



Marine  
Resources  
Advisory  
Council

# BULLETIN

Robert Danielson

John Davi, Jr.

Melissa Dearborn

Paul Farnham

Thomas Jordan

Joseph Paradiso

John Renaldo

Paul Risi

Christopher Squeri

Charles Witek

Dean Yaxa

William Wise  
Chairman

Kim Knoll  
Staff Assistant

15 April 2014

Meeting of the Marine Resources Advisory Council

Volume XXIV, No.3

The Marine Resources Advisory Council's April meeting is usually devoted to reviewing and commenting on bills dealing with marine resources that are under consideration by the NYS Legislature.

Chairman Wise announced that the Council will not have a quorum of members present. He then explained that the Council had recently discussed ways by which Council meetings could be improved. Mr. Wise and individual Councilors have been receiving negative feedback that Council meetings have become a bit unruly and unfocussed and are often longer than they need to be. The Council has resolved on certain changes to its meeting procedures that will address these concerns.

The Council seating has been an open "U" with the open end facing the public. This seating arrangement has been changed to a conference seating square to facilitate discussion among councilors. Audience seating will not be around the perimeter of the meeting room in an effort to reduce distracting chit-chat between members of the general public attending the meeting.

The Public Comments segment that starts the meeting will be limited to topics that are NOT on the day's agenda. Those addressing the Council will have one minute to speak. The topic they raise will be subsequently dealt with under "new business" at the end of a meeting should there be sufficient time or it will be placed on the agenda for the next regularly scheduled meeting.

Once a motion is made and all councilors wishing to speak on the motion have done so, the motion will be open to the public for their comments. Members of the public addressing the motion must be recognized by the Chairman, then come forward to a designated seat at the Council's table, state their name, and say their piece. Each person will have 3 minutes, they will then return to their seat.

To avoid confusion as to what the exact motion is, a staff person from the DEC will be typing the motion and displaying it on the large screen in the conference room. Mr. Gilmore, Director of Marine Resources for DEC, asked that the wording of Council motions be made as definitive as possible.

Mr. Wise then went over the day's agenda.

## Announcements

Mr. Gilmore said that there has been some confusion with regard to winter flounder regulations. He stated that the Atlantic States Marine Fisheries Commission (ASMFC) voted to extend the open season from March 1<sup>st</sup> – December 31<sup>st</sup>. It was left up to the Commission's member states to implement this or not. New York has not because the Council did not make an official recommendation to the Department at its last meeting for lack of a quorum. DEC will prepare a rule-making on the matter, with alternate options including status quo and different variations on full season/partial season. It will be brought up to the Council again for its recommendation.

Mr. Pat Augustine made the announcement that he is stepping down from his post as a New York State commissioner to ASMFC. He thanked everyone for their support over the years as well as their feedback whether good or bad. He will continue in his duties until he is replaced.

## Public Comment

Commercial fisherman Mr. John German referred to the topic of conch. He has heard rumors the DEC was essentially trying to strong-arm Connecticut to conform to New York's proposed minimum size. He has heard talk that there was a threat to bar Connecticut fishermen from New York waters if they did not go along with New York's size regulations. He pointed out that, if Connecticut whelk fishermen cannot fish in New York waters, Connecticut will ban New York fishermen from its waters. The two states have always had reciprocal licenses and Mr. German doesn't want that to end.

## Marine Legislation Review

### Newly filed bills

S4420/A4397: Directs the department of environmental conservation to grant Robert Zickmund, Sr. a license to fish conch

*Discussion:* Mr. Wise believes this is the first time he can recall that a person has actually gone to the Legislature to secure a commercial fishing license and gotten a bill introduced. Mr. Gilmore said this was essentially a person who did not receive a whelk permit through the normal process, which is a lottery. He was not happy that he did not get chosen and is trying to go through the Legislature to get one. Mr. Gilmore doesn't believe this is the correct way to go about getting one. Eligibility requirements are the way to go.

Councilor Tom Jordan feels this would set a very bad precedent. He does not support this bill. Councilor Davi knows Mr. Zickmund personally and understands why he is trying to move forward in this manner but worries that others will also try this and how can you say yes to one and not yes to the next person. Councilor Danielson concurs – he would not support this legislation.

