

NEW JERSEY MARINE FISHERIES COUNCIL

Galloway Township Public Library
Jimmies Leeds Road
Absecon, New Jersey
January 3, 2008

In Attendance were: Chairman Gilbert H. Ewing, Jr.
Councilman Erling Berg
Councilman Patrick Donnelly
Councilman Edward Goldman
Councilman Richard Herb
Councilman Barney Hollinger
Councilman John Maxwell
Councilwoman Frances Puskas
Councilman Joseph Rizzo

Also in attendance representing the Division of Fish and Wildlife:
David Chanda, Director
Thomas W. McCloy, Administrator, Marine Fisheries Adm.(MFA)
James W. Joseph, Chief, Bureau of Shellfisheries
Joe Meyer, Deputy Chief, Law Enforcement
Peter Himchak, Acting Chief, Bureau of Marine Fisheries
David Jenkins, Acting Chief, Endangered and Nongame Species
Program (ENSP)
Brandon Muffley, Research Scientist, MFA
Jeffrey Brust, Research Scientist, MFA
Amanda Dey, Senior Biologist, ENSP
Mike Celestino, Senior Biologist, Bureau of Shellfisheries
Linda Barry, Technician, Bureau of Marine Fisheries

Also in attendance representing the Division of Law:
Helene Chudzik, Division of Law

Ms. Smallwood read the compliance with the Sunshine Law. Notice of meeting was filed with the Secretary of State on December 5, 2007. Chairman Ewing reminded everyone of proper conduct to the meeting. Chairman Ewing suggested the discussion on the Horseshoe Crab proposal be held until after New Business. All Council members concurred.

Mr. Herb requested a correction to the November minutes. He referenced his comments (p12) on a statement made by Mr. Bogan regarding the ASMFC action on New Jersey's tautog proposal. Mr. Herb clarified that his "agreement" with Mr. Bogan's comments were limited to those specific to New Jersey's tautog proposal being rejected without

considering the science. He requested changing the reference to his comments to indicate that he did not believe ASMFC took the scientific merit of New Jersey's proposal into consideration when making their decision. On a motion by Dr. Donnelly and seconded by Mr. Herb the November minutes, as corrected, were unanimously approved.

Law Enforcement Report

Captain Meyer presented the Law Enforcement Report.

On Wednesday November 7, 2007, a Conservation Officer inspected the party/charter boat Miss Atlantic City in Atlantic City. There were only 6 patrons onboard and they were targeting black sea bass. There was a total of 285 fish caught by the six anglers. Out of the 285 fish 148 were of legal size. If all of the sublegal fish were released, the anglers would have been 2 fish shy of their combined limit of 150 fish. Summonses were issued to all six patrons for possessing undersize and over the limit sea bass.

On Sunday 12/2/07, the captain and owner of the charter boat "Barb Gail IV" which fishes exclusively out of Brielle, NJ, were apprehended at the Seville Diner located in East Brunswick, NJ. Clint Dunham who resides in Point Pleasant Beach, NJ is being charged with selling 93 striped bass fillets or 47 whole striped bass to the diner. He is also being charged with filleting striped bass other than immediately prior to preparation or being served as food, and possession of 45 striped bass in excess of the legal possession limit of 2 striped bass. All of the striped bass fillets were less than 28 inches in length. The sale of striped bass in the State of NJ carries a penalty of \$300-\$3,000 for a first offense. Filleting of striped bass other than immediately prior to preparation or being served as food, possession of striped bass in excess of the possession limit and possession of striped bass less than 28 inches, all carry a penalty of \$100 per fish. Minimum penalties for these violations total \$14,200 plus court costs with a maximum potential penalty of \$16,900 plus court costs.

The Seville Diner had in addition to the previously mentioned striped bass fillets an additional 110 frozen striped bass fillets or 55 whole striped bass on the premises. The diner is being charged with selling striped bass in the State of NJ. This violation carries a penalty of \$300-\$3,000 plus court costs.

