

**NEW JERSEY MARINE FISHERIES COUNCIL**  
**Basto Village, Nature Center**  
**Basto, New Jersey**  
**November 14, 2012**

In Attendance were: Acting Chairman Richard Herb  
Councilman Erling Berg  
Councilwoman Eleanor Bochenek  
Councilman Sergio Radossi  
Councilman Joseph Rizzo  
Councilman Robert Rush  
Councilman Joseph Zaborowski

Absent:  
Councilman Scott Bailey  
Councilman Walter L. Johnson III  
Councilwoman Frances Puskas

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 (BMF)  
Russ Babb, Acting Chief, Bureau of Shellfisheries  
Captain Dominick Fresco, Bureau of Law Enforcement  
Russ Allen, Supervising Biologist, BMF  
Peter Himchak, Supervising Biologist, MFA  
Sherry Bennett, Council Secretary

Ms. Bennett read the compliance with the Sunshine Law. Notice of the meeting was filed with the Secretary of State on November 8, 2012. Meeting Minutes from the September 6, 2012 Council Meeting were approved.

**Audience Conduct**

Acting Chairman Herb reminded the audience to take conversations outside or wait until the end of the meeting and to turn off all cell phones. Individuals wishing to make a public comment will need to sign up.

**Law Enforcement Report**

Captain Fresco presented Council with the Law Enforcement Report. A detailed report was provided in Handout #1.

During the period between August 23<sup>rd</sup> and September 1<sup>st</sup> depuration clambers were issued summonses for harvesting hard clams by the use of power in the Sandy Hook Bay. In the special restricted waters of the Shark River numerous summonses were issued for clamming without a shellfish license, clamming after sunset, clamming in special

restricted waters and possession of undersize marine fish. In addition one individual faces enhanced penalties and jail time since this was the individual's second incident for harvesting shellfish from restricted waters.

With many multiple Atlantic menhaden spills occurring in Cape May County in September, CO's met with Cape May boat operators to review the regulations, effects and consequences from spilled fish. Two summonses were issued to two different Captains for spilling dead fish from a purse seine net, one for failure to initiate clean-up within 24 hours of releasing fish. As per regulation, a license holder is responsible for all costs associated with the clean up, in this one case, \$706.50. In another instance an ongoing investigation is being conducted among five different purse seine vessels. No Captain has taken responsibility for the spilled fish. However, a local fish dealer has volunteered to repay the municipalities for the cost incurred for the clean-up.

During the period between September and October recreational fishing regulation violations from Raritan Bay to Delaware Bay consisted primarily of sublegal size and over the limit summer flounder, weakfish, striped bass, black sea bass, scup and tautog. Most of the violations involved striped bass and tautog.

### **Legislative Report**

No activity at this time.

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

Mr. Himchak presented Council with a summary of ASMFC Annual Meeting which is presented in Handout #2.

Mr. Himchak reminded Council that the Atlantic Coastal Cooperative Statistics Program (ACCSP) has been funding programs in NJ that support monitoring of various species. NJ has relied on this funding source since 2005 and was successful at securing funding for fiscal year 2013. However, this funding could be in jeopardy next year as changes are made to the review and ranking process.

### **Atlantic Herring**

The ASMFC Atlantic Herring Section met and reviewed the final approval of comprehensive spawning regulations under Addendum V.

### **American Lobster Management Board**

The ASMFC American Lobster Board approved Draft Addendum XIX to Amendment 3 to the ISFMP. The Draft Addendum proposes to change the transfer tax for Lobster Conservation Management Area 3 which they neglected to do in a previous amendment. An additional Addendum will be developed to address effort reductions in the Southern New England stock in LCMA's 4, 5, and 6.

### **Tautog Management Board**

ASMFC Tautog Board met to discuss the issue of tautog harvest in federal waters and receive reports on the Tautog Ageing and Assessment Scoping Workshops.

