

NEW JERSEY MARINE FISHERIES COUNCIL
Galloway Township Library
Galloway, New Jersey
September 8, 2011

In Attendance were: Chairman Gilbert H. Ewing, Jr.
Councilman Scott Bailey
Councilman Erling Berg
Councilman Patrick Donnelly
Councilman Richard Herb
Councilwoman Frances Puskas
Councilman Sergio Radossi
Councilman Joseph Rizzo

Absent: Councilman Walter L. Johnson III
Councilwoman Eleanor Bochenek

Also in attendance representing the Division of Fish and Wildlife:

David Chanda, Director
Thomas W. McCloy, Administrator, Marine Fisheries Adm.
Russ Babb, Acting Chief, Bureau of Shellfisheries
Brandon Muffley, Chief, Bureau of Marine Fisheries
Jeffrey Brust, Research Scientist, MFA
Peter Himchak, Supervising Biologist, MFA
Captain Dominick Fresco, Bureau of Law Enforcement
Russ Allen, Principal Biologist, Bureau of Marine Fisheries
Sherry Bennett, Recording Secretary

Ms. Bennett read the compliance with the Sunshine Law. Notice of the meeting was filed with the Secretary of State on August 8, 2011. July 20, 2011 meeting minutes were not available for approval.

Chairman Ewing began the meeting with the Pledge of Allegiance.

Chairman Ewing introduced Councilman Sergio Radossi to the public.

Chairman Ewing congratulated Captain Dominick Fresco, Bureau of Law Enforcement on his recent promotion to Captain for the Marine Region.

Audience Conduct

Chairman Ewing reminded audience to take conversations outside or wait until the end of the meeting and that those individuals wishing to make a public comment needed to sign up.

Law Enforcement Report

Captian Fresco presented the Law Enforcement Report.

There were numerous violations by recreational fishermen and a party boat for the typical violations, such as minimum size limits for summer flounder, black sea bass, striped bass, weakfish and cod.

The conservation officer's from the Marine and Inland Enforcement Regions spent a significant amount of time patrolling the oyster fishery for compliance with the Food and Drug Administration's requirements for monitoring the Control Plan for *Vibrio parahaemolyticus* (VP). The focus of the regulations was to improve the handling of oysters following harvest to prevent illness in consumers due to the VP bacterium.

During VP patrols officers observed a vessel that was not in compliance with the VP requirements for tarping. In addition, this vessel was also underreporting their harvest totals for their daily trip. Further investigation revealed two other vessels underreporting their harvest also through the use of cages larger than those permitted by regulation (used to containerize product).

With the assistance of the Ocean City Police Department, COs issued summonses to these Pennsylvania residents for harvesting horseshoe crabs. The violation carries a mandatory \$10,000.00 penalty.

A significant enforcement action in the Delaware Bay oyster fishery was taken. Marine Conservation Officers assisted NMFS Agents in the service of four arrest warrants; the seizure of five NJ licensed oyster boats and the issuance of restraining orders to prohibit the use of five additional NJ licensed oyster vessels. The case was a joint investigation by District 8 marine conservation officers and NOAA's Office of Law Enforcement for the over harvest and under reporting of oysters harvested from NJ state oyster seed beds located in the Delaware Bay between 2004 and 2007; product illegally harvested was valued at \$600,000.00. Simultaneous warrants were served by NMFS agents on a seafood dealer located in Delaware with a co-owner and a book keeper being arrested for creating and maintaining false records to hide over harvests by the New Jersey fishermen. The arrests and vessel seizures were the result of a 15-count criminal indictment by a federal grand jury under the Lacey Act. Indictment charges include false reporting, false records of oysters harvested, trafficking in illegally harvested oysters, obstruction of justice and conspiracy to commit those crimes.

Six individuals and two related oyster dealers from New Jersey, Delaware and Maryland were charged in the indictments and face maximum penalties of 20 years in prison and a \$250,000.00 fine for obstruction of justice and five years in prison and a \$250,000 fine for each of the remaining counts with corporations facing a fine in the amount that is greater of \$500,000.00 or twice the gross gained.

Legislative Report

Chairman Ewing commented there is not Legislative Report at this time.

