



BULLETIN

Robert Danielson

John Davi, Jr.

Melissa Dearborn

Paul Farnham

Thomas Jordan

Joseph Paradiso

John Renaldo

Paul Risi

Karen Rivara

Christopher Squeri

Charles Witek

Dean Yaxa

William Wise
Chairman

Kim Knoll
Staff Assistant

17 September 2013

Meeting of the Marine Resources Advisory Council

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After introductions by the councilors present and the Director of the Marine Bureau of the DEC, James Gilmore, Chairman Wise went over the day's agenda. Originally the topic of "importation of Asian horseshoe crabs in US/NYS" was scheduled to be on the agenda; however, because the people who requested this topic were not at the meeting, it will be postponed to a time when they are present so they can express their opinions and recommendations.

Public Comment

No comments were made at this time.

Draft Minutes, 09 April & 14 May, 2013 Council Meetings

At the time this agenda item was brought up, a quorum of councilors was not present. These minutes will be reviewed at the November 2013 Council meeting.

Condition of Local Winter Flounder Population

Chairman Wise introduced this topic saying that Councilor Charles Witek had asked that it be put on the meeting agenda. He asked Mr. Witek to speak to the issue. Mr. Witek said the research has documented that there hasn't been any improvement in the abundance of flounder in Long Island's bays, including Peconic Bay as well as Jamaica Bay. Traditional management measures to recover this stock are not working. Local flounder populations are so low that it is believed that inbreeding may be taking place with the catch being so low the numbers aren't even registering on the charts. Mr. Witek said that we must do more than the restrictive measures currently in place (i.e., trip/ size/ bag limits, etc.) Mr. Witek called for the Council to ask DEC to review the condition of winter flounder stocks and make a determination as to whether this species should be classified as a "species of special concern" (NYRR 182.3 & 182.4, Sec. 6). Mr. Witek believes the winter flounder is in serious trouble and should be viewed and treated as such.

Councilor Robert Danielson wanted to know what specifically that would mean to the fishing community? Mr. Witek said it could mean "no possession" – statewide. It was asked how other states are looking at this; however, other states don't have the same surveys as New York so it's hard to gauge what's going on in other areas to use as a comparison.

It was thought that the Council could ask Chairman Wise to write to the Mid-Atlantic Council or ASMFC to suggest this situation be looked at. It was also thought this should be on the agenda for November's meeting as well for follow up and Mr. Gilmore thought he might have a better understanding of what other states are finding regarding the health of winter flounder populations in their waters.

Audience member John Mihale agrees that something has to be done but does not see fishing as the cause of the problem. He believes there is something else going on, namely predators. He doesn't believe that you will eliminate the problem simply by banning the recreational fishermen from catching flounder. Mr. Arnold Leo concurred; he thinks its time to look at other ways to fix the problem. Standard fishery management techniques are simply not working. Councilor John Davi disagrees completely about the state of local winter flounder stocks. Based on personal observations, he believes there are plenty of winter flounder – the data is just wrong.

Mr. Witek agreed that there may be other things involved besides fishing, such as the impacts of predators, but this needs to be turned over to the professionals at DEC and let them make the determination of cause and suggest the best way to deal with this.

Mr. Witek referred to Dr. Michael Frisk's work at Stony Brook University. Dr. Frisk's research in Shinnecock Bay indicates there are actually two separate populations of flounder, one of which migrates to the ocean in the summer and one that never leaves the bay. Mr. Witek indicated that, coastwide, the population of winter flounder is only about 9% of the target under the interstate fishery management plan for the species - - not good. There are many other considerations that need to be looked which is why he thinks it best to turn this over to the professionals.

Councilor Paul Risi agrees with Mr. Davi that the fishery is in better shape than it was 5 years ago. He would, however, move forward with the Council as a whole to support an endeavor to assess the situation. He considers flounder, "a poster fish" for non-fisheries related depletion. We should send this forward with the concept that harvest and fishing pressure is not a significant factor.

Councilor Melissa Dearborn doesn't disagree with everything being said but worries that this may lead to a complete moratorium on flounder fishing. She would like to have factual proof before that step is taken that it is, indeed, the *only* recourse. With the possibility of a moratorium looming in the future, she thinks it would be wise to look ahead now to see which fishery could be opened earlier to give the recreational fishing community something other than flounder to fish for in the spring. The details of this should be worked out now rather than later should a moratorium be necessary.

