



Marine Resources Advisory Council

Sean Barrett

Marine Resources Advisory Council
May 8, 2018 – 2:00 p.m.

Robert Danielson

John Davi, Jr.

Today's afternoon Council meeting will be dedicated to go over Bill's being considered for Legislative Review. The Council's April meeting is typically set aside for the Legislative review, however, the meeