

**NEW JERSEY MARINE FISHERIES COUNCIL**  
**Galloway Township Library**  
**Galloway, New Jersey**  
**May 13, 2010**

In Attendance were: Chairman Gilbert H. Ewing, Jr.  
Councilman Erling Berg  
Councilman Patrick Donnelly  
Councilman Edward Goldman  
Councilman Richard Herb  
Councilman Walter L. Johnson III  
Councilwoman Frances Puskas  
Councilman Joseph Rizzo

Absent: Councilwoman Eleanor Bochenek  
Councilman Scott Bailey

Also in attendance representing the Division of Fish and Wildlife:

David Chanda, Director  
Thomas W. McCloy, Administrator, Marine Fisheries Adm. (MFA)  
Brandon Muffley, Chief, Bureau of Marine Fisheries  
Peter Himchak, Supervising Biologist, (MFA)  
Lt Fresco, Bureau of Law Enforcement  
Jeffrey Brust, Research Scientist, MFA  
Russ Babb, Supervising Biologist, Bureau of Shellfisheries  
Mike Celestino, Principal Biologist, Bureau of Shellfisheries  
Sherry Bennett, Council Secretary

Ms. Bennett read the compliance with the Sunshine Law. Notice of meeting was filed with the Secretary of State on May 5, 2010.

Chairman Ewing began the meeting with the Pledge of Allegiance. Chairman Ewing commented that immediately following the Council Meeting, the Division is holding a public hearing on the shark proposal. Therefore, the Council meeting will need to be concluded by 6 pm.

Mr. Herb made a motion for approval of January 7, 2010 and March 4, 2010 meeting minutes. Mr. Goldman seconded. Motion passed for approval on both meeting minutes.

**Audience Conduct**

Chairman Ewing reminded the audience to take private conversations outside or wait until the end of the meeting. If you wish to speak or make a public comment there are sign up sheets at the front table. Please wait until your name is called and come to the front of the room before speaking.

Chairman Ewing, on behalf of the Council, extended condolences to Councilman Bailey and his family on their recent loss.

### **Law Enforcement Report**

Lt. Fresco presented the Law Enforcement Report.

#### **District 7 Highlights February – March 2010**

A CO recently settled a case against the F/V Jaime Mae, a commercial trawler out of Point Pleasant. The CO originally apprehended the vessel with over by-catch limit of summer flounder and possession of striped bass caught with a net. Through a plea agreement, the owner/captain of the vessel paid \$1,000.00 for the summer flounder violation, \$500.00 for taking striped bass with net and \$200.00 for possession of undersized striped bass. There is also a mandatory suspension of the vessel's summer flounder landing permit for a period of 60 days beginning May 2, 2010.

Acting on information and the recent explosion of striped bass activity in the Raritan Bay COs set up early morning patrols centered around the high tide. On March 22, 2010, COs apprehended three fishermen in possession of undersized striped bass. Some of these fishermen had the fish hidden in their motor vehicles. The officers also checked compliance with the federal saltwater fishery registry. Compliance was very good.

A CO recently settled a case in Atlantic Highlands Court involving the apprehension of four depuration clammers working in prohibited waters. All defendants pleaded guilty and were assessed a \$500.00 fine for the prohibited waters charge as well as a three year suspension of their shellfish licenses and permits. Other associated penalties were assessed to those clammers who failed to display their depuration signs; and failing to exhibit their licenses and permits to the CO.

District 7 COs continue to notify fishermen by providing all marine fishermen they inspect with printed information regarding the federal saltwater fishery registry.

#### **District 7 Highlights March – April 2010**

During this report period the COs settled two commercial cases. The first occurred in Little Egg Harbor Township Municipal Court and involved an eel pot fisherman who was charged with tampering with eel pots. It was discovered by COs that this individual was utilizing another fisherman's eel pots and claiming as his own. The fisherman pleaded guilty and paid a penalty of \$1,000.00 plus cost. The pots were returned to the rightful owner.