On 12/11/07 a Conservation Officer (CO) boarded the F/V Pearl W. O'Neal at Cold Spring Fish Company in Cape May, NJ. The F/V Pearl O'Neal is a general category scallop vessel and had offloaded 100 pounds of sea scallops which was reflected on the fishing vessel trip report. Upon further inspection of the vessel the CO found approximately 25 pounds of summer flounder fillets (128 pieces) hidden in a garbage bag inside a fish bin. The captain and owner were both issued summonses for landing summer flounder during the commercial closure.

A Ventnor business owner in the process of renovating his business reported the presence of a dolphin on his neighbor's roof. He contacted the USFWS SA Manera, who

responded for an initial investigation. As part of the Marine Enforcement Unit's JEA (Joint Enforcement Agreement) with NMFS, a Conservation Officer (CO) was dispatched to assist with the investigation. On 12/12/07 the CO and SA Manera responded to the Martindale Ave. home in Ventnor. From the adjacent building, the skeleton of the dolphin was clearly visible on the rooftop of the home next door. The homeowner Ali Ahmad was contacted. Mr. Ahmad admitted that in late December 2005 he had placed a dolphin carcass on his roof. He explained that he had found a decaying carcass on the beach in Ventnor, thought it was an interesting specimen and carried it home with the help of two friends. He told the officers that he was an artist and wanted to wire the skeleton back together so he could cast and bronze a replica. He said, using a ladder and a rope, he hoisted the carcass up onto his roof to allow the bones to be "cleaned up". Through contact with the Ventnor City Police, the Ventnor City Fire Department responded with their hook and ladder unit to assist the CO access the subjects roof. The CO recovered a nearly intact skeleton of a Bottlenose Dolphin with some skin and cartilage remaining. Due to the condition of the evidence recovered and some inconsistencies with the subject's story, the CO and SA Manera pressed him for an accurate account of the origin of the carcass. Mr. Ahmad was cooperative and provided a written statement reflecting his recollection of the events. After leaving Mr. Ahmad's home, the CO contacted the Marine Mammal Stranding Center to determine if they kept records on all reports of strandings regardless of whether or not an animal is located. To the CO's surprise, a technician at the Center was able to locate a report for a badly decomposed Bottlenose Dolphin on the beach in Ventnor one block from Mr. Ahmad's street in December of 2005. The following day the CO met with Marine Mammal Stranding Center Director Bob Schoelkolf to compare file photos from the stranding report and the bones recovered. Luckily for Mr. Ahmad, they were able to use the skull, lower jaw and miscellaneous measurements, to determine the skeleton recovered from Mr. Ahmad's home was the animal documented in the MMSC file. Normally dead Marine Mammals are disposed of by burial at an approved location to prevent the illegal possession of their parts by non-permitted persons. This particular animal according to the MMSC file was to have been disposed of by the Ventnor Public Works Department.

The Conservation Officer documented the federal violation of the Marine Mammal Protection Act and issued Mr. Ahmad an Enforcement Action Report for the Prohibited Use Possession, and Transportation of a Marine Mammal. All evidence and documentation was passed on to SA Jim Cassin of NOAA NMFS Office of Law Enforcement who will consult with the US Attorney's office for filing of formal charges

Legislative Report

Mr. McCloy presented the Legislative Report.

A 4479 which would revise sections of Title 50 (Shellfish) was posted for a vote in the Assembly.

A3986/S2635 which would prohibit the use of fish pots on artificial reefs passed the Senate but has not been posted for a vote in the Assembly.

S2945 to urge Congress to make changes to the Magnuson-Stevens Act (MSA) was also introduced.

The Legislative session ends on January 7, 2008 so any bills not passed by then will die.

Atlantic States Marine Fisheries Commission Report (ASMFC)

Mr. Herb presented the ASMFC report. The ASMFC Summer Flounder, Scup, Black Sea Bass Board met in conjunction with the Mid-Atlantic Fishery Management Council (MAFMC) and approved a state conservation equivalency approach to recreational summer flounder management in 2008. The Board/MAFMC also voted for status quo for the recreational scup and black sea bass fisheries for 2008. Mr. Herb indicated that the National Marine Fisheries Service recently adopted the recommended summer flounder total allowable landings of 15.77 million pounds for 2008.