Chairman Wise questioned how many applicants there had been for whelk permits? There were 33-34 applicants for new whelk permits under the permit cap and only 1 was given out.

Environmental Conservation Officer Billotto commented that Mr. Zickmund, Sr. once had a license in the past but as the value of conch decreased, Mr. Zickmund gave up his license. He believes he is interested again because there has been an increase in the fishery and in the value as well.

Since there wasn't a quorum, the Council could not vote on this but it was clear it does not support S4420/A4397.

S6419/A8561: An act to amend the environmental conservation law, in relation to the definition of "immediate family"

*Discussion:* This legislation would remove from current law the requirement that immediate family members eligible to receive a commercial fishing license by pre-designated of the license-holder must be domiciled with the license-holder.

Mr. Wise questioned whether this new bill would broaden or narrow the range of individual eligible for license transfer by pre-designation? Mr. Gilmore said it would expand it. The current law stipulates that the immediate family member to receive a license via pre-designation must be domiciled within the house of the person currently holding the license. This bill would remove the shared-residence requirement and a New York-licensed commercial fishermen could designate that, upon his/her death, the license would be transferred to a son living in Rhode Island, for example. The only concern here is that this may be creating a loophole whereby people can then pretend to be a relation. Mr. Gilmore also clarified that the word domiciled is very specific in its meaning. You may have more than one residence but you can be domiciled in only one residence.

Councilor Jordan questioned whether the proposed language would include blood marriage or the word adoption? He doesn't want to sneak in any additional language to confuse matters.

Mr. Wise thought that the language used in the commercial license transferability itself identified what immediate family meant in that context. Councilor Witek said the qualifier in this bill is "immediate" and not the word "family".

Mr. Davi thought originally it meant a New York State resident; that you had to be a resident in the same state the license was held. He also worries about a person who has worked side by side with the license holder – why shouldn't he be allowed to transfer it to that person?

Councilor Risi believes that the only change in this bill is to take out the word "domiciled." Mr. Wise agreed, he said that currently if you are a son but are not domiciled in the same residence, you would not be eligible to receive the license. The newer version would amend that.

Mr. Risi said the question is basically, "Do we want to make it that a commercial fisherman can hand the license down to a designated person or should the license go back into the pool and be reissued?" Mr. Jordan said this is a post-mortem transaction. The person has to die first and then the family should have options. Mr. Wise said the Council's original position on this was premised on a desire to help out someone who received a license, they were immediate family who wanted to take over the business. Mr. Danielson said that the Council originally stipulated "immediate family member" so it has already been decided. Mr. Davi said he doesn't have a problem with a nephew/niece who wants to take over the business; what if that nephew worked alongside the uncle for many years, it's only fair. Councilor Renaldo said we just need to decide who the blood relative is and that should be our only point of discussion. Charlie Witek said it seems like we're discussing what immediate family is referring to. You have family and you have immediate family – two separate things. The question is, should the license be limited to immediate family only (son/daughter) or do we want to put this in a much larger group just because they are part of the extended family.

Mr. Jordan said that we are not looking to expand this whether we keep it immediate family or just family. If there is no other immediate family that wants it, they can put it in an immediate family person's name and a day later, that person can sell it for \$1.00 for a one-time sale provision. Mr. Risi said that dying might be a loophole but doesn't think people would do it to take advantage.

Mr. Jordan questioned when the state receives a pre-designation on a license, does it ask for the relationship to the holder of the license on the form? Deborah Barnes said yes. When the wording was put together, it was very broad but it does recognize that immediate family does have its limitations. The way this bill is now written, anyone related by blood, marriage and adoption could apply. The true intent was for the license to be passed down to an immediate family member who would carry on the traditions of commercial fishing. It was then amended because many families do not want to carry on their family's traditions so it was changed that you could designate it to a family member and before that person takes ownership, they can do a one-time only transfer. The rules begin all over again – the new person gets to designate a family member should they pass on and so on and so on, the cycle repeats. Mr. Jordan said the original intent was meant to help a widow who needs to sell all the fishing gear to stay afloat financially. Ms. Dearborn said the wording refers to immediate family *OR* those domiciled in the household? Ms. Barnes said it did – should the fisherman have a son-in-law who resides in his house, the son-in-law would be eligible because he is domiciled in the house.