In a separate case in Barnegat Light Municipal Court, the captain of the F/V Karen L pleaded guilty to exceeding the black sea bass trip limit by 113 pounds. A \$300.00 penalty was assessed along with 60-day suspension of the vessel's black sea bass landing permit.

A complaint from the Borough of Union Beach PD was submitted in reference to a fisherman who illegally possessed striped bass. COs met the apprehending patrolman

who seized three striped bass from the fisherman. The angler was issued a summons for exceeding the bag limit and another for possessing undersized striped bass.

### **DISTRICT 8 HIGHLIGHTS - MARCH 2010**

A CO observed a fyke net illegally set within the Collins Cove closed section of the Mullica River. Investigation of the net by boat revealed the net did not bear the fisherman's gear identification number as required by law. After a day or two of surveillance, the CO observed the fisherman tend the net. Following an interview, the fisherman admitted that he had a total of five nets set in the river. The CO checked the other nets and found that they also lacked gear identification markings. The fisherman was ordered to immediately remove the net within the closed area, and mark his remaining nets. The CO issued the fisherman a summons for failing to properly mark his gear and a warning for the placement of the fyke net within the Collins Cove boundary.

On March 7, 2010, a CO boarded the F/V Capt. Charlie in Wildwood as it returned from a crab dredge trip in the Delaware Bay. As a part of the crab dredge fishery, harvesters are allowed to retain and land conch as a by-catch. This season has produced large numbers of conch landed from this fishery. Upon boarding this vessel, the CO documented over 30 conchs, which measured, less than the 5 inch minimum size. The appropriate summons was issued to the captain of the vessel.

### **DISTRICT 8 HIGHLIGHTS - APRIL 2010**

COs assisted NMFS Special Agents with the recovery and seizure of nearly 1,200lbs of sea scallops illegally sold from a commercial scallop vessel, which landed in Cape May. The Captain and the crew of the scallop vessel landed and sold 1,200lbs of shucked sea scallops to a non-permitted restaurant/bar, the Pic-A-Lilli Restaurant in Shamong Twp., Burlington County. This illegal sale by-passed Atlantic Capes Fisheries, the owner of the dock and vessel, as well as a federally permitted scallop dealer. The sea scallops landed and sold were easily identifiable since they were in a spawning phase causing them to take on orange or "pumpkin coloration". From the dealer's standpoint, these scallops are not marketable. The dock/dealer had requested that their vessel not land them due to difficult marketability of the discolored product. The vessel's crew instead sought out an illegal market for the scallops, which provided a cheaper supply for the bar.

This unique color phase also aided officers in their inspection of the restaurant. The owners of the Pic-A-Lilli Bar recognized this and cooperated with the seizure of the scallops and subsequent investigation initiated by the SA. This investigation is continuing and federal charges are pending.

COs observed that the F/V Western Explorer had completed their offload of sea scallops to Lund's Fisheries in Cape May. The CO boarded the vessel at the dock after the offload. During his inspection of its federal paperwork and the fish hold of the vessel, he found one remaining 50 lb bag of scallops, which had not been recorded on the vessel's logbook. The CO suspected that this bag of scallops had not been included in the vessel's offload either. Since the captain had left the vessel to get supplies at a local hardware store, the CO asked the crew about the bag of scallops remaining on the vessel.

None of the crewmembers could provide an explanation for the “oversight”. The CO contacted the captain and requested he immediately return to the vessel. On his way back to the vessel the captain contacted Lund’s Fisheries and asked them to alter the offload documents to include the bag. Upon his return to the vessel the captain attempted to conceal the extra bag with the fictitious story. Currently, both the CO and a SA of NMFS are investigating both Lunds Fisheries and the captain of the F/V Western Explorer for interference, making false statements and falsification of dealer reports.

On April 10, 2010, a CO issued a summons to a commercial clammer in Middle Twp. that had harvested and possessed 270 undersized hard clams out of 800 harvested; 33% undersized. The law allows for a 3% tolerance for compliance of the size limit. Some of the clams possessed measured as small as 1/2". The clammer blamed it on his rake that he used to harvest. He also said he forgot to cull his catch before transporting his clams. The appropriate summons for undersized clams was issued.