Mr. McCloy added that the NMFS also adopted the recommended total allowable landings of scup and black sea bass as recommended by the Board/MAFMC, 7.34 million pounds and 4.22 million pounds, respectively.

Mid-Atlantic Fishery Management Council (MAFMC)

Mr. Goldman presented the MAFMC Report.

The MAFMC passed a motion to adopt and submit to the Secretary the same preferred alternatives selected by the New England Council for Framework 5 to the Joint Monkfish Fishery Management Plan (FMP). The framework would also reduce the Days at Sea (DAS) carry over level, eliminate the three hour trip accounting mechanism, establish a new lower incidental landing limit for vessels using large mesh and eliminate the letter of authorization requirement for certain VMS vessels while maintaining such a requirement for non-VMS vessels.

The MAFMC also requested that the New England Council consider reviewing the current management measures and the latest monkfish stock assessment to determine if any adjustments to total allowable catch related trip limits are warranted.

The MAFMC posthumously recognized Stewart Tweed with its 2007 Fisheries Achievement Award (FAA). The award was presented to Gail Tweed on behalf of the Tweed family and it is designed to recognize individuals who exhibit outstanding professionalism, diligence, and effort to protect living marine resources. Mr. Tweed was recognized for his personal efforts to protect and enhance living marine resources.

The MAFMC held a well attended public workshop on the impact of new MSA requirements on the MAFMC.

Mr. McCloy asked if Mr. Herb wanted to address the letter to Council from the ASMFC regarding the Council's position to not make changes in the tautog regulations.

Mr. Herb reviewed the discussion the Council had at their November meeting. He indicated the Executive Director of ASMFC (Mr. O'Shea) was willing to come to New Jersey to talk to the Council about the importance of New Jersey complying with the Tautog Plan.

Chairman Ewing concurred. He recommended letting the ASMFC Tautog Board react to the Council's position before making any further decisions.

Mr. Berg indicated that the Tautog Technical Committee was not comfortable with the methodology used in New Jersey's analysis. Mr. Berg stressed that Mr. O'Shea had indicated how serious this matter was to the ASMFC. Mr. Berg believes that the Tautog Board will find New Jersey out-of compliance with the plan at the February meeting.

Shellfish Council Reports

Delaware Bay Shellfish Council Report

Delaware Bay Council report was presented by Mr. Hollinger.

2007 Direct Market Oyster Program Update

The natural oyster seed beds in the Delaware Bay officially closed on November 16, 2007 after being open for 33 weeks. Of the total allowable catch of 86,875 bushels, 81,353 bushels (94%) were reported as being harvested. This was the highest harvest since 2003 and was the fourth highest harvest since the start of the direct market program in 1996. There were 74 boats that participated in the fishery and the final quota per boat was 1,171 bushels. The average catch per effort in 2007 (for both one and two dredge vessels) was 66.5 bushels/day, down slightly from 68.9 bushels/day in 2006. With the average dockside value for Delaware Bay oysters in 2007 at \$43/bushel, the 2007 harvest had a dockside value of nearly \$3.5 million.

2007-2008 Oyster Tonging Season

The oyster tonging areas on the Delaware Bay are open for harvest. There has consistently been a small fleet of boats working the Maurice River cove tonging area (8-17 boats). The Nantuxent cove tonging area has had less pressure with only 2 to 5 boats working on it. License sales and harvest activity on the tonging area at the mouth of the Maurice River have increased significantly over the last few years since the Bureau has coordinated intermediate transplants from the Maurice River and one Delaware Bay

seedbed onto the tonging area. For example, only 29 tonging licenses were issued in 2004 compared to approximately 200 in 2007. This program has provided economic benefits to the oyster industry, particularly to hand-harvesters who do not have oyster dredge boat licenses and other hand-harvesters after the Direct Market Program ends. These beds are located in Seasonally-Approved waters which are open for harvest from November 1-April 1 each year.

