

Endangered and Nongame Species Advisory Committee

Meeting Minutes

August 13, 2008
Island Beach State Park
Interpretive Center

ATTENDEES

COMMITTEE: Jane Morton Galetto (Chair), James Applegate, Barbara Brummer, Joanna Burger, Emile DeVito, Erica Miller, Dale Schweitzer, James Shissias.

STAFF: Dave Jenkins, Kathy Clark, Amanda Dey, Larry Herrighty, Todd Pover, Amy Wells, Mick Valent.

GUESTS: Fred Akers, Julie Akers, Rick Dutko (NJDEP-DPF), Jan Larson, Martin McHugh (DEP-OCE), Pete McLain, Margaret O’Gorman (CWFNJ), Annette Scherer (USFWS), Mark Zabutansley

The meeting was called to order at 10:30 am. Notice of the original meeting date and location was filed with and posted at the Office of the Secretary of State on May 28, 2008. Notice regarding the rescheduling of the date and meeting location was filed with and posted at the Office of the Secretary of State on July 2, 2008.

Minutes

A motion was made by J. Applegate, seconded by J. Shissias, and approved by the Committee to approve the minutes for May 21, 2008.

Reappointments

J. Galetto noted ENSAC members had already received, or will soon be receiving, a letter from the Commissioner and the Administrative Order No. 2008-12 which includes a list of the members, their position and the staggered term expiration dates.

ORV Parks / Sahara Sands

Reports and minutes were reviewed by committee which documented its familiarity with the DEP's search for an ORV park and its subsequent conclusion that the Sahara Sands site was inappropriate for development of a park. Jane Galetto reiterated that her husband's family owns Dun-rite Sand and Gravel Company property which neighbors the Sahara Sands site and that Green Acres has been aware of this ownership. This information was known to both the full Committee and the ORV Subcommittee in 2003.

Fred Akers (public attendee and Administrator of the Great Egg Harbor Watershed Association) noted that the Ecological Integrity Assessment recently completed by the Pinelands Commission

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staff does not adequately deal with the ecological value of “barren” lands such as abandoned gravel mines and suggested ENSAC invite appropriate Pinelands Commission staff to give a presentation on the EIA at some future ENSAC meeting.

Mr. Akers also provided an update on the status of potential ORV licensing legislation and discussed a potential piece of property near Pigeon Swamp State Park that does not have any environmental issues.

A motion was made by J. Burger, seconded by E. DeVito and unanimously approved by all voting members of the Committee (J. Galetto abstained from the vote) to send the Commissioner a letter noting:

“After due consideration of our responsibility for endangered and threatened wildlife, the ENSAC has again determined that continuing with the leasing and development of an ORV park at the Sahara Sands property is inappropriate. ENSAC encourages DEP to look to other locations where impacts to endangered and threatened plants and animals are minimized.”

It was decided that Joanna Burger and staff would draft a letter for the Committee.

State Wildlife Grant Matches / Conserve Wildlife Foundation

D. Jenkins reiterated the explanation made at the last ENSAC meeting that the matching portion of SWG grants has increased from 75/25 to 50/50. Discussions at the last meeting included the possibility of utilizing revenue acquired by CWF for use on ENSP projects as SWG matches. M. O’Gorman, Executive Director for CWFNJ, noted CWF has worked with ENSP to meet these requirements in the past and plans are to continue using CWF revenue and/or in-kind services for use on ENSP projects as SWG matches.

Dave also clarified that SWG grants are not "competitive" grants. Funds are available to New Jersey based on a formula that determines NJ's apportionment of the total funds that congress appropriates. The application process is simply one of demonstrating that the proposed work is consistent with the intent of the grant program, that the matching funds are available and obligated for use on the proposed work and that the proposed work complies with all federal requirements. Once we make that demonstration through the application process the funding is approved on a reimbursable basis.

Champagne Island

D. Jenkins and T. Pover reported the assignment of management rights to NJDFW for the tidal portion of Champagne Island and its designation as a Wildlife Management Area is progressing through the lengthy signature processes for both the DEP Commissioner and the Governor. Once signed, the area will be administered as the Cape May Wetlands WMA. Protective actions, with the exception of issuing summons, have been implemented based on the Champagne Island Management Plan. The area was able to remain open for public use and did experience high degree of compliance. Unfortunately, the nesting areas, particularly for black skimmer, have been severely impacted by two natural events: the April nor'easter and a recent new moon tide.

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Staff will prepare a press release noting successful public compliance and the natural challenges faced by these shorebirds.

Black Skimmers

J. Burger provided positive information on the black skimmer populations nesting in Spartina. Populations appear to be adapting to the rise in sea level by transitioning to alternative nesting habitats.

Red Knot / Horseshoe Crabs

M. Dey reported that low horseshoe crab egg densities and delayed spawning (late May) contributed to delayed departures of red knots from Delaware Bay. This years statistics revealed only 15% of the departing Red knots achieved the 180-g threshold departure weight necessary to increase probability of adult survival and successful reproduction in the Arctic.

M. Dey will invite Dr. Daniel Hernandez, Assistant Professor of Biology at Stockton College and Assistant Director of Research at The Wetlands Institute, to discuss the baywide horseshoe crab egg survey and methodology differences in NJ and DE that have lead to a side-by-side comparison in 2008.

The Atlantic States Marine Fisheries Commission's Horseshoe Crab Management Board will vote on Addendum V at the August 21, 2008 meeting in Alexandria, VA. P. Himchak (NJDFW Bureau of Marine Fisheries) will introduce a motion to include a moratorium option in Addendum V. Discussions continued around ways to achieve support for the moratorium.

