

ADVISORY COUNCIL ON TIDAL FINFISHERIES



MINUTES OF APRIL 17, 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 (*Absent*)
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
Mike Stangl
Capt. John Rutherford

PUBLIC

10 Visitors

Agenda Item 1. Welcome

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

Agenda Item 2. Approval of 3/20/13 meeting minutes

The March meeting minutes were not finalized prior to the meeting. They will be available for endorsement by the Council at the May meeting.

Agenda Item 3. Director's update

Director Saveikis said the proposed legislation to change the violations fine structure and declassify certain DFW violations is currently under legal review. The DFW legislation is proceeding independently from the other two Department Enforcement units. He hopes that by the May meeting of this advisory council, the bill will have been introduced to the General Assembly.

Agenda Item 4. Summer flounder hearing summary and preferred option

Mr. Michels went over the results of the summer flounder public hearing stating that the majority of comments made at the hearing favored option 4 (16.5" size limit, 4 fish, no closed season), but the overwhelming majority of written comments and the majority of total comments received favored option 3 (17" size limit, 4 fish, no closed season). The comment period closed on April 5th. **Mr. Michels** explained that the hearing officer prepares a report for the Dept. Secretary to review, and if in agreement with the recommendation made in the report, the Secretary signs to approve the regulation. In order for the regulation to become effective, it is then sent to the Registrar of Regulations for submission to the Delaware Register of Regulations. However, an approved regulation must be submitted to the registrar by the 15th of the month in order to make publication on the 1st of the following month with an "effective date" on the 11th of the month of publication. Therefore, this regulation will not become effective in May as has been the case for the flounder regulation in recent years. The earliest the 2013 summer flounder regulation will be effective is June 11th but there is no guarantee. Some discussion took place regarding regulatory procedures. **Dr. Fox** commented that perhaps the DFW should look into seeking "proclamation authority" as has been mentioned during past meetings. **Mr. Clark** stated that **Mr. Michels** followed Dept. regulatory procedures to have the summer flounder regulation expedited, but delays were still

encountered. He clarified that states like MD and NC, who have proclamation authority, follow certain procedures to have management options approved and then give 48 hours' notice that a regulation is going to change. With species such as summer flounder, that are very popular with recreational anglers, proclamation authority allows for a faster and more efficient regulatory change.

Agenda Item 5. Regulatory update/regulatory review

Mr. Michels updated everyone on recent regulatory actions. The tidal water invasive finfish regulations were finalized making it legal to take northern snakehead and blue, flathead, and walking catfish and grass carp with a bow and arrow in tidal water. The Start Action Notice (SAN) to develop regulations for Highly Migratory Species (HMS) to adopt federal rules and allow for enforcement and prosecution of HMS infractions at the state level may not be practical given the frequency that the HMS rules are updated. The DFW has referred this concern to the Attorney General's Office. A SAN will soon be submitted for Atlantic menhaden which will seek to implement mandatory daily harvest reporting through the Interactive Voice Response system in accordance with the ASMFC Fishery Management Plan (FMP). A SAN for black sea bass will be prepared soon to reduce the possession limit from the current 15/25 fish to 20 fish during all seasons, consistent with the federal rules. **Mr. Michels** explained that changes to the striped bass regulations are being worked on to 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. A SAN will be developed to prohibit the importation of Asian horseshoe crabs. Some discussion took place regarding various invasive species and the striped bass commercial fishery.

Agenda Item 6. HB 41 Sale of Shark Fins bill discussion

Mr. Townsend reviewed details of the current proposed bill, which would make the sale of detached shark fins illegal in DE. **Council** members expressed concern about the economic burden the bill would cause commercial fishermen because it will restrict their ability to get the best price for legally harvested sharks. **Director Saveikis** indicated that after meeting with various stakeholders affected by the possible passage of this proposed bill, Representative Jaques tasked the DFW with facilitating resolution to issues that had not yet been agreed upon. The DFW did not oppose or support this

proposed bill but simply facilitated the exploration of possible options among the stakeholders. Audience member, **Ms. Hetti Brown**, Delaware State Director of the Humane Society of the U.S. (HSUS), clarified some of the changes made to the current proposed bill, including the “possession and distribution” exemption developed after she gave a presentation to this Council in April 2012. After some discussion, the **Council** agreed that a compromise to exempt smooth and spiny dogfish from the bill would help, but they also said the bill should give the DFW regulatory authority to add or remove shark species from the list of those exempt from this bill’s restrictions. The Council unanimously passed a motion to request that the Legislature add a clause giving DNREC regulatory authority to add or remove species from the exempt shark species list within the bill.

Agenda Item 7. ASMFC American eel hearing

Mr. Clark stated that on April 11 in this auditorium the Atlantic States Marine Fisheries Commission (ASMFC) held a well-attended public hearing on Addendum 3 to the Eel Management Plan. This addendum responds to the results of the 2012 stock assessment which found that the American eel stock is depleted. The various management options seek to reduce harvest and increase conservation across all life stages. Many strong opinions were voiced at the hearing, including general consensus opposing the implementation of any size limits or quotas and agreement that some proposed options are not workable. The public comment period ends May 2, 2013 and this addendum will be voted on during the Spring ASMFC meeting beginning the week of May 20.

Agenda Item 8. Atlantic sturgeon Section 10 update

Mr. Clark said that Fisheries Biometrician, Dr. Kahn is continuing to gather data to make a better case for attaining approval from the National Marine Fisheries Service for mandatory daily reporting of Atlantic sturgeon catches. The DFW is pursuing this approval to avoid requiring on-board observers with each commercial gill net fishing trip. The data will be included in a report being prepared as part of the Habitat Conservation Plan (HCP) required with the application for an incidental take permit under Section 10 of the Endangered Species Act (ESA). Dr. Kahn will also include in his HCP report a request and recommendations to decrease hypoxic conditions in the Delaware River in the area between Wilmington and Philadelphia, where many Atlantic sturgeon young of the year are found. The application should be complete in the next few weeks, and hopefully, the entire process should be complete prior to the next commercial gill net season.

Agenda Item 9. Fishing lights Subcommittee report

Mr. Little reminded everyone that this subcommittee was formed from discussion generated from the review of fisheries regulations, as per Executive Order 36, which was implemented to consider changing or removing obsolete or burdensome regulations. There were several opinions expressed at last month’s meeting favoring removal of the regulation restricting the use of electric lights while fishing. The subcommittee recently met with DFW Fisheries and Enforcement staff to explore options. DFW staff informed the subcommittee that a clause in Title 7, Delaware Code (§925 (b)) would make it illegal to change the regulation as desired.

After some discussion, the **Council** passed a motion to pursue having §925 (b) stricken from 7 Del. C.

Agenda Item 10. Revisions to proposed TFFAC by-laws

Dr. Fox stated that since Mr. Pankowski was not able to attend tonight’s meeting, and since he chairs the By-laws Subcommittee, this item will be postponed until the May meeting.

Agenda Item 11. Agenda items for 5/15/13 meeting

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

1. HB 41 update.
2. By-laws Sub-committee update.
3. Discussion regarding Proclamation Authority.

This meeting adjourned at 7:32 PM.

Respectfully submitted,



Kim Stangl
Recording Secretary