Annual Oyster Stock Assessment Workshop

On February 4-6, 2008 the tenth annual Delaware Bay Oyster Stock Assessment Workshop will be held at the Haskin Shellfish Research Laboratory (HSRL) in Bivalve, NJ. Workshop participants and committee members review the quantitative status of Delaware Bay's oyster resource based on the fall random survey ('07). This survey is currently being prepared by HSRL staff. This committee makes harvest allocation recommendations and will formulate various management schemes for the 2008 oyster fishery.

Atlantic Coast Shellfish Council Report

The Atlantic Coast Shellfish report was presented by Mr. Maxwell

Mr. Maxwell indicated there was no report since the Council has not met. He commented that Title 50 has been an eleven year process.

Mr. Joseph updated the Council on the status of adoption of amendments to the shellfish statutes (Title 50), which we anticipated to be adopted in January, 2008. One of the key changes will be the removal of the current prohibition on leasing in a specific area of the lower bay below the Clam Line. That change will allow us to establish an aquaculture development zone (ADZ) where people will be able to employ some aquaculture practices with structures requiring permits. As you may recall, the Division obtained those state and federal permits a couple of years ago and rather than wait for regulations to be developed, Assistant Commissioner Cradic proposed the use of an expanded leasing document for the ADZ's, which is currently being reviewed by the Attorney General's Office. As soon as that review is complete, we would be able to lease that area of the lower Delaware Bay. Finally, the Aquaculture Advisory Council Meeting that was originally scheduled to occur in late January has been cancelled so that the Aquaculture Advisory Council's Leasing Committee can meet to discuss some of these ADZ and traditional lease issues as soon as the Attorney General's office review is complete.

Ms. Puskas asked when the Aquaculture Advisory Council would be meeting.

Mr. Joseph replied the AAC meets quarterly: January, April, July and October. The January meeting has been cancelled and, alternatively, the AAC Leasing Committee will be meeting to discuss key issues related to the establishment and use of the ADZs as well as traditional shellfish leases. Presumably, the AAC will meet again formally in April.

Mr. Berg asked where the “Clam Line” was in the lower bay.

Mr. Joseph indicated that the “Clam Line” is located near Pierce’s Point immediately downbay of the Rutgers Cape Shore Laboratory. It runs basically east/west. The area below the Clam Line (including Areas 1, 2, and 3) was established decades ago as being off limits for leasing so that they would remain open for public use. Because of the declining resources in those areas, there was a proposal to put an ADZ below the Clam Line in Area 1. Surveys of the area were conducted a few years ago and Area 1, an inshore area which had been set aside for tongers only, contained extremely limited shellfish resources, so establishing an ADZ there would not impact any existing harvesters. Now some of the aquaculturists can expand operations in that area (once Title 50 is amended). The Division has already obtained State and Federal permits on their behalf.

Mr. Hollinger asked when the Leasing Committee will meet?

Mr. Joseph indicated a date had not been set. The Division is waiting for the final document to come back from the AG’s office and then a meeting will be set up.

Committee Reports

Mr. McCloy indicated that due to the scheduling conflicts there were no Committee meetings since the November Council. He will attempt to set-up the ones requested by Council in November, Executive and Eel Committees. He indicated there will also need to be a Summer Flounder Committee meeting to develop recreational options for the 2008 season.

Regulatory Updates

Regulatory Adoption/Proposals

Mr. Himchak informed the Council that the marine fisheries multi-species regulatory proposal that was developed throughout 2006 and 2007 was adopted and will appear in the January 7, 2008, New Jersey Register. He briefly mentioned the major amendments effective on publication, i.e. the allowance of parts of one legal sized summer flounder to be used as bait in the recreational fishery, mandatory reporting for miniature fyke net license holders to primarily document American eel commercial landings, the transferability of American shad permits among immediate family members, capping the number of Atlantic coast crab dredge licenses at 250, and most significantly, adoption of the provision whereby the Commissioner, with the approval of the Council, has the authority to modify commercial fisheries’ trip limits by Notice of Administrative Change for optimum utilization of a fishery’s commercial quota.

