-board trip observers to report all sturgeon by-catch. This will not only be problematic to the commercial fishermen but it will be very costly to the DFW in terms of staff time, observer training and wages. Dr. Kahn explained that he is exploring an alternative, more practical, monitoring method of mandatory daily reporting. The DFW would have to seek approval for an alternative monitoring method. He said the data set from past cooperating fishermen is helpful in this respect in that it proves the willingness by the fishermen to report. The data also shows the threat to sturgeon from the DE commercial gill net fishery has been fairly insignificant. He found for every 100 commercial gill net fishing trips, 12 sturgeons were caught (caught, not killed). In a year, this would equate to 630 trips and 77 sturgeons. Dr. Kahn said the Section 10 permit would provide legal protection to the state.

Dr. Fox agreed and added that he believes it would also protect the commercial fishermen. Some discussion took place regarding the sturgeon population. In response to a question about volunteer observers, Dr. Fox explained it is his understanding that these types of observers are required to obtain certification because they are working with endangered species. He added that there are companies who certify staff to perform this work.

Agenda Item 4. Striped bass juvenile index trends

Dr. Kahn presented "Recent Trends in Abundance of Striped Bass in the Mid-Atlantic" by PowerPoint. He went over total catch data and explained two possibilities for a decline since 2006 – an increase in mortality and a decrease in recruitment.

Data from the Delaware River index shows no declining trend in recruitment. He went over some additional data, including a chart detailing the MD Young-of-year (YOY) index, which shows the lack of a big year class over ten years. This is significant because the Chesapeake Bay is the dominant producer of striped bass for the Atlantic coast. Dr. Kahn concluded with possible causes of the ten-year gap between large YOY classes in the Chesapeake Bay, which are natural variation, effect of very high abundance depressing reproduction through feedback on forage reduction, and poor male condition due to the mycobacteriosis epidemic- which could have reduced sperm output (bass require a high ratio of males to females to fertilize eggs). Some discussion took place regarding future management measures.

Agenda Item 5. Regulatory update/regulatory review

Mr. Michels went over recent regulatory activities. The new Tidal Invasive regulations were published in the March Register of Regulations. The new regulations are intended to designate snakehead, blue catfish, flathead catfish, walking catfish and grass carp as invasive. This regulation will allow these invasive species to be taken by bow and arrow in tidal waters and make it unlawful to possess, transport, purchase or sell live invasives without the written permission of the Director. A public hearing will be held tomorrow night (March 21, 2013) at 6PM in this auditorium. The Register Notice on Summer Flounder was published in the March Register and it lists the following four recreational options that have been approved by the ASMFC Summer Flounder Technical Committee.

Option	Minimum Size	Possession Limit	Closed Season	Estimated Increase in Harvest
1	18.0 inches	4	Oct. 24 - Dec 31	0 (<i>status quo</i>)
2	17.5 inches	4	None	10.1%
3	17.0 inches	4	None	40.1%
4	16.5 inches	4	None	81.8%

As the minimum size decreases, the risk of exceeding the quota increases. Currently, any overage would result in a reduction of quota the following year. The Summer Flounder Public Hearing is scheduled for tomorrow night at 6:30 PM or immediately following the Invasive Species Hearing. A Start Action Notice (SAN) is being prepared regarding Highly Migratory Species (HMS - tuna, billfish, some coastal sharks) which primarily occur in federal waters. The SAN will propose to adopt federal rules and allow for enforcement and prosecution of HMS infractions at the state level, however;

this may not be practical given the frequency that the HMS rules are updated. The DFW is referring this concern to the Attorney General's Office. A SAN is being initiated for Atlantic menhaden which will seek to implement mandatory daily harvest reporting through the Interactive Voice Response system in accordance with the Fishery Management Plan (FMP). A SAN for black sea bass will be prepared to reduce the possession limit from the current 15/25 fish to 20 fish during all seasons, consistent with the federal rules. Work continues on amendments to the striped bass regulations. Mr. Michels explained that changes are anticipated that will make them more consistent in format with other tidal regulations. Most of the changes will attempt to clarify the weigh station and harvester tagging and reporting requirements. Final horseshoe crab regulations are due to be published in the April Register of Regulations. Delaware's quota for 2013, adjusted for a minor overage in 2012, should be 161,881 male horseshoe crabs.