Atlantic States Marine Fisheries Commission (ASMFC) Report

Mr. Himchak presented Council with the ASMFC Report from the 2011 Summer Meeting Week, Handout #1

American Lobster Management Board

ASMFC approved draft Addendum XVII for public comment. The Addendum seeks to reduce exploitation on the Southern New England Stock by 10%. The proposed 10% reduction would come from changes in the minimum size limit, maximum size limit, and/or closed seasons. A public hearing is scheduled for October 6th, in Belmar, NJ. Mr. Himchak suggested that the Lobster Committee of the Council may want to start facilitating talks with area lobstermen. The Addendum will be up for consideration at the annual meeting in November.

Tautog Management Board

Based on the coastwide assessment, all states will be required to implement regulations to implement Addendum VI by January 1, 2012. Massachusetts and Rhode Island's regional VPA assessment proposal was approved by the ASMFC, and they are not required to implement any reduction for 2012. New York, Maryland, and Virginia submitted a proposal based on catch curve analyses which, if approved, would allow these states to make reductions less than the required 53% reduction. The ASMFC Board also approved state proposals for CT, NY, DE, MD and VA to achieve the 53% reduction. All new and revised proposals must be submitted by September 15, 2011. Mr. Brust will be submitting a proposal for NJ.

Spiny Dogfish and Coastal Sharks Management Board

The Board voted to initiate an addendum to the Coastal Shark FMP to include a state by state allocation for smooth dogfish to be implemented in 2012.

Atlantic Menhaden Management Board

The Atlantic Menhaden Board approved Draft Addendum V for public comment. A hearing will be held in NJ on September 29th, in Toms River. The Draft Addendum proposes establishing a new interim fishing mortality threshold and target (based on maximum spawning potential (MSP) with the goal of increasing abundance, spawning stock biomass, and menhaden availability as a forage species.

Horseshoe Crab Management Board

The National Fish and Wildlife Foundation (NFWF) has provided funds to match contributions made by biomedical and bait industries to conduct the Virginia Tech Horseshoe Crab Trawl Survey. Sufficient funds have been received to conduct all aspects of the survey in 2011.

The Commission's Horseshoe Crab Board initiated development of Addendum VII to implement Adaptive Resource Management Framework (ARM Model). The Draft Addendum will incorporate horseshoe crab and shorebird abundance levels when developing a harvest level for the Delaware Bay area and will additionally address allocation of the ARM harvest output among the four states of NJ, DE, VA, and MD that harvest horseshoe crabs from the Delaware Bay population.

Mr. Bailey asked to be notified when the ASMFC Horseshoe Crab public hearing will be held. Mr. Himchak responded sometime after the Commission's November meeting. Mr. Bailey commented when allocations are developed, he would like to see the New Jersey season open again.

Mr. Allen presented Council with an update on four ASMFC Board meetings he attended.

South Atlantic State/Federal Fisheries Management Board

The Board approved the Omnibus Amendment for Spot, Spotted Seatrout and Spanish Mackerel. This includes updates on commercial and recreational management measures and recommendations, adaptive management options, *de minimis* thresholds and exemptions and monitoring recommendations. The Omnibus Amendment will be implemented July 1, 2012. Implementation plans are due Oct 15th, 2011 for spot and spotted seatrout and March 15, 2012 for Spanish Mackerel.

Weakfish Management Board

The Board reviewed the TC report on the adequacy of North Carolina's conservation equivalency measure of a 10% bycatch allowance with a 1,000 lb trip limit in lieu of the 100 lb commercial trip limit. From August 2010 to December 2010 17% of trips were found non-compliant, which equates to roughly 20,000 pounds. However, from January 2011 through April 2011, North Carolina had better compliance with only 5% non compliant trips at 1,150 pounds. Another update will be given at the November 2011 Board meeting.

Atlantic Striped Bass Management Board

The Board postponed releasing Draft Addendum III for public comment, pending the results of the stock assessment update in November. Draft Addendum III contains management options to reduce fishing mortality up to 40% and provide increased protection for the stock when concentrated and vulnerable. The Draft Addendum was initiated due to increased concern over declining catch and abundance, as well as low recruitment and increasing uncertainty and concern over mycobacteriosis in Chesapeake Bay striped bass.