Council was then notified that the Notice of Administrative Change that included implementation of American lobster recreational and commercial maximum size limits for male lobsters at 5 ¼ inches, modification of the minimum size limit of the V-shaped notch of a female lobster bearing a V-shaped notch, changing the recreational weakfish possession limit from 8 to 6 fish, and changing the November 1 through December 31 scup commercial fishery trip limit from 6,500 pounds to 3,500 pounds was signed by the Commissioner December 13, 2007 (effective on signing) and will also appear in the January 7, 2008, New Jersey Register. The importance of adopting these amendments to regulations was that now New Jersey was in compliance with the ASMFC interstate fishery management plans for American lobster, weakfish, and scup.

Mr. Himchak then advised Council that since the 2006-2007 multispecies regulatory proposal was being adopted January 7, 2008 and the Commissioner would then have the authority to modify commercial fisheries' trip limits for optimum utilization of a commercial quota, the Notice of Administrative Change, already approved by Council at their November 1, 2007 meeting, modifying seasonal trip limits for summer flounder and black sea bass, would move forward through legal review and subsequent adoption.

The Council was notified that staff planned to have the first Draft of the marine fisheries 2008 multi-species regulatory proposal, including all summary and impact statements, completed by January 31, 2008. Handout 6 in the Council's packets was referenced since it was the regulatory language of the 2008 multi-species regulatory proposal under development.

Old Business

Mr. McCloy directed Council's attention to a DVD in their handout folders. The DVD shows fish utilization of the "Redbird" subway cars deployed.

Mr. Rizzo inquired where New Jersey was in relation to accepting the recently available stainless steel subway cars.

Mr. McCloy indicated that it was New Jersey's intent to accept 600 subway cars for reefing. The Department is currently in the process of revising the Reef Plan to authorize their acceptance.

New Business

Horseshoe Crab Proposal

Mr. Himchak gave an overview of the Department's proposal for a continued moratorium on the harvest of horseshoe crabs. He referenced a copy of the proposal and a letter from Director Chanda in Council handouts (4a, 4b). The letter documented recent

activities and meetings of Division staff on horseshoe crabs and shorebirds as well as highlighting the many Division activities performed over the years to protect and enhance the Delaware Bay ecosystem with the goal of increasing populations of horseshoe crabs and shorebirds. The Council received a copy of the official New Jersey Register published proposal on December 14, 2007 which commenced their 60-day review period. Their 60-day period ends on February 11, 2008.

Mr. Goldman expressed his concern about the moratorium not having a sunset.

Director Chanda indicated that all regulations are required to be reviewed every five years. This just recently occurred so the rules need to be reviewed within 3-4 years.

Mr. Berg asked when the public comment period ended and was told February 1, 2008.

Mr. Herb also expressed his concern that the proposal had no sunset date for the moratorium. He also would prefer not to make a decision in the middle of the comment period. He asked how many comments had been received to date. Mr. Himchak indicated only one comment had been received.

Mr. Herb advocated not taking any action until the public comment period closed. Director Chanda agreed.

Mr. Herb asked if the Council made a motion at this meeting, what would be the process to change it at the next meeting.

Chairman Ewing responded that if the Council took action at this meeting that action would be final (the next regularly scheduled meeting is March 6, 2008).

Mr. Berg suggested scheduling another meeting just to address Horseshoe Crabs after the close of the comment period but before the end of the Council's review period. Either February 8 or 11, 2008.

Public Comment

Mr. Siciliano thanked Enforcement for their efforts on tautog. He asserted that anglers exceeding the possession limits are NOT recreational.

Mr. DiDomenico inquired about what Council had to do to implement the revised trip limits for summer flounder and black sea bass.

Mr. Himchak explained that the Council had already taken the necessary action at the November Council meeting. To implement the revised trip limits the Department needs to adopt the current proposal (anticipated adoption January 7, 2008) and then have the Commissioner approve the Council's recommendation in the Notice of Administrative Change that Council approved in November

Mr. DiDomenico asked about making in season adjustments to the trip limit.