### **Horseshoe Crab Management Board**

The ASMFC Horseshoe Crab Board approved the harvest specifications for horseshoe crabs of Delaware Bay origin, setting the harvest limit of 500,000 Delaware Bay male horseshoe crabs and zero female horseshoe crabs for the 2013 season. NJ's portion of the 500,000 crabs is 162,000 but they will not be harvested as a result of the State moratorium on harvesting horseshoe crabs.

One outcome of the insufficient and therefore expensive horseshoe crabs for bait is the introduction of the Asian Horseshoe Crab as an alternative bait source. This raises concerns over what other non-native organisms or diseases may be introduced.

### **Spiny Dogfish and Coastal Sharks Management Board**

The ASMFC Spiny Dogfish and Coastal Sharks Management Board approved spiny dogfish quotas for the 2013/14, 2014/15, and 2015/16 fishing seasons (May 1 – April 30), with a maximum possession limit of 4,000 pounds per day. The approved quotas represent an approximately five million pound increase in quota over the 2012/13 season.

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

The Board reviewed the MRFSS recreational harvest estimates for the recreational fisheries for summer flounder, scup and black sea bass. Currently, harvest estimates for summer flounder and scup are below the 2012 harvest targets. However, the black sea bass harvest estimates have exceed both the harvest target (RHL) and the Annual Catch Limit (ACL). When the ACL is exceeded it triggers a closure of the recreational fishery in Federal waters. NOAA announced, effective November 1, 2012, no one may fish for or possess black sea bass in Federal waters for the remainder of 2012 calendar year. The Board discussed closing states waters for the remainder of 2012 but no action was taken. The Board initiated development of an addendum for the 2013 black sea bass recreational fishery.

### **Atlantic Menhaden Management Board**

The Board did not meet but a meeting is scheduled for December 14, 2012 in Baltimore, MD. The Board is likely to adopt aspects of Amendment 2 to the Plan that could implement a coast-wide quota for menhaden.

Mr. Allen continued with the rest of the ASMFC meeting summary for the following Management Boards.

### **Winter Flounder Management Board**

The ASMFC Winter Flounder Management Board approved Addendum II to Amendment 1 to the Interstate Fishery Management Plan for the Inshore Stocks of Winter Flounder and approved Draft Addendum III for public comment. These

addendums affect the Gulf of Maine stock of winter flounder and therefore will have no impact on NJ fisheries.

#### **Shad and River Herring Management Board**

The ASMFC Shad and River Herring Management Board met to review the potential Endangered Species Act (ESA) listing of river herring. A decision from the NMFS is expected soon. Mr. Allen reminded Council of the moratorium on American shad to be implemented by January 1, 2013. NJ, working with other Delaware Basin states, was able to justify sustainability of the Delaware stock which will allow recreational and commercial American shad fisheries to remain open in the Delaware Estuary.

#### **Weakfish Management Board**

The ASMFC Weakfish Management Board reviewed the Technical Committee's (TC) report on the Weakfish stock status indicators for 2011. The Board was encouraged with the more positive indicators in 2011, but acknowledged this is only one year in the time series. Mr. Allen will keep the Council informed on future developments.

Mr. Zaborowski stated that weakfish abundance is very good in some years to not so good in other years. There must be historical data showing this rise and fall of the species, proving that the species rebounds quickly after it bottoms out.

Mr. Allen responded that weakfish are not necessarily cyclic, but tend to rise in abundance and then experience a fast increase in mortality. There is no reason as to why this occurs. Acting Chairman Herb questioned if this is seen in other species such as dogfish. Mr. Allen commented that it would be hard to prove given the data is anecdotal.

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

The ASMFC Atlantic Striped Bass Board reviewed the 2012 Striped Bass FMP Review and found all states in compliance. The stock is currently not overfished and overfishing is not occurring.

#### **American Eel Management Board**

The ASMFC American Eel Board met to review the potential ESA and CITES (Convention on the International Trade in Endangered Species) listing, as well as provide guidance to the Plan Development Team (PDT) in the development of Draft Addendum III. The USFWS is expected to publish their CITIES recommendation in November.

#### **South Atlantic Management Board**

The ASMFC South Atlantic Fishery Management Board approved the draft black drum FMP for public comment. The draft FMP solicits comment on a range of issues, including management goals and objectives; recreational and commercial management measures; flexibility to react to new assessment information; *de minimis* levels and exemptions; monitoring requirements and recommendations; and recommended measures for implementation of NOAA Fisheries in Federal waters.

### **Atlantic Sturgeon Management Board**

The Atlantic Sturgeon Management Board met to review and discuss a draft delisting/downlisting petition for Atlantic sturgeon. It also received an update on the stock assessment timeline and required scientific support. Given that that a stock assessment is currently scheduled for completion by 2014, the Board opted to delay action on the petition until the stock assessment could provide the necessary information to guide management action. Mr. Allen updated Council that NJ is continuing to work on Atlantic Sturgeon Section 10 Permit.

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

Mr. Berg presented Council with the MAFMC report; Handouts #3a, #3b and #3c. A more detailed summary of the meeting can be found by visiting the MAFMC website at <http://www.mafmc.org>.

### **Spiny Dogfish**

The MAFMC voted to increase the commercial quota and trip limits for spiny dogfish by 14% to 40.8 million pounds in 2013 with a 4000 pound trip limit. They also set quotas for 2014 and 2015 in an attempt to promote stability in the fishery.

### **Delaware Artificial Reefs**

The MAFMC reviewed a list of proposed management alternatives submitted by Delaware regarding their application for their artificial reef sites being designated as Special Management Zones (SMZs). The range of alternatives discussed for consideration ranged from no action to the designation of all five of Delaware's reef sites as SMZs for the entire year.

### **Black Sea Bass**

The National Marine Fisheries Service (NMFS) announced that the recreational black sea bass fishery will close on November 1, 2012. The fishery will remain closed to recreational fishermen in Federal waters (3 – 200 miles from shore) through the end of the year. The closure, which applies to both private anglers and party/charter vessels, prohibits fishing for or possessing black sea bass in Federal waters for the remainder of 2012. This action was taken in response to the review of recreational catch data indicating that the 2012 recreational harvest target had been exceeded.

Mr. Berg read "excerpts" from a letter, Handout #3, from William Karp of NOAA asking the MAFMC to request its Statistical & Scientific Committee (SSC) to reconsider their determination of categorizing black sea bass as a Tier 4 stock assessment to a Tier 3 stock assessment which would allow for a higher acceptable biological catch in 2013.

Mr. Rush directed a question to Adam Nowalsky as to the extent of what will happen if the black sea bass is elevated from a Tier 4 to a Tier 3.

Acting Chairman Herb opened the floor up to Adam Nowalsky to comment. Mr. Nowalsky commented that this issue will be discussed at the next MAFMC Meeting held

in December. However, if black sea bass is amended to a Tier 3, there will be no answers until May on how this will affect the fishery.

### **Shellfish Council Reports**

Mr. Babb updated Council on the status of NJ's shellfish growing waters as a result of Hurricane Sandy.

Due to Hurricane Sandy, all State waters have been closed to commercial and recreational shellfish harvesting since October 29th due to concerns about degradation of water quality. The Bureau of Marine Water Monitoring has been monitoring water quality up and down the coast since the storm. There were a number of sewage treatment plant bypasses, pump station failures and sewer system surges that resulted in the release of waste. Waters must meet certain standard for bacteria and viruses before they can be reopened to shellfish harvest to ensure public health. As far as reopening procedures, the DEP will continue to monitor bacteria levels until the water quality returns to within standards.

### **Delaware Bay**

Effective sunrise on this past Monday, all State waters in Delaware Bay were re-opened to harvest. The Department is also looking to extend the oyster fishery season and allow for Saturday harvesting to allow for the harvest of the remaining quota, which is approximately 5,000 bushels.

### **Atlantic Coast**

Many of the areas in the coastal bays in Atlantic and Cape May counties have had a number of good water samples and tissue samples have also been taken. If results meet the criteria in the National Shellfish Sanitation Program (NSSP), then it is possible that waters can be reopened to shellfish harvesting for Atlantic and Cape May counties as early as tomorrow, November 15, 2012.