Shad and River Herring Management Board

An update was given on the NEFMC Amendment 5 to the Atlantic Herring FMP and the MAFMC Amendment 14 to the Squid, Mackerel and Butterfish FMP. Both Amendments are currently being developed to address bycatch of shad and river herring in federal fisheries. The Amendments are expected to be finalized in 2012, with implementation in

2013. The ASMFC Board was also updated on the implementation of Amendment 2 (river herring) and 3 (American Shad). Four States – ME, NH, NC and SC have submitted River Herring Sustainable Fishery Management Plan's (SFMPs), which have been approved by the Board. New York will be submitting a SFMP prior to the November meeting.. Jurisdictions without an approved plan in place are required to close their commercial and recreational river herring fisheries by January 1, 2012. New Jersey will be one of those states to close waters without an approved River Herring SFMP.

Mr. Allen provided an update on the Delaware River Shad Plan from the Joint Council Meeting in July. Process is moving forward on a joint plan between NJ, NY, PA, and DE to satisfy the requirements of Amendment 3. Otherwise NJ will have to close waters to shad harvest by January 1, 2013.

Mr. Nowalsky, as legislative proxy to the ASMFC, addressed the Council to further supplement the reports given by Mr. Himchak and Mr. Allen.

The tautog addendum called for a reduction to the fishing mortality rate. The Addendum did not specify a specific percentage on reduction. In the absence of data from the individual states, the individual states would then have to use the coastwide reduction of 53 percent. States with data started submitting proposals, which showed that a significantly lesser reduction required. Mr. Nowalsky is optimistic that the reduction will be a lot less than the proposed 53 percent.

Mr. Nowalsky asked Mr. Brust if he has an update to address Council with NJ data.

Mr. Brust commented that the data analysis he has conducted is not conducive to the more conventional stock analysis. The fishing mortality ranged from a third to three times the target. Mr. Brust hopes to find one that comes close to target, allowing for the reduction to be minimal. The Technical committee meets again in about three-weeks. This is still in the process of being analyzed and Council will be kept informed.

Mr. Herb asked if the data that was rejected from a past analysis could be used in this instance. Mr. Brust commented that it was a blessing that analysis was rejected, because when Mr. Brust revisited this analysis he found out that the data used from NMFS was incorrect. NJ data was not represented accurately in that analysis.

Mid-Atlantic Fishery Management Council (MAFMC)

Mr. Berg presented Council with the MAFMC report. Handout #2.

The MAFMC met August 16 to 18th, 2011, with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, Black Sea Bass, and Bluefish Boards to adopt fishery management specifications for 2012. Based on their recommendations, the harvest limits for summer flounder, scup, and bluefish could increase if approved by the National Marine Fisheries Service.

The MAFMC recommended the summer flounder quota/harvest limit would increase 7% compared to 2011 levels; the commercial quota would be 18.95 million pounds and the recreational harvest limit 12.63 million pounds.

The MAFMC recommended a commercial quota of 34.43 million pounds and a recreational harvest limit of 10.85 million pounds for the scup fishery. These limits are 66% and 86% higher for the commercial and recreational fisheries, respectively, compared to 2011.

For black sea bass, the MAFMC recommended the same commercial quota as 2011, 1.76 million pounds. However, they recommended a lower limit of 1.36 million pounds for the recreational fishery.

The MAFMC recommended a commercial quota of 10.50 million pounds and a recreational harvest limit of 17.19 million pounds for the bluefish fishery. These levels are about 1% higher compared to the 2011 limits.

Mr. Berg also noted that new and reappointed MAFMC members were sworn in.

Mr. Himchak added that the Winter I scup trip limit was increased to 50,000 lbs/trip, with no limit on the number of days. This is something the Cape May fleet has been supporting and looking for new markets. The Winter I trip is the heart of NJ's fishery.

Mr. Berg added that the fleet has not been catching the winter quota.

Mr. Bailey asked if the fact that the entire quota is not being reached is because the stock is low.

Mr. Berg commented no, the fish are there, they are not catching enough to make it profitable.