Mr. Gilmore said he would like the wording to say "New York residents only" as well. He would like to make sure the license stays in New York. The Council concurred. So, the general agreement was that this bill should be revised to say "domiciled in **New York State**."

#### *Comments from public:*

John Mihale says licenses aren't going where they are supposed to. They are not ending up with people who are already in the fishing business. This needs to be looked at closely. People are just buying licenses now and that is wrong. Councilor Davi did not see this as a problem.

August Ruckdeschel likes the expansiveness of transferring the license to more people. He worries about changing the law and then perhaps the Department's own interpretation may be different so the law wouldn't be handled in the way in which it was intended. We could be opening a can of worms.

Reed Reemer said if the interpretation changes and someone opposes it, it can be taken to court where the judges can decide.

#### A2298 /S02178A – Prohibits the taking of striped bass during the period January 15<sup>th</sup> – April 15<sup>th</sup>

*Discussion:* Mr. Danielson said for point of clarification – this simply puts into law what is already a regulation. Mr. Renaldo recalls this was more for the commercial fishery in light of Hurricane Sandy; it gave the fishermen two extra weeks to fish. He doesn't think we need to continue to do this especially with the striped bass stock in the condition it is in. Mr. Gilmore said this will be brought up at the May ASMFC meeting. He believes there will be reductions in allowable catch levels for striped bass. He's not sure of the particulars just that there will be a reduction.

*Comments from public:*

Mr. German said the period of December 15 – January 1<sup>st</sup> is a very lucrative time for the commercial fisherman because they can get a better price fishing through the holiday season and there are a large number of striped bass available at that time.

A03355/S02922-Relates to party and charter boat licenses, requiring the owner of a “for-hire” fishing vessel to document that the vessel operator and crew are enrolled in a federally-approved drug testing program.

*Discussion:* Mr. Wise recalls that in last year’s discussion of this bill, the Council worried that this required the owner to be the subject of the drug testing program but many times the owner isn’t even on the boat, he assigns a boat captain to operate the vessel. This newly written bill reflects the Council’s concern.

Mr. Risi thinks this is fine the way it is. A multi-passenger vessel can have a written letter from the Coast Guard posted on the vessel letting folks know that that are using a vessel that has a drug-free crew. Mr. Risi supports the revision to bill A03355/S0922, and most councilors agreed.

*Comments from public:* None

A3890/S3059-Allows spears, spearguns and underwater guns in the commercial and recreational harvesting of striped bass.

*Discussion:* Mr. Wise recalled that originally there were two bills concerning spearguns; one authorized the use of this equipment to catch a wide variety of fish and then there was this bill that specified “striped bass.”

Mr. Renaldo said one of the problems with last year’s bills was that the definition of the word spear. The definition is now the same in both Senate and the resubmitted Assembly bill (A5179B).

Mr. Gilmore said the core problem he hopes one of the State legislators will take on is to match up definitions of spear gun in Articles 11 and 13 of the Environmental Conservation Law. The definitions in the two articles differ from one another and create ambiguity. Until the contradictions are removed, the problem will not go away.

Mr. Witek still has a problem with allowing commercial spearfishing, in particular the ability to determine the exact size of the fish underwater. He doesn’t believe anyone can determine the size of a fish within an inch of an approved size limit.

Mr. Wise said we could work with the legislation to help correct the ambiguity. The Council agreed with this.

*Comments from Public:* Captain Joe Anginopsky, who is a recreational fisherman but works with commercial fishermen, stated that you’re talking about a slot size limit of 24-36 inches. If you are an experienced diver, the size limit is not that difficult to figure out even under water. With spear guns, there is no discard, no underwater gear left behind nor any damage to the environment. He thinks the current prohibition on use of spear guns is very discriminatory especially in light of the by-catch mortality associated with other commercial fishing gear.

Mr. Wise advised Captain Anginopsky to write to the sponsors and help them reduce the ambiguity in the bill. Paul Risi thinks there is a fair balance between what they do and what a gill netter does and hook and line fishermen. He, too, doesn't believe there is much waste. Mr. Davi also agrees. Mr. Renaldo said you could always make a tighter slot size so the chances of falling out that size are minimal.