North of Barnegat Inlet is a different story. Upper Barnegat is still showing some elevated levels. Lower Barnegat had some positive samples, but now has shown a few poor samples. Middlesex and Monmouth County stations are in waters primarily classified as Special Restricted and Prohibited with a small area of both the Navesink and Shrewsbury Rivers classified as Seasonal. Monitoring results indicate that those areas continue to exhibit high levels of fecal coliform bacteria but some general improvement in water quality with three stations within Sandy Hook Bay that are within the criteria for Approved waters. While water quality trends do show improvement, the DEP cannot consider re-opening shellfish harvest in this area until the Middlesex County Utilities Authority ceases the discharge of untreated wastewater into Raritan Bay. At this time MCUA is working to get treatment back on-line. Once treatment is back on-line, the NJDEP will begin the process of re-opening the area to previous classifications and shellfish harvest. The hard clam depuration plants are not operational until the water quality issue in this area is resolved.

Mr. Babb suggested that anyone interested in staying apprised of the monitoring check the Department's webpage and click the Marine Water Monitoring link at [www.nj.gov/dep/wms/bmw/](http://www.nj.gov/dep/wms/bmw/)

Just prior to the end of the meeting Mr. Babb received a call from indicating that waters in the coastal bays in Atlantic and Cape May counties would be reopened to shellfish harvesting at sunrise, November 15, 2012.

## **Committee Reports**

### **Atlantic Sturgeon Committee Report**

Dr. Bochenek presented Council with the Atlantic Sturgeon Committee Report, Handout #4. The purpose of the meeting was to initiate a dialogue with industry in regards to Atlantic sturgeon management and develop strategies to incorporate into NJ's Section 10 Permit application.

Staff presented an overview of the Endangered Species Act and the potential effects on fisheries. The overview included federal/state planning discussions, an update on New Jersey's Section 10 permit application and a review of recently obtained Federal observer program data.

The Committee discussed needs and strategies for moving forward including mandatory reporting, in-state observer coverage and potential funding sources. There was also a discussion on additional data analysis that could assist in the permit application process.

The Committee recommends re-convening sometime in 2013 to continue discussions with the Committee and advisors as the Section 10 permit application proceeds. Discussions will focus on developing mandatory reporting and observer programs for state water commercial fisheries as well as developing funding options. On the recreational side, the committee recommended development of a public outreach program to educate the fishing community. These issues will be increased should other species such as river herring and the American eel be listed in the near future.

### **Summer Flounder/Black Sea Bass Committee Report**

Mr. Rizzo presented Council with Summer Flounder/Black Sea Bass Committee Report, Handout # 5.

On October 2, 2012, a meeting of the New Jersey Marine Fisheries Council's Summer Flounder and Black Sea Bass Committee was held at the Nacote Creek Law Enforcement Office. In attendance were Division of Fish & Wildlife staff, Summer Flounder and Black Sea Bass Committee Council members, and industry advisors. The purpose of the meeting was to review the 2013 summer flounder and black sea bass quotas and trip limits as well as the ongoing discussion of vessels entering New Jersey ports with multiple state trip limits.

NJDFW staff provided the 2012 summer flounder landings summary and fishery performance overview. Advisors discussed new possible trip limits and unanimously

decided on proposing changes to three of the six summer flounder directed seasons; Season 1: changing 3,000 lbs. twice a week or 5,000 lbs. once a week to 2,500 lbs. twice a week or 5,000 lbs. once a week. Season 2: changing 1,500 lbs. three times a week to 2,000 lbs. twice a week. Season 6: changing 1,000 lbs. four times a week or 3,500 lbs. once a week to 1,000 lbs. three times a week or 3,000 lbs. once a week. Seasons 3, 4, and 5 were recommended to remain the same in 2013 as in 2012.