Agenda Item 6. Management update: ASMFC winter meeting

Mr. Clark reviewed the three Fisheries regulations identified for potential update as a result of Executive Order 36. Afterwards, he went over pertinent activities from the ASMFC winter meeting. The regulation for American Shad could be amended to clarify that the ocean fishery is closed. The Black Sea Bass regulation needs modification to allow for the transfer of permits. In 2001 the National Marine Fisheries Service (NMFS) closed access in federal waters to new fishermen. Eligible federal permittees must have proof of landings between 1994 and 2001 in order to land black sea bass in DE. There are only six permittees, but a mechanism for transference needs to be added to the regulation so that younger DE fishermen can participate in this fishery. Mr. Clark said he spoke to DFW Enforcement Officers regarding the third regulation requiring electric lights on boats to be a minimum of 10 feet above the water while fishing and the officers stated that they would like the regulation to remain status quo. **Mr. Little** responded that he does not agree and requested reconsideration. He said this regulation was originally passed 20+ years ago to deal with a fishing practice that he does not believe exists today. He added that regulations are in place to limit the number of fish caught, so there should no longer be an issue regarding lights on boats attracting fish. **Sr. Cpl. Howell** stated that the Enforcement Officers did not see any need to change or delete this regulation. After further discussion, the **Council** passed a motion to amend this regulation. **Mr. Clark** then went over items from last month's ASMFC meeting. The American Eel Management Board approved draft Addendum 3 for public comment. The goal is to reduce American eel mortality and increase conservation of stocks through all life stages. The ASMFC public hearing for DE will be held in this auditorium on April 11 at 6:00 PM. The Summer Flounder, Scup and Black Sea Bass Management Board approved Amendment 23 to the Black Sea Bass FMP which allows for the use of regional measures to manage the 2013 fishery. Delaware intends to adopt the same regulations as in federal waters, which will be to change the creel limit from 15 and 25 fish to 20 fish in each season. The Board initiated the development of draft Addendum 24 to the Summer Flounder FMP. This draft addendum is going to propose a mechanism to allow

states to access the recreational harvest limit that is projected to not be harvested in 2013. Mr. Clark explained that the summer flounder population is restored but has shifted north. Since state allocations have been based on 1998 recreational landings, and the northern states have been experiencing quota overages (due to the population shift), the goal is to restructure state allocations by means of unused quota estimates from the southern states (DE down to NC). The Black Drum draft FMP is going to public hearing and ASMFC will hold a DE public hearing in this auditorium on April 2 at 7:00 PM. Much discussion followed regarding summer flounder. **Mr. Brian Wazlavek**, a charter boat captain, expressed his concerns regarding choosing the summer flounder recreational option for 2013 that would best suit his Lewes, DE business and coming to terms with the possibility that DE may be forced by Addendum 24 to "help" NJ with its quota despite NJ's past refusal to transfer quota to DE when forced to consider much larger minimum size limits. While **Mr. Clark** sympathized and commented that Mr. Roy Miller, Governor Markell's appointee to the ASMFC expressed the same concern during the Board meeting, he also emphasized that Delaware will not lose any quota as a result of this addendum. **Mr. Little** added that he has heard from numerous recreational fishermen expressing the same frustration.

Agenda Item 7. Options for TFFAC mailings

Mr. Clark stated that in talking with each of the Council members, everyone seems fine with receiving meeting notifications, agendas, etc., via email. The **Council** agreed that email notifications are satisfactory. **Mr. Clark** reassured the Council that each member can choose to opt-in to regular (US Postal Service) mail notifications at any time.

Agenda Item 8. By-laws discussion and vote

Mr. Clark reminded the Council that the Governor's Office has asked that all the DFW advisory councils implement by-laws. A draft set of by-laws was provided to the Council and **Dr. Fox** suggested that language be added to include two vice chairmen, one representing recreational fishing interests and one for commercial fishing interests, and that these two members alternate in regard to acting-chair duties as necessary. **Mr. Pankowski** stated that he feels a sub-committee should be formed with members from the Council in order to discuss and come up with by-laws. **Mr. Clark** stated that this topic was briefly discussed in January and he requested comments from council members then. In receiving very few comments since the January meeting and after the draft had been floating around for a while he decided to make it available for discussion and a possible vote tonight. He said there would be no problem in making changes to the document. **Mr. Pankowski** replied that he feels the council members should create the by-laws among themselves. A motion passed to form a sub-committee on council by-laws. **Mr. Kahl** agreed to chair this sub-committee and **Mr. Pankowski and Mr. Townsend** agreed to participate.

Agenda Item 9. Director's update

Director Saveikis provided each Council member with a copy of the latest edition of *Outdoor Delaware* magazine (www.dnrec.delaware.gov/Admin/Pages/OutdoorDelaware). Fishing-related items of interest include articles on fishing, hunting and boating opportunities for people with disabilities,

and the fishing report. The next issue will include an emphasis on the Fisheries Section of the DFW with an article on the Nanticoke River Shad Hatchery and on the rise and decline of tidal fishing with profiles on striped bass and weakfish. He then gave a legislative update. The scientific collection permit legislation has cleared the Governor's Office and sponsors in the House are being sought. The proposed bill for the DFW to partner with organizations such as Recreational Boating and Fishing Federation (RBFF) in order to better market and engage license holders is pending and on hold due to privacy issues. The proposed bill to increase the fine amounts for certain environmental offenses and de-classify some of these offenses is ongoing. The DNREC's three Enforcement units have been trying to construct the bill, since the Department wants to make sure there are certain efficiencies included across the board, which is difficult when each unit has different objectives. The DFW, as the originator of this proposed legislation, may proceed independently. Updates on this legislative effort will continue.

Agenda Item 10. Agenda items for 4/17/13 meeting

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

1. Electric lights update.
2. Sub-committee on By-laws report.
3. ESA Sturgeon update.
4. Invasive species presentation.

This meeting adjourned at approximately 8:20 PM.

Respectfully submitted,



Kim Stangl
Recording Secretary