CO Petruccelli was named 2009 New Jersey Conservation Officer of the Year. This award is presented separately by two organizations: Shikar Safari Club and the Northeast Wildlife Chiefs’ Association. Congratulations to CO Petruccelli for this honor commemorating his outstanding commitment to the protection of New Jersey’s Fish and Wildlife resources.

Mr. Rizzo asked about the fine for eel pots. Lt. Fresco commented that a violation for tampering with eel pots was \$1,000, falling within the range prescribed by N.J.S.A. 23:2B-14.

Dr. Donnelly asked who enforces fishing in the EEZ, the USCG or Division? Lt. Fresco said recently USCG has been investigating the EEZ in regards to fishing for striped bass.

Chairman Ewing congratulated Officer Petruccelli for receiving the award for the 2009 New Jersey Conservation Officer of the Year.

### **Legislative Report**

Mr. McCloy presented the Legislative Report. He brought Council’s attention to two handouts as follows:

- SCR93/ACR119 is a bill authorizing creation of a State lottery to fund conservation programs.
- SR56 urges FDA and the Interstate Shellfish Sanitation Conference to work collaboratively to improve shellfish safety.

Dr. Donnelly inquired about the specifics of the SCR93, lottery bill. Mr. McCloy responded that SCR93 (and the Assembly companion), if passed, would be placed on the November ballot for the public to vote on. If the public approves in November, he

anticipates that additional legislation, with specifics, will need to be drafted and go through the legislative process.

Ms. Puskus asked if this is an additional lottery for NJ. Mr. McCloy responded yes.

Mr. Rizzo voiced his concern with regards to what the exact specifics are for this bill. Mr. Rizzo asked Council's approval to contact Mr. Van Drew (Sponsor) and invite him to the next Council meeting for his explanation of SCR93. Council agreed.

Ms. Puskus queried Director Chanda on his thoughts on this bill. Director Chanda responded that it is a good idea for the Council to be informed as to the specifics of how this bill will fund conservation. Getting this bill on the ballot for November is important to see how the people feel about it too, especially if it will help NJ's conservation needs.

#### **Atlantic States Marine Fisheries Commission (ASMFC) Report**

Mr. McCloy presented part of the ASMFC report. He brought Council's attention to Handout #4.

#### **Summer Flounder, Scup and Black Sea Bass Management Board**

ASMFC approved the expansion of the black sea bass recreational season. May 22 to October 11, 2010 and from November 1 to December 31, 2010. The NMFS has not adopted this new season, but has been requested to have the same season.

#### **Weakfish Management Board**

The Weakfish Management Board reviewed the status of state implementation of Addendum IV to Amendment 4. North Carolina did not implement the requirements (one fish recreational bag limit, 100 lb. commercial trip limit, 100 lb. commercial by-catch limit) by May 1, deadline, and instead submitted a proposal for alternative management. North Carolina was found to be in non-compliance by the Weakfish Board. The ASMFC will be notifying the Secretaries of Commerce and Interior of the Weakfish Board's findings.

#### **Atlantic Striped Bass Management Board**

ASMFC Striped Bass Board approved Draft Addendum II to Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass for public comment. The Draft Addendum proposed two changes to the striped bass management program: (1) an increase in the coastal commercial quota, and (2) revising the definition of recruitment failure.

The Board also approved NJ's recreational proposal (2 fish creel limit, with a minimum size limit of 24 inches for one fish and a minimum size limit of 32 inches for the other fish) with the requirement that the Technical Committee re-evaluate whether the alternative measures are still conservationally equivalent three years following implementation. The Legislative must take action to make this change in NJ.

Dr. Donnelly asked if Council could be more restrictive than the approved proposal. Mr. McCloy responded if the Council wishes too, but it would have to go back to the ASFMC first.