NJDFW staff then provided the 2012 black sea bass landings summary and fishery performance overview. Advisors discussed possible new trip limits and unanimously decided on proposing changes to only the first of the four directed seasons. Season 1: change 500 lbs. four times a week or 1,000 lbs. twice a week to 750 lbs. twice a week or 1,500 lbs. once a week. All other seasons were preferred to remain the same.

Black sea bass advisors also raised ideas regarding the ability for increased flexibility in modifying in-season trip limits. It was requested to implement an automatic triggering mechanism for Seasons 2, 3, and 4 in which after a fixed percentage of quota was remaining after a predetermined amount of the season had passed, the number of trips per week would double. NJDFW staff advised council and industry that this type of change would require going through the regulatory process and could be pursued but would not occur for the 2013 fishing year.

NJDFW staff then provided a brief synopsis of discussions during the August 29, 2012 Summer Flounder and Black Sea Bass Committee meeting concerning vessels possessing multiple state trip limits and entering NJ ports. Some different ideas were discussed; however, advisors, Council and staff did not come to a consensus on a plan to allow multiple state trips to enter NJ ports. Since any possible solution would require a regulatory change and take to move through the process, everyone agreed to continue to work together to develop a solution which will be agreeable to all parties.

The Committee report stands as a motion on the revision of the commercial trip limits for summer flounder and black sea bass for 2013.

Acting Chairman Herb asked for Council comments and no comments were made by Council members.

Acting Chairman Herb opened the floor for public comments. No members of the public commented. Council unanimously approved the trip limit recommendations for both summer flounder and black sea bass.

### **Regulatory Actions**

Mr. Muffley presented Council with regulatory measures upon which Council must take some action.

#### **American Shad**

New Jersey was only able to develop an approved sustainable fishery plan for American shad for the Delaware Estuary. Consequently, American shad fisheries in all other waters must be closed. In the regulations, currently American shad and Hickory shad are collectively identified as 'shad'. Staff proposes to separate these two species.

After separating these two species the recreational possession limits would be:

- 3 American shad in the Delaware Bay and River
- 0 American shad in all other waters
- 3 Hickory shad in all waters

The only exemption for the commercial fisheries outside of the Delaware Bay, would be a 5% bycatch for the vessels fishing in the EEZ for Atlantic herring or Atlantic mackerel (but the shad may not be sold). This is the same exemption that exists for possession of river herring.

Acting Chairman Herb asked for Council comments/questions. Mr. Rush asked why the ocean was closed to shad possession. Mr. Muffley indicated that it was because the Division could not prove the fishery was sustainable.

Acting Chairman Herb opened floor for public comments. No public comment.

Mr. Rizzo made a motion to modify the American shad regulation to come into compliance with ASMFC, incorporating all provisions mentioned above in both the recreational and commercial fisheries for American and Hickory shad. Motion passes unanimously.

#### **Commercial Bluefish**

During 2011 and currently in 2012, New Jersey has significantly under-harvested the commercial bluefish quota. In an effort to increase bluefish landings, optimize available quotas and comply with most other gear type seasons that are open for the entire year, the Division is proposing that Council extend the gill net and otter trawl seasons to be January 1 – December 31.

Dr. Bochenek made a motion to extend the gill net and otter trawl commercial bluefish seasons to run year round, from January 1 – December 31. Motion passed unanimously. (No public were interested in commenting).

#### **Recreational Black Sea Bass Seasons**

Mr. Muffley brought Council's attention to Handout #6b, regarding NMFS closure of the recreational black sea bass fishery (in Federal waters) for the remainder of the 2012 calendar year. At the ASMFC meeting the issue to close state waters was discussed but no action was taken. Consequently, most states will probably remain open. If Council chooses to do nothing, then State waters will remain open.

After some discussion amongst Council members, Council chose to allow the recreational black sea bass fishery to remain open in State waters, for the remainder of the year (through Dec. 31, 2012).