Mr. Jordan said we could consider changing the commercial slot size, raise the lower limit and eliminate the upper slot size limit.

#### *Refiled bills council opposes*

Chairman Wise noted that the following bills have been re-filed from previous legislative sessions. He asked the Council if anyone wanted to propose a change in the Council's opposition/support for these pieces of legislation. There were no such proposals.

A01224/S01762A: Authorizes the catching and possession of up to 5 times the daily limit of fish during any 7 day period of time; authorizes the catching and possession on a single vessel of the maximum daily limit for each species of fish a person aboard the vessel is authorized to take.

A04617/S02690: Provides for aquaculture and shellfish regulation, transferring authority over shellfish aquaculture from DEC to the State Department of Agriculture and Markets.

A05421: Limits the taking of sharks, except spiny dogfish, to the use of non-stainless non-offset circle hooks.

A4837/S03707: Relates to granting tidal wetland permits

A00138/S00782A: Eliminates requirement for operators of commercial fishing vessels to pay diesel fuel taxes and then seek a full refund of these payments.

A05434: Changes the income requirement for the State commercial foodfish license to 50% of total income over three consecutive years of \$10,000 over three consecutive years from fishing; applies this same criteria to issuance of special commercial striped bass harvest permit.

A05021: Prohibits the taking of horseshoe crabs without a permit; permits to be issued only for taking horseshoe crabs for medical or research purposes or to such persons holding commercial lobster permits as determined by DEC.

A05024: Establishes a marine life protection task force within DEC and charges it to conduct a comprehensive assessment of the needs to protect marine life in New York's Marine District and the adequacy of current laws and regulations to provide this protection.

A04687: Makes changes in the definition of the habitat protection zone for Long Island Sound, expanding to the east the no-trawl zone in the Sound.

A05614: Authorizes the taking of surf clams or ocean quahogs by mechanical means from the Atlantic Ocean for commercial purposes.

A06047: Establishes a tax credit for commercial fishing equipment.

A02291/S02125: Decreases application fees for tidal wetlands permits

Mr. Wise went over each bill to see if the Council had changed its position on any of the above named Bills but no one had.

#### *Re filled Bills – Council supports*

A01218: Provides motor fuel tax exemption for sales of diesel motor fuel used in vessels used directly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes.

A01045: Bans the release of more than 25 balloons inflated with a lighter-than-air gas within a 24 hour period.

A01605: Prohibits disposal of dredged spoils containing toxic pollutants into the waters of New York's Marine and Coastal District.

### **Review of Council's Duties & Responsibilities**

Chairman Wise stated that the Council has specific fundamental duties and responsibilities as set forth in the Councilor's Manual and he thinks it would be wise to go over them to make sure that the Council is upholding their obligation.

#### **The Council's Purpose & History**

The Council was created by the New York State Legislature (Chapter 582 of the Laws of 1987) to provide advice to the State Department of Environmental Conservation (hereinafter "DEC") on issues pertaining to New York's marine resources and the fisheries they sustain. The original duties of the Council as specified in Section 13-0350 of the Environmental Conservation Law were:

- 1) To review DEC allocations and expenditures for the care, management, protection, and enlargement of marine resources
- 2) To issue reports and information regarding DEC's marine resources program to commercial and recreational harvesters
- 3) To consult with commercial and recreational harvesters to develop recommendations regarding marine resource program needs
- 4) To assist DEC's efforts to expand available income to meet (marine) program needs

In 1994, the Legislature gave the Council an additional responsibility:

- 5) To review and provide recommendations to DEC on any proposed regulations for the management of marine fisheries

Mr. Wise recalled years ago, the Council used to look at the DEC's allocation of fund to various program areas in marine resources. However, in recent years the Council has been delinquent in this area. The Council spends most meetings focusing on #5 but items 1-4 are equally important. He

would like the Councilors to look at the list and think about where there is room for improvement. He hopes to discuss this at the next meeting.

As far as voting is concerned, it's fairly restrictive, currently voting can only take place when there are 4 members present from each of the fisheries, commercial/recreational. Mr. Wise suggested that, perhaps in this day and age with all the variations of conference calls and skyping, the Council might want to consider loosening its rules a bit while at the same time maintaining the essence of the meeting. Since the Councilor's Manual was written by Chairman Wise many years ago, and is not part of the Legislation, it was thought that perhaps, a change could be made and quite easily at that.