Mr. Goldman asked how the commercial quota would be affected with the Bonus program. Mr. McCloy responded that under the draft addendum, NJ's commercial quota (which is used for the Bonus Program) would increase by whatever level other states' commercial quota is increased.

Mr. Himchak brought Council's attention to the following section of the ASMFC Report. (Handout #4)

#### **American Lobster Management Board**

Due to the serious condition of the Southern New England (SNE) stock, the Board initiated the development of a draft addendum to address stock declines, including a range of alternatives from 'no action' to a 'moratorium'. Mr. Himchak indicated that NJ has great lobster sampling for the past two years and hopes this information can be used to lessen any impacts to NJ lobster fishermen.

#### **Atlantic Herring Section**

After extensive deliberations, a motion to move forward with exemptions in Draft Addendum III failed. This addendum would have allocated additional quota to the small mesh bottom trawl vessels.

#### **Horseshoe Crab Management Board**

Draft Addendum VI has been approved for public comment. This Draft Addendum VI contains options for a Delaware Bay region management program after the current addendum measures expire on October 31, 2010. North Carolina's quota transfer request of 11,655 crabs from Georgia was approved.

#### **Atlantic Menhaden Management Board**

The Atlantic menhaden benchmark assessment indicates that the stock is not overfished but shows signs of concern. As a result, the Technical Committee was asked to develop new reference points to increase protection to the spawning stock and consider alternative reference points that account for predation on menhaden.

#### **Spiny Dogfish & Coastal Shark Management Board**

Until the 2010 Shark Proposal is adopted, NJ will remain out of compliance with the Coastal Shark Plan. Discussion occurred on the need to initiate an addendum proposing state allocations of the spiny dogfish quota to allow states to manage their fishery that meets states individual needs.

Mr. Rizzo asked if the lobster landings were based on state or federal waters or includes both. Mr. Himchak responded landings are from both, but NJ landings are predominately from federal waters.

Mr. Rizzo inquired about the horseshoe crab quota transfer in Addendum II. Mr. Himchak responded that the transfer of quota was designed to be within the same population of crabs.

Dr. Donnelly asked if the potential five year moratorium would impact recreational lobstermen using a recreational lobster pot license which allows them to set 10 lobster pots.

Mr. Himchak responded that there are no data quantifying this recreational harvest of lobsters and if a moratorium is required on the commercial lobster pot fishery, it would be hard to justify allowing recreational harvest to continue.

Ms. Puskus asked if the skin divers keep records on the lobsters caught and where their records come from. Mr. Himchak responded that the Reef Program does have some data on skin diver harvest of lobsters on the State's artificial reefs.

### **Mid-Atlantic Fishery Management Council (MAFMC)**

Mr. Berg presented Council with the MAFMC Report. Handouts 5a-c.

The MAFMC discussed and acted on NMFS Emergency Rule for the 2010 black sea bass fishery, convened a public workshop on research set-aside program, conducted public hearings for Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan and Amendment 5 to the Monkfish FMP, and selected risk alternatives for its annual catch limit/accountability measures (ACL/AM) omnibus amendment.

Amendment 11 to the Squid, Mackerel and Butterfish (SMB) was delayed. The ACL/AM Omnibus Amendment was approved for public hearings. Mr. Berg also reported on Amendment 5 to the Monkfish Plan.

### **Shellfish Council Reports**

#### **Atlantic Coast**

Mr. Babb presented the Atlantic Coast Shellfish Council report on behalf of the Council. A one-week oyster harvest season was scheduled for the Mullica River / Great Bay oyster beds from May 10 to May 15, 2010.

#### **Delaware Bay**

Mr. Babb presented the Delaware Bay Shellfish Council report, in Mr. Bailey's absence.

#### **2010 Delaware Bay Oyster Harvest Season**

The Delaware Bay Direct Market Oyster Season started on April 5, 2010. Approximately 16,000 bushels have been harvested to date. The catch per unit effort is 69 bushels, which is slightly higher than the average for last year at this time up from 64 bushels. Twenty-eight vessels have participated to date fishing a total of approximately 224 boat days. The Shell Rock and Ship John seedbeds have provided the bulk of the harvest.