Mr. Muffley brought Council's attention to another black sea bass matter that needed Council's attention in the event NMFS should close the recreational black sea bass season in January / February 2013. The estimated recreational black sea bass landings through August have already exceeded the Northern Region (NJ – MA) and the Southern Region targets by 38% and 43%, respectively. Because of this the NMFS implemented

an emergency closure effective November 1<sup>st</sup>, closing all recreational black sea bass fishing in Federal waters, through December 31, 2012. Therefore, there is a possibility that NMFS will close the January/February 2013 recreational season

Council previously passed a motion to open the recreational black sea bass season January and February 2013 which was consistent with action taken by NMFS for Federal waters. In reviewing Council's action from the last meeting, (opening the fishery in January / February 2013), the Division does not think the motion was broad enough to allow reversal of Council action should NMFS choose to close the season in January/February 2013. The Division recommends Council pass a contingency motion, allowing the Division to move forward and to maintain consistency with NMFS for the recreational black sea bass season for January/February 2013.

Acting Chairman Herb commented we just discussed the importance of staying open for the rest of 2012 year, how are these two months any different?

After some more discussion between Council and Division staff, Mr. Radossi made a motion to close State waters if Federal waters close in January/February 2013 for the recreational black sea bass fishery.

Acting Chairman Herb opened the floor to public comment.

Mr. Nowalsky commented that the only way for January/February 2013 black sea bass fishery would close is if the NMFS issues an emergency closing. Mr. Nowalsky commented in the event the Northeast Region office implements an emergency action for closing Federal waters in January /February, then he supported the State's action to do the same.

Motion was passed unanimously.

#### **Notice of Administration Change**

Mr. Muffley brought Council's attention to Handout #6 the Notice of Administrative Change (NOAC), which includes all the Council's approved motions made tonight in regards to modification of American and Hickory shad recreational and commercial harvest and possession limits, commercial bluefish seasons, commercial black sea bass and summer flounder trip limits. A motion to approve the NOAC was unanimously approved.

#### **Old Business**

Mr. McCloy brought Council's attention to Handout #7, a letter from Great Egg Harbor National Scenic and Recreational River Council to Governor Christie requesting a larger financial investment for Marine Fisheries management in New Jersey..

Mr. McCloy brought Council's attention to Handout #8, a letter from Stephen Drew of TE SubCom regarding GlobeNet Cable's cable replacement operations off southern New

Jersey that began about October 9, 2012. Mr. McCloy indicated that the Division had forwarded the email to commercial fishermen via email addresses on file.

Mr. McCloy brought Council's attention to Handout #9, a follow-up letter sent to Mr. Conti in regards to his presentation at the last Council meeting regarding the denial of a "hook and line summer flounder permit" back in 1997. The letter directs Mr. Conti as to who he should contact should he wish to appeal the denial of his permit.

Mr. McCloy updated Council on the Committee Meetings coming up: Eel meeting has been cancelled, Blue Crab will meet Monday, November 19th, and Menhaden will meet Tuesday, November 20<sup>th</sup>.

### **New Business**

Mr. McCloy brought Council's attention to Handout #10, a letter from Governor Christie to Acting Secretary of Commerce requesting that they declare NJ a federal fishery resources disaster as outlined in the Magnuson-Stevens Fishery Conservation and Management Act, as a result of damage from Hurricane Sandy. If a fisheries disaster is declared by the Department of Commerce it is up to Congress to appropriate money.

Mr. Muffley updated Council on a survey that the Division developed to get feedback from commercial and for-hire industries in regards to their damages that occurred due to Hurricane Sandy.

Mr. Zaborowski presented Council with a report on his attendance at PSE&G's recent tour of their marsh restoration program. He asserted that PSE&G needed approval to use more spraying of chemicals (Round Up) to control the phragmites.

Acting Chairman Herb opened up the meeting for general public comment on Council's meeting.

### **Public Comment**

Mr. Nowalsky asked if there was a way to post the for-hire survey on the website to open access to all. Mr. Rush commented that he has survey results that were used to assist those who needed assistance after Hurricane Katrina. He will pass that document to Council and the Department.

Meeting adjourned.

Next Meeting January 3, 2013, Galloway Township Library.