Mr. Renaldo said that he misses 1 or 2 meetings a year due to business commitments; however, if he were able to take advantage of participating through a conference call, he wouldn't need to miss any meetings.

Mr. Witek thinks there is value to attending the meeting in person. He believes that if we begin using remote access, it will be the end of the Council as a whole. He believes strongly that the interaction between the Council and audience needs to take place physically. Each Councilor knows in advance when the meeting is to take place and they should make a point of attending. And if you can't be here for every meeting, perhaps you should step down.

Mr. Risi said that for items that are on the agenda, he doesn't see a problem with a phone in vote because each Councilor would have had an opportunity to speak to the fishermen he/she represents prior to the vote so he/she would understand their preferences.

Mr. Renaldo does see the value of meeting face to face; however, he also doesn't want to see voting being postponed for an additional month or two because there isn't a physical quorum present at the meeting. This is especially important when time is of the essence concerning a decision.

Mr. Danielson thought perhaps you could lower the minimum number needed on each side in order to vote. Mr. Wise reminded the Council that this number was set at 75% for each side (commercial/recreational) because this was thought to be fair representation; he would not like to see this compromised.

Mr. Wise said he will come up with several different voting ideas on moving forward and bring them to the next meeting for discussion and hopefully voting.

**Public Comments:**

Kathy Heinlein thought it would be beneficial to audience members if the supporting documents being used at the meeting are posted prior to the meeting. This would enable audience members to print their own copies should they choose to. She suggested using worddocs.com.

Reed Reemer would really like to see the vacant Council seats filled.

**Striped Bass Commercial Harvest Permit Recommendations**

At a preceding meeting, Mr. Mihale made the recommendation that Council meetings should include a follow-up on topics that the Council has previously discussed and voted on. Mr. Wise agreed especially since the language in the Manual does direct the Council to do just that. This is the first topic in a series that will be done periodically.



Mr. Wise has asked Mr. Gilmore to speak on the set of recommendations the subcommittees came up with several years ago on eligibility of striped bass permits, transferability of striped bass permits as well as transferability of tags. One workgroup met twice, initially on the tag issue and what kind of transferability should be attached to the tags and then it was suggested to look at the permit itself. This brought about two sets of recommendations but Mr. Wise doesn't believe anything has moved forward on this.

Mr. Gilmore stated that some of the Council's recommendations require legislative action while others can be implemented through regulation. Anything dealing with legislation takes longer and is more complicated because it must go through a process involving Article VII (a budget bill), which has quite a bit of limitations.

Soon after the striped bass recommendations were made, the DEC was faced with an Investigator General (IG) investigation that was supposed to span several months which has turned into years. The investigation required numerous interviews with DEC staff which took up a lot of time. To further complicate matters for the DEC, there were limited personnel in the permit office to handle the permitting system. The DEC is working on improvements for instance they now have additional personnel in the permit office. The recommendations for striped bass are just a part of a larger group of recommendations the DEC needs to address, what they would like to do is tackle them all at the same time. First they need to wait for the trip reports to come out in order to capture the true data. To take care of this collectively would make the most sense.

Mr. Jordan worries when the word "collectively" is used; he does not want to see things lumped together (i.e., recommendations on striped bass – this shouldn't be allowed to overflow into food fish licenses or fluke licenses because they are independent issues). Mr. Gilmore said he won't know what the IG's recommendations are until the report comes out. Once the recommendations come out, we will then have to look at implications. The IG will come out with recommendations to the Department and the Council will be heavily involved in making decisions regarding them. Mr. Jordan asked if the recommendations are to be viewed as mostly *guidelines*. Mr. Gilmore wasn't sure.

Mr. Davi said moratoriums need to be put in place for 2015 – do we have to wait for this report to come out? Mr. Gilmore said no, but to keep in mind that what we decide may be way off base when the report does come out.

## Public Comments

Mr. German said that he has been very active in what Mr. Gilmore refers to as "the IG report" but it is not a report – it's an investigation and one that needs to be taken seriously. They are investigating the manipulation of the rules and regulations by DEC. Mr. German noted that he didn't elect lawmakers to go up to Albany to make laws only to have them turn the power over to the Department.