Chairman Ewing commented that the way the trip limits were set up discouraged some of the fisherman.

Shellfish Council Reports

Chairman Ewing congratulated Mr. Babb on his recent appointment to Acting Chief for Bureau of Shellfisheries following the retirement of Jim Joseph.

Mr. Babb presented Council with an update on a few of the shellfish programs.

Shellfisheries has completed the annual shell planting program in Delaware Bay. Approximately 150,000 bushels were planted primarily on two main beds that sustain the bulk of the Direct Market Program harvest.

The Little Egg Harbor hard clam survey is now underway and a new pilot program is proving to show lots of potential to sustain the tongers oyster fishery in the Maurice

River Cove. Spatted shell that was planted in high recruitment areas of the lower Bay received an outstanding oyster set and was then transplanted to the tongers bed.

Mr. Shuster, Bureau of Marine Water Monitoring, presented Council with an update on the shellfish closure due to Hurricane Irene in August 2011. On August 29th, sampling water quality began so these shellfish beds could be reopened as soon as possible. To facilitate the process the Department partnered with the public to collect data and harvest clams to see if the water quality was adequate for reopening. This allowed the Atlantic Coast beds to reopen on September 6, 2011. Others will follow as water quality improves.

Mr. Rizzo thanked Mr. Shuster for his work in reopening areas.

Delaware Bay

Mr. Bailey presented Council with the Delaware Bay Report. The Delaware Bay Direct Market Oyster Season started in early April and will close on or around November 18, 2011. Through five months of harvest, the 83 participating vessels have harvested nearly 55,000 bushels of oysters of the 95,000+ bushels quota. He referenced the shellfish waters closure prior to the arrival of Hurricane Irene and indicated oystermen were hopeful that all or part of Delaware Bay will be reopened to harvest as soon as tomorrow.

Atlantic Coast

No report to present at this time.

Committee Reports

Chairman Ewing commented there are no committee reports at this time.

Mr. McCloy updated Council on a few committee meetings coming up.

Mr. McCloy commented that a Menhaden Committee Meeting is in the process of being set up.

He also suggested Council consider a Summer Flounder, Scup and Black Sea Bass Committee Meeting, to recommend commercial trip limits for 2012. Council would need to take action at their November meeting for any modifications.

Regulatory Updates

Mr. Muffley said the Department has set up a priority schedule. Currently the 2009/2010 Regulatory proposal is in the 2nd tier of the Department's priority. Adoption is scheduled for 2012. Approval was granted to include the Saltwater Registry Regulations with the Multispecies Rule Proposal.

Mr. Muffley commented on the river herring moratorium that Mr. Allen covered in his report. At November's Council meeting, more information will be available as to what closure action on river herring will occur.

Ms. Puskus asked how do we get into the first tier of priority schedule and who shares the 2nd tier. Mr. Muffley commented that the legal department sets the priority schedule.

Old Business

The Arthur W. Radford reef deployment occurred on August 10, 2011. Chairman Ewing commented that it was a wonderful event for those who attended. He thanked Hugh Carberry for his efforts with this deployment, along with the states of DE and MD.

Mr. Muffley provided an update on the Saltwater Recreational Registry Program. A little under 250,000 individuals have registered. For the for-hire sector the number is under 1,000. The registry data needs to be submitted to NMFS on September 30, so the data is being “cleaned up”. The registry is also being updated for 2012 with some changes, such as a wallet size card.

Mr. Rizzo commented that he is surprised with the low numbers of registrants. Mr. Muffley commented that considering the program just came online in May, it already has more individuals registered than in 2010 (under the federal program).

Chairman Ewing commented that non-residents are not aware that they need to be registered in the NJ Saltwater Registry to be in compliance if they are registered in the federal program. The federal registry card is no longer accepted now that NJ has its own registry program.

New Business

Mr. McCloy presented Council with Handout #5 and #6. The Council has been invited to go on a tour of the Hope Creek Nuclear Generating Station. (Handout # 5) Council is also invited to the next Endangered and Nongame Species Advisory Committee meeting where they will discuss shorebirds and horseshoe crabs. (Handout # 6)

Chairman Ewing asked how the March meeting for 2012 was working out on obtaining the meeting location in Toms River. Mr. McCloy said all paperwork has been submitted to Toms River.