A motion was made by J. Burger, seconded by J. Applegate, and unanimously approved by the Committee to prepare a statement from ENSAC to ASMFC noting:

“The ENSAC would like to make ASMFC aware of the updates to shorebird and horseshoe crab egg trend information. NJ is taking a leadership role, has taken the most risk-averse action through moratorium of horseshoe crab harvest and supports an option for NJ & DE moratorium in Addendum V.”

M. Dey distributed the recently-published Studies in Avian Biology No. 36 - Status of the Red Knot (*Calidris Canutus Rufa*) in the Western Hemisphere, authored by current and former ENSP staff and others.

Recognition of Pete McLain

J. Applegate recognized Pete McLain for his long history of vested contributions to the Division and the wildlife of NJ reading the following proclamation:

“The Committee welcomes Paul D. (Pete) McLain to our meeting. We would like to acknowledge Pete’s visionary leadership as Assistant Director of NJ Division of Fish and Game almost 40 years ago that resulted in all that has transpired since on behalf of Endangered and Nongame species in New Jersey. Under his inspiration, New Jersey was then, and continues to be, a leader in the management of our nongame wildlife species. In acknowledging his

contribution, on behalf of our committee, the citizens of New Jersey and the wildlife resources of New Jersey, we extend to him our deepest appreciation.”

Environmental Enforcement Enhancement Act

M. McHugh provided an overview of P.L. 2007 Chapter 246 approved on January 4, 2008. The law (also referred to as the Environmental Enforcement Enhancement Act) updates and enhances provisions of ten environmental statutes in a uniform manner, to bring the enforcement provisions up to date and make the enforcement processes more consistent. Included among the ten statutes is the Endangered and Nongame Species Conservation Act (ENSCA). ENSCA and the other nine statutes listed below were originally passed between the early 1960's to early 1980's, so it was necessary to amend the penalty schedules and enforcement processes available to the Department to ensure consistent and effective authority to deter future violations.

Statutes Amended:

- (1) The “Waterfront Development Act,” R.S.12:5-1 et seq;
- (2) The “Pesticide Control Act of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.);
- (3) “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.);
- (4) The “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et seq.);
- (5) The “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.);
- (6) “The Endangered and Nongame Species Conservation Act,” P.L.1973, c.309 (C.23:2A-1 et seq.);
- (7) The “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et seq.);
- (8) The “Safe Dam Act,” P.L.1981, c.249 (C.58:4-8.1 et seq.);
- (9) The “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.); and
- (10) The “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.).

The important changes to the original statute as they relate to enforcement for endangered and nongame species include:

- 1) The authority of the Department to now levy a civil administrative penalty and/or a civil penalty of up to \$25,000/violation/day (previously penalties were limited to a range of \$250-\$5000);
- 2) The authority to include a claim in any civil action filed, for the recovery of compensatory damages for the loss or destruction of natural resources, including wildlife, fish, aquatic life, habitat, plants...
- 3) The authority to include a request in any civil action filed for an order requiring the violator restore the site of the violation.
- 4) The authority to petition the Attorney General to bring criminal sanctions/penalties at a level of a crime of the third degree.
- 5) Any funds received for violations will be placed in the Endangered and Nongame Species Conservation Fund.

A possible concern with the newly enacted law is the potential loss of the ability to prosecute cases in municipal court. Marty will continue to look into this with Chief Jenkins and the Bureau of Law Enforcement.

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Discussions continued around the need for an enhanced E/T Rule and establishment of authority for future regulations.

Nominating Committee

J. Shissias reported the Nominating Committee has discussed and will present nominations for both positions (ENSAC chair and vice-chair) by the November meeting. Discussions will continue and an update will be provided at the September meeting.

Japanese Stilt Grass

E. DeVito reported logging activities have aided the migration of invasive Japanese Stilt Grass (*Microstegium vimineum*) to several new locations at the Berkshire WMA. ENSAC members expressed concern as the containment of the species requires immediate action. L. Herrigty noted T. Petrongolo will address the issue within the proper time constraints.

Discussion regarding how to address the threat of invasive species in the context of habitat management and enhancement work will be included in a future ENSAC agenda.

White Nose Syndrome (WNS) in Bats

M. Valent, ENSP Principal Zoologist, provided a brief update on the white nose syndrome in bats. Eight states have begun testing for WNS. WNS has been identified in 4 states with possible, but unconfirmed, sites in Pennsylvania as well. To date there have been no reported findings in NJ. The cause appears to be multifactorial as impacts include a variety of different issues, each ranging in severity, including the appearance of fungi on the nose, tissue damage, wing damage, extreme dehydration and emaciation.

Discussions included limited knowledge regarding the distribution of NJ bats, efforts to identify additional hibernacula, roosting counts, and development of standards and procedures to prevent cross contamination between hibernacula.

ENSP Budget

Kathy Clark distributed information regarding ENSP's income and expenses. 90% of ENSP's current projects are funded through State Wildlife Grants (SWG). In the interest of time, discussions will continue at the September meeting.

Janet Larson

On behalf of the ENSAC, J. Galetto presented Janet Larson with a wood carving of a shorebird thanking her for her many years of active participation on the Committee and assistance with numerous issues relating to endangered and threatened species.

A motion was made by E. DeVito, seconded by B. Brummer and approved by the Committee to adjourn the meeting at 1:20 p.m.