### **Delaware Bay Oyster Fishery – Intermediate Transplant Program**

The 2010 total allowable catch had initially been set at approximately 48,000 bushels. The Division recently completed the coordination of a three-week transplant program, which moved nearly 40,000 bushels of oysters from the underutilized portions of the upper bay seed beds to the primary direct market beds. This program has increased the industry quota by approximately 27,000+ bushels for a total 2010 industry quota of approximately 75,000 bushels.

## **Committee Reports**

### **Executive Committee Meeting Report**

Dr. Donnelly presented the Executive Committee Report. Handout #6.

The Executive Committee met with recreational advisors and Division staff on April 21, 2010 to discuss the Council approved motion (January 7, 2010 meeting) to explore a recreational saltwater fishing license and other funding options for the Division's Marine Fisheries Administration.

The Committee and advisors had a tremendous amount of open discussion with a lot of good ideas being presented and subsequent questions were addressed. Everyone was in agreement that the Marine Fisheries Administration was severely under-funded and it is in the best interest of the fishing community (recreational and commercial) that Marine Fisheries is properly funded.

Numerous funding ideas were presented and discussed and four funding options were agreed upon as the most viable and realistic. The four options are as follows (not in any particular order): increase in the state appropriation, conservation license plate, recreational saltwater license and a Conservation Lottery.

There was discussion as to the pros and cons of each of these options and it was determined that there is merit to all of them. Advisors did not agree on which option was the best, but most agreed that it is unlikely that any one option will be the magical solution and in order to fund Marine Fisheries it will likely require many, or all, of these options to come to fruition.

The Executive Committee then discussed all of these options and determined a second Committee meeting was necessary to discuss the details of these various options. They would like the proponents of the various options to develop and provide to the Committee, prior to the next meeting, a detailed proposal on the options so they can review and be prepared with questions and concerns about each of the options. The Executive Committee would like to meet again with advisors sometime in late May to early June so they can provide a recommendation to the full Council at the July meeting.

Mr. Berg confirmed that the Committee would be presenting to Council a proposal for each of the four options at the next Council meeting. Dr. Donnelly agreed.



### **Regulatory Updates**

Mr. Muffley brought Council up to date on the regulatory issues. The 2009 Regulatory Proposal is still awaiting approval. Mr. Goldman asked if any feedback has been communicated on how regulations are prioritized. Mr. Muffley responded no feedback has been communicated from DEP.

Dr. Donnelly asked if anything had been deleted from the proposal. Mr. Muffley indicated that the shark provisions had been pulled out and put forward as a separate proposal due to the pending moratorium.

Mr. Muffley brought Council's attention to Handout #7 which deals with the NAC in regards to modification of black sea bass, large coastal sharks and summer flounder recreational seasons, weakfish recreational possession limits and weakfish commercial trip limits. The NAC was approved by the Council in March and appeared in the NJ Register on April 19, 2010.

Mr. Muffley brought Council's attention to Handout #8, the NJ Register copy of the shark and smooth dogfish proposed amendments at N.J.A.C 7:25-18.1 and 18.12. The proposal was published in the NJ Register on April 5, 2010. Mr. Muffley advised Council that their 60-day review period began as of today's Council meeting. It is the Department's intention to adopt the proposal by July 19, 2010 to avoid a moratorium on New Jersey's shark fisheries.

Mr. Muffley brought Council's attention to Handout #9, which is a draft NAC on the new recreational black sea bass season approved by ASMFC and the lobster escape vent size increase, also an ASMFC compliance measure.

Dr. Donnelly made a motion for approval of the draft NAC for the recreational black sea bass season to be open May 22 to October 11, closed on October 12 to October 31 and reopen again on November 1 through December 31, 2010 and to increase in the lobster pot escape vent size as reflected in the NAC.

Mr. McCloy commented that the change in lobster pots only applies to Area 3, the offshore area and not Areas of 4 or 5.