Mr. McCloy responded that the process to change trip limits must still go through the Council at one of their meetings. Season to season adjustments can be made but because of the length of the various seasons (2-3 months) inseason adjustments are not really practical.

Mr. DiDomenico asked if the Division could enforce a tautog moratorium and Chairman Ewing responded in the affirmative.

Mr. Wagner expressed his opinion that New Jersey fishermen had nothing to gain by not complying with the ASMFC tautog requirements. He further stated that the illegal tautog fishery could be curtailed by only allowing the sale of live tautog by commercial permit holders. He also advocated a buyers license be implemented.

Mr. Wagner expressed his dismay that the “flexibility” of the regulations to change trip limits would not work for sea bass.

Mr. DiDomenico suggested that the commercial fishery come into compliance with the ASMFC tautog plan.

Mr. Himchak clarified that even if the commercial fishery was in compliance and the recreational was not, a moratorium would apply to all fisheries for tautog.

Mr. Givens questioned Director Chanda on the substance of the letter he sent to Council regarding the shorebird/horseshoe crab issue. He asserted that the letter had not included scientific publications.

Director Chanda invited Mr. Givens to provide the Council with any information he felt was pertinent to the issue.

Mr. Dillingham (American Littoral Society) commended Council for scheduling a special meeting for the horseshoe crab proposal. He requested Council support the proposal.

Mr. Stiles (NJ Audubon) encouraged Council to support the horseshoe crab proposal.

Mr. Oates referred Council’s attention to comments from Dr. Schuster on the horseshoe crab proposal that Mr. Oates provided to Council during the meeting.

Chairman Ewing reminded everyone that if they wanted their comments on the horseshoe crab proposal to be part of the public record they needed to send their comments to the Department at the address listed in the New Jersey Register copy of the proposal. (Copies were available on the back table).

Mr. Flimlin announced a workshop to be held at the Tuckerton Seaport on January 25, 2008. The focus of the workshop will be the best management practices for shellfish aquaculture.

Dr. Dey (Bureau of Endangered and Non-Game Species) addressed Mr. Given's comments regarding the letter Director Chanda had sent to Council members on the horseshoe crab/shorebird issue. She indicated one of the publications discussed in the letter was the red knot status assessment that is available on-line. The other is a manuscript submitted to the journal *Bioscience* and currently in review. It had not been accepted for publication as of this meeting. Dr. Dey indicated the manuscript contains the same trend data that is provided in the red knot status assessment with the addition of the most recent (2007) data. She offered to provide that information to Council. Dr. Dey explained the sampling program for horseshoe crab egg densities.

Mr. Rizzo asked how the harvest of 100,000 male crabs (ASMFC recommendation) would effect egg densities.

Dr. Dey responded that the harvest of Delaware Bay breeding crabs during their non-breeding season, when they are located in other areas outside of Delaware Bay, have an impact on egg densities inside the Bay. She further explained the breeding behavior of the horseshoe crabs and the uncertainty about how many males are necessary to achieve sufficient fertilization and maintain genetic diversity of the female eggs.

Mr. Rizzo asked what responsibilities Dr. Dey had as the "rule manager" for the proposal.

Director Chanda indicated that every rule the Department does has a rule manager assigned to follow the paperwork through the system. Ms. Dey was assigned to this rule because of her expertise with shorebirds.

Mr. Hollinger asked if there had been any studies looking at correlations between egg density and beach loss. Dr. Dey was not aware of any.

Mr. Hollinger expressed his continued concern that this information has not been researched. He asserted that the continued loss of beaches will ultimately result in no habitat for the horseshoe crabs to lay eggs and therefore, no food for the birds.

Dr. Dey agreed that loss of beaches is of concern but expressed her belief that the amount of suitable spawning beaches is not a limiting factor at this time.

Mr. Rizzo asked for an update on the pending horseshoe crab lawsuit (from the 2006 horseshoe crab moratorium rule). Mr. Himchak responded that oral arguments were scheduled for February 6, 2008.

Meeting adjourned.