Mr. Mihale thinks that we waited too long to take action on striped bass. He believes changes need to be made that will make folks lives better. Up until 1983 there was no license requirement to sell fish including striped bass in the state of NY. In 1984, the State decided it would issue a \$100 license to sell striped bass with the only restriction being a minimum size limit of 23" there was no restriction as to where you could fish. The second year (1985) there was a restriction – you could only fish on the east end. Because of that Mr. Mihale did not buy the license in 1985. The striped bass fishery then closed for 4 years, however, in 1986 for the first time a foodfish license was issued. When the

striped bass fishery reopened in 1990, those who had had a license in 1984/1985 were grandfathered in. Further restrictions were forthcoming, e.g., closed fishing areas and slot sizes. Eventually the boundary on the south shore was brought westward to the terminus of East Rockaway Inlet which still left all the New York Bight and all the 5 boroughs, back around the Long Island Sound to Wading River closed for the commercial harvest of striped bass. When the DEC initially reopened the fishery they recognized that not everyone who had a striped bass permit would be able to participate in the fishery if they lived in this closed area; they actually had a mechanism by which one could transfer tags. We need to find a way to go back to allowing the transferring of striped bass tags again. We've asked for the recertification of the waters. Perhaps with funding made available because of Hurricane Sandy, this will be able to get done. Mr. Jordan said that it is his recollection that the department does agree with Mr. Mihale's view on the transferability of the tag issue.

Mr. Davi recommended should be some kind of rule that allows commercial fishermen to be allowed to take at least the recreational limit on striped bass.

Ron Oranato said the original reasoning for the clean line between the east and west was not for control of the bass population, it was set because of health concerns. It was due to a high concentration of PCBs, Dioxin and heavy metal that striped bass would pick up in the west end waters. The bigger the fish, the more contamination it carried. The whole point of not selling the fish was to protect the public.

## **New Business**

Mr. German requested an update on the multi-species crustacean regulatory package that includes the minimum size proposal for conch. Mr. Gilmore said they are moving forward with the package but the implementation dates will be different. It will be done through normal rule-making. They are currently looking at where the area restrictions will be with regard Terrapin Excluder Devices. They are working together with Connecticut and, contrary to what Mr. German suggested earlier in the meeting, Mr. Gilmore said the talks are very friendly. The earliest timeline is 2015, and for efficiency sake, they are trying to package them together.

ASMFC was considering having an interstate management plan on conch. Because it would have been too restrictive it was decided that while something needed to be done, it would be up to individual states as to what would make sense for each particular area.

Councilor Yaxa worries that this Department is moving forward with this package without having the input from numerous counties including Richmond, which is the most populous county in New York State for hard clams. He feels that you are pitting the east and west end against each other. Mr. Gilmore said there will be an opportunity for the public to make comments once the language has been set.

Mr. Davi worries about putting excessive pressure on Connecticut as was stated before, it will create animosity. Mr. Gilmore said that the talks that have taken place have been very friendly.

Mr. Yaxa said he has been the recipient of much chatter concerning the taking of shellfish by divers. He has heard that clams and oysters are being taken by divers, which is considered poaching. When a flag goes up, you are restricted from fishing in that particular area and if you have how many people doing that, the area removed for fishing is extensive.

### **2014 Council Meeting Schedule**

The following are the dates of the regularly scheduled meetings of the Marine Resources Advisory Council in 2014: They take place at the offices of the DEC – 205 Belle Mead Road, East Setauket, NY at 2:00 p.m.

- June 3<sup>rd</sup> (note: this meeting was originally scheduled for May 20<sup>th</sup> and was rescheduled)
- July 15<sup>th</sup>
- September 16<sup>th</sup>
- November 18<sup>th</sup>

Check the Council's web page at <http://www.somas.stonybrook.edu/community/MRAC/index.html> for June 3<sup>rd</sup>'s agenda items which will be posted prior to the meeting. For further information about the Marine Resources Advisory Council, items covered in this bulletin, to make arrangements for addressing the Council on an agenda items or submitting written comments or to suggest an agenda item, contact: William M. Wise, Chairman, Marine Resources Advisory Council; phone 631 632-8656; [William.wise@stonybrook.edu](mailto:William.wise@stonybrook.edu).