Arnold Leo said when the Council hands over a problem to the regulators all they can do is more of the same and that is NOT working (reduce the quota/reduce the size limit/reduce the season). That really is all they would have the authority to do.

Mr. Davi said that the fishery was knocked down to 50 lbs a few years ago. Why would you do something new when you haven't seen the results of that decision?

Chairman Wise said Dr. Frisk's data looked at the juveniles in the South Shore and North Shore bays, based on the genetic diversity among the juveniles that they have captured and studied, they are able to back calculate the adult population that likely produced how many adults. Those numbers range from 300 to 600 fish, which is not a lot of fish. The arguments that are usually given when a species begins a decline to very low numbers, "What can we do?" "What difference will anything we try to do, do?" Mr. Wise continued by saying if we don't do anything now, when will we do something? How bad does the fishery have to get before we take an action? Look at the fisheries management policy of New York State – it is to preserve fish in usable abundance for future generations. Can anyone argue that we are satisfying that standard with winter flounder? Mr. Danielson said the stock continues to decline according to all reports. He didn't see any harm in having the DEC look further into this. Ms. Dearborn asked Mr. Gilmore what the ramifications would be for labeling this fish of "special concern?" Mr. Gilmore said that by labeling the winter flounder special concern, we can offer special protection. The preference would be to NOT create a moratorium because with a moratorium in place, there will be no data coming in and without data coming in; there's no way to see if there has been an improvement.

Councilor Christopher Squeri believes there is a problem with flounder. Whether its water quality or predation, we need to find out what the cause is and what can be done about it. Do we *really* want to find out what the problems and/or solutions are? What are we willing to do to find out?

Councilor Witek then made a **motion**: He does not want to close the recreational fishery; he wants to refer the issue of winter flounder to the DEC to determine whether a listing under the appropriate State statutes and regulations is appropriate. We are not drawing any conclusions, we are simply saying let's look at it. The motion was seconded by Mr. Danielson

Discussion: Mr. Witek began the discussion and wonders why are we afraid to hand this over to the experts under the protection of this fixed criterion, which is the law of this state. If you're in the business – how much blood do you expect to squeeze from this particular stone? Are you willing to exhaust this fishery so there is nothing left for your grandkids? The history of the management of this fishery has always been "a little too little, a little too late." Back in 1998, we knew what should have been done then and didn't do it; the stock is now paying the price. In years past we caved to pressure by the fisherman to bring "just a little more" home. We could all speculate as to why we're where we are today but the truth is that we didn't do what should have been done back when we could have. This fish is in serious trouble, the measures that are in place now are not working and we need to fix this now.

Councilor Karen Rivera questioned if the DEC be able to even gather the information needed with all the personnel cutbacks the DEC is facing. How is this actually going to help?

Chairman Wise asked Mr. Gilmore to explain the steps that will be taken. Mr. Gilmore said the first thing would be to declare this a "Species of Special Concern". Since this would be the first time he actually has worked on this, he speculates that the Dept would use existing data, they wouldn't actually go out and gather new data and they would make a judgment based on that. Should new data/survey be necessary, that wouldn't happen for a few years though. Ms. Rivera wanted to know how water quality would fit it, where would data come from regarding that issue because she personally feels that the water quality issue is more to blame here than fishing practices. Mr. Gilmore said they wouldn't really be looking at that issue.

Mr. Wise said predation was not a problem until the fishery was fished to the point where it couldn't bounce back on its own.

Paul Risi would like to move toward a motion that would find other tools other than a moratorium. SWIG would be eligible here. Bob Danielson wanted to know the time frame for the ASMFC to do another stock assessment.

Mr. Davi believes this is just the first step to putting shackles around the fishery.

Mr. Witek's motion was adopted. **The vote was in favor – 4, Opposed – 3, Abstentions – 4.**

Mr. Gilmore believes this would be best to approach this in two steps – it must be researched from a legal perspective and also they will need to research the data. He will plan on bringing that information to November's Council meeting. At that time options can be discussed.

Striped Bass Stock Assessment

Mr. Gilmore said there has been a gradual decline over the past few years in striped bass that bears monitoring. Two years ago, the New England states brought a motion at the ASMFC to have a 40% reduction in striped bass harvest because their numbers were dwindling.