No one from the public offered any comment on the motion.

Motion was approved.

### **Old Business**

Director Chanda read a letter that was sent to Dr. Bochenek regarding the Division Scientific Collection Permit to accompany the Federal Research Set Aside (RSA) Permit. The Department will be issuing the permit for 2010 but still has concerns that will be

evaluated during the coming year. There is no guarantee the permit will be issued in future years.

Mr. McCloy brought Council's attention to Handouts #10, #11, and #12.

Handout #10 is the Federal Register Notice dated April 27, 2010 stating how NJ was found out of compliance with the ASMFC Shark Plan and the NJDEP timetable for implementing these regulations.

Handout #11 is a letter from NMFS Northeast Regional Administrator Kurkul, in response to Council's letter expressing concerns about the RSA program.

Handout #12 summarizes the East Coast states 2010 recreational management measures for summer flounder, scup and black sea bass. The sea bass provisions were those in effect prior to the ASMFC's action to change the recreational black sea bass season.

Mr. Goldman brought Council's attention to Handout #13 regarding the Flexibility Act. This is draft letter written to Senator Lautenberg requesting his support of S.1255, the Senate companion bill to the Flexibility in Rebuilding American Fisheries Act 2009. Upon conclusion of reading this letter Chairman Ewing requested if he could help Mr. Goldman with some adjustments before sending. Mr. Goldman agreed. Chairman Ewing thanked Mr. Goldman for initiating this letter.

### **New Business**

Mr. McCloy brought Council's attention to Handout #14a regarding a draft letter from Council to be sent to NMFS requesting that NMFS adopt the identical provisions as the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board for the 2010 recreational black sea bass fishery. Council approved the letter.

Mr. Muffley informed the Council about a letter they received from the Fishermen Energy Wind Farm, stating they are submitting an application for a permit to erect six windmills approximately 2.8 nautical miles off of Atlantic City.

Mr. Rizzo asked if the menhaden bill, S1140, is being heard? Mr. McCloy responded it was scheduled for the Senate Environment Committee.

### **Public Comment**

Mr. Budd requested Council enable him to exchange his horseshoe crab permit for another fishery, such as gill nets. Chairman Ewing responded Council would take that under advisement and contact him (It would require a regulatory change).

Mr. Nowalsky thanked Council for all their help on the recreational black sea bass season. He further commented that the letter to federal legislators on the 'Flexibility Act' needs to be strongly worded. He encouraged Council to send a letter to the NJ Senate

and Assembly Appropriations Committees requesting a greater appropriation for the marine fisheries budget.

Mr. Rizzo is concerned with the timing for the Council to have an impact with the Appropriation Committees since the budget must be set by July 1<sup>st</sup>. Dr. Donnelly said the letter would have the opportunity to address his concerns on the budget if the letter is sent soon.

Mr. Rizzo made a motion for the Council to draft a letter concerning the budget. Council approved sending the letter.

Mr. Nowalsky also invited Council to attend a public hearing on May 18<sup>th</sup>, 2010. The hearing involved annual catch limits and accountability measures (ACL/AM). He commented that Federal waters could close for recreational fishing on September 1, 2010. This shut down could have been avoided if MRFSS data wasn't so faulty.

Mr. Gutman thanked Council for the work on black sea bass. He expressed his concerns on the Omnibus Amendment (ACL/AM's) and expressed his concern on how bad these September 1<sup>st</sup> closures will be. Secondly, he commented on the RSA. He offered to work with whoever would be setting up conditions of the permit. Last year he was required to collect information on discarded fish. He reminded everyone that the participants in the RSA were tasked with funding research, not collecting scientific data.

Mr. Berg commented that the Omnibus Amendment can be found on the MAFMC website.

Mr. VanDaley asked when the next Executive Committee meeting would be held on the proposed options to help fund the Marine Fisheries Administration. Dr. Donnelly said a letter would be sent out when announced.

Meeting adjourned.

Next Meeting is July 8, 2010, Galloway Township Library.