Mr. Rizzo asked Mr. Chanda how he felt the Joint Council (July) meeting went. Mr. Chanda was very pleased with how the Joint Meeting turned out. He will work on making this an annual event. Chairman Ewing was very impressed with the meeting considering it was the first time all Councils were able to get together.

Mr. Rizzo wanted to bring Council’s attention to the Governor trying to clean up Barnegat Bay and as part of that, the issue of Conservation Zones.

Mr. Babb indicated that the Bureau of Shellfisheries staff updated the Atlantic Coast Council on Action Item 10 of the Governor and DEP's action plan to address the health of

Barnegat Bay. The plan was developed after a series of public meetings were held last summer. A number of recommendations came out of those meetings, among which was a suggestion that it was important to reduce impacts from watercraft on the ecology of Barnegat Bay, and submerged aquatic vegetation in particular. This became the basis for Action Item 10 which states:

"Boats and personal water craft can harm the Bay by damaging submerged aquatic vegetation and disrupting aquatic habitats. Designation of a Conservation Zone, similar to the one at Island Beach State Park, can reduce such impacts."

A number of internal meetings were held to identify candidate sites to be vetted through additional stakeholder meetings. The first round of sites were displayed at a stakeholder meeting in May 2011. Bureau staff displayed those same sites to the Atlantic Coast Council in September 2011. The first round of sites includes:

- Mosquito Cove and North-West Point Island (northern Barnegat Bay)
- Egg Island (Little Egg Harbor Bay)
- Story Islands east and west (southern Little Egg Harbor Bay)

The types of activity that will or will not be permitted in the zones is still being discussed. The Atlantic Coast Council will be becoming more involved in this process.

Public Comment

Mr. Yates asked why there was a reduction in the recreational black sea bass quota for 2012

Mr. Himchak tried to explain. Scup and Black sea bass were both declared rebuilt at the end of 2009. In setting quotas, the Scientific and Statistical Committee (SSC) sets the acceptable biological catch, and sets how to calculate allowable landings. On Scup, the scientific uncertainty is not as bad as it is for BSB. When we see scup acceptable biological catch going up, it is a reflection of the ABC starting at a relatively higher level. Anytime there is management uncertainty, discards issue and scientific uncertainty there are percentages taken off whatever the ABC is set at. BSB is a data poor stock and there is a relatively much higher amount of scientific uncertainty. Therefore, when the SSC sets the BSB acceptable biological catch, the amount of scientific uncertainty greatly reduces the next year's quota. The only way you are going to have higher landings with this rebuilt stock is to have a better stock assessment. It is the system under which the MAFMC operates. We are using new terminology, management uncertainty, scientific uncertainty and discards, all of which influence quotes.

Mr. Ewing asked why management can't be more fluid across the species. He suggested reducing the size limit to reduce discards.

Dr. Donnelly commented that there is a general feeling of distrust of management, especially in the recreational sector. There is no new data presented, yet the recreational program is still being affected. This needs to change.

Mr. Raddossi asked how they come up with scientific uncertainty, is it driven by data or opinion? Mr. Himchak indicated that it is determined by the SSC by calculating probability of overfishing using the species specific stock assessment.

Mr. Rush asked Council to formulate a letter opposing the quota for Black Sea Bass for 2012. He asked Council to formulate a letter to allow MAFMC more flexibility within the Magnuson-Stevens Act, which is up for reauthorization. Mr. Muffley, commented that the Council has already submitted letters asking for flexibility, but not specific to the Magnuson-Stevens Act.

Mr. Nowalsky indicated that with the ACL/AM (annual catch limits/accountability measures) Amendment everyone is afraid of payback provisions. He expressed concerns that the Marine Recreational Information Program (MRIP) will not improve the situation.

Chairman Ewing commented that he is surprised that people are just starting to see that MRIP is no different than the Marine Recreational Fisheries Statistics Survey (MRFSS).

Meeting adjourned.

Next Meeting is Thursday November 3, 2011 Galloway Township Library.