New York agreed to wait for the stock assessment to come out to see if any action was warranted. There are now two pertinent reports (links are below): the Stock Assessment Workshop (SAW) and the peer review of this assessment. This will be discussed at the end of October at the ASMFC meeting. Projections show that we will need to reduce harvest at some point. Mr. Gilmore encouraged everyone to review these documents

and feel free to send either him (jjgilmor@gw.dec.state.ny.us) or Carol Hoffman (cjhoffma@gw.dec.state.ny.us) your comments.

The links are:

www.nefsc.noaa.gov/publication

www.nefsc.noaa.gov/publications/crd1314

www.nefsc.noaa.gov/saw/saw57/index.html

Fishery management issues

Menhaden

Mr. Wise said that menhaden used to be a purely legislative fish for New York but things have changed. Mr. Gilmore said that because the menhaden stock was considered "depleted" back in January 2012 it was decided that there would be a reduction coastwide of 20% in the commercial harvest. Each of the states had to abide by that, even if you were considered a *de minimus* state (where your harvest could be considered insignificant). We're talking 370 million lbs. of coastwide commercial harvest; New York harvests approximately 2-3 million lbs. – it's essentially a bait fishery. Unfortunately, because New York didn't take reporting the landings of this fish seriously, they did not record all landings through ACCSP. When the ASMFC needed to cut back, New York was given a limit of only 270,000 lbs simply because when they looked at the data, it didn't appear that New York needed a higher amount. The DEC countered that the reports were not complete and they needed to be updated before any sort of limit could be imposed. At the spring meeting in 2013, the DEC said they would implement all the required regulations but they need to have correct data first. In July they implemented regulations that give the DEC the authority to manage the fishery; they will implement the limits once they have a better handle on the correct numbers so for the time being, the DEC is collecting data. The DEC was not happy with how quickly this addendum was implemented. It was only voted on in December 2012 with the effective date being July 1, 2013. So, for the time being the menhaden fishery for New York is NOT closed, however, should it close, there is still a 6,000 lb by-catch limit in non-directed fisheries. It's important for anyone involved to get in touch with the Department to accurately report their menhaden landings. The time frame they are looking to fill is 2009-2011. Even though New York is not a big player in this field (we account for about 1% of the coastwide quota) we are going to have to report our landings in order to help ourselves.

Councilor Dearborn asked if New York actually received permission to do this or as we move forward will we be out of compliance? Mr. Gilmore said its semantics; no one seems to be worried about New York. Ms. Dearborn said that she is in communication with bait suppliers in New Jersey and has heard that they considered 2012 to be a great season and even though they had to go from 35% down to 20% it was really more like 40/50% hit considering last year's numbers. New Jersey closed down in August and the fishing community was upset because it was still viable for Omega to continue fishing off New Jersey's waters because they are in the EEZ. The report from DEC will need to be completed and ready to forward in the Spring. When the statistics show the increase in catch data, the DEC hopes to make a motion to have New York's quota increased. He's optimistic that folks will realize the more data the DEC receives the more accurate their case will be in asking for more quota. Please get the information to the department as quickly as possible.

Summer Flounder

Governor Cuomo went fishing on a party boat out in Montauk this summer and has now become "hooked" in this fishery. He caught a number of 17 ½" fish but the captain told him that he had to throw them back, however, had he been just a mile over in Connecticut, he could have kept them. It prompted the Governor to become involved and he wants New York's fluke "problem" fixed. There is currently a workgroup working on this and they are hoping to go to a regional approach. Mr. Gilmore thinks there may be an opportunity to

borrow quota from other states as they did last year. This is concerning the recreational side – the commercial sector would take a much longer time to do.

American Eel

Mr. Gilmore said that this is another stock that qualifies as depleted; catch restrictions will be forthcoming. Ms. Carol Hoffman of DEC went over Addendum III to the American eel fishery management plan and its likely effects in New York. The addendum's purpose is to reduce fishing mortality on all life stages of American eel in both recreational and commercial industries. There is currently a 6" minimum size limit – that will be increased to 9" for both commercial and recreational fisheries. Coastwide agreed on a 1 ½ x 1 ½" minimum mesh size, however, New York already does 1" x 1 ½" so we wouldn't need to do anything. In the recreational fishery there is a cap of 50 fish per day which will drop down to a 25 fish daily bag limit except for the captain and crew of party and charter boats can keep 50 fish per day but the passengers can have 25 per paying customer.

Mr. Gilmore continued; the other parts of the fishery are the glass eel fishery, which is really the larger of the problem, and the second is the silver eel fishery in the Delaware River. They thought it best to separate the glass eel fishery because it's a very lucrative fishery, particularly in Maine, they do not want to let that fishery go, however, when you are harvesting large numbers of juveniles, it can have a detrimental effect on the whole population. For this reason Addendum 4 was created. Now other states want to do the same – to separate the glass eel fishery simply because if Maine can do it, other states want to do it too. At the May meeting, the Advisory Panel had recommended that since the NY/Delaware fishery was so small, they shouldn't face a reduction in the fishery. However, between the May meeting and the August meeting, a work group had been put together and it was the decision of the working group that NY/Delaware not receive an exemption. Because so many crazy numbers were bandied about at the August meeting, nothing was settled and this will be discussed at the next meeting where hopefully a consensus can be reached.

Mr. Carl LoBue has studied the eel numbers for New York State landings and said there is no way possible the numbers could be correct. They show state-wide landings in the amount of 8,000 lbs. a year. He worries that we will be in the same position when the Commission decides it's going to take the same approach as they did with menhaden. He hopes the DEC has this on its radar when attempting to get better data for menhaden; we need real numbers for this fishery as well. Ms. Hoffman said she agrees and they do hope to tackle this as well.

Whelks

Kim McGown of the DEC said that she is putting together a regulatory package that will include reporting requirements for whelk because right now people who possess a whelk permit are not required to report on that permit. The DEC has changed reporting requirements for foodfish, lobster and crab license holders – they have to report all species. Anyone who has those licenses AND whelk officially they should report but the DEC has heard that this is not happening. The DEC has been meaning to look at this situation for quite some time but haven't been able to, they are finally able to. They have also been looking at size and maturity of female whelk. They have found that they do not start to mature until they are 5 ½" – 6" so they are looking to place a minimum size limit for their protection.

Asian Horseshoe crabs – The ASMFC made a resolution that States should prohibit the importation of this species.

Diamond-back Terrapin: Ms. McGown said that in July 2012, Mr. John Turner and Dr. Burke gave a presentation on the use of terrapin excluded devices in crab traps which the DEC is looking into.

Lobsters – prohibiting the release of live out-of-state lobsters in New York waters. From time to time people think they are "rescuing" a lobster and will purchase a lobster for consumption at a restaurant and save it by placing it back into the water. Since many of our lobsters come from out of state, mostly Maine, you are not doing a service to the lobster because the water temperature is different here and they could actually be putting parasites into New York waters that are not local to us. It's not a good idea to take one animal from one area to another.

Ms. McGown is busy preparing a scoping information document concerning the above noted species and hopes to complete it in October. Once that is complete, she will post it on the DEC's website and schedule a date for a public hearing on all the rules. Kim will send an invitation to all pertinent holders. She would like to have this put on the Council's November meeting agenda.

Miscellaneous

Councilor Rivera questioned how many staff will be able to attend the Interstate Shellfish Sanitation Conference in San Antonio, Texas in October? Mr. Gilmore said that they made the argument that they will need to send at least 3 people and it's currently being reviewed in Albany. He's hopeful because there are currently a lot of issues that require laboratory management and inspections, so the information gathered at the conference is vital.

2013 Council Meeting Schedule

The following date is the final date of the regularly scheduled meetings of the Marine Resources Advisory Council in 2013:

12 November

Meetings of the Council are held at 2:00 p.m. at DEC's offices at 205 Belle Mead Road in East Setauket, New York unless otherwise noted. The meeting schedule for 2014 will be determined during the November meeting.

12 November 2013 Council Meeting Agenda

The following are the tentative agenda items to be addressed at the Council's 12 November 2013 meeting:

- approval of Council minutes
- winter flounder as a species of "special concern"
- omnibus regulatory package
- updates:
 - summer flounder
 - menhaden
 - American eels
 - Winter flounder
- 2014 Council calendar

Check the Council's web page <http://www.somas.stonybrook.edu/community/MRAC/index.html> for other agenda items, added to the list after this bulletin is distributed. For further information about the Marine Resources Advisory Council or items covered in this bulletin, to make arrangements for addressing the Council on an agenda item or submitting written comments on an agenda item, or to suggest an agenda item, contact: William M. Wise, Chairperson, Marine Resources Advisory Council; phone 631/632-8656; FAX 631/632-9441; william.wise@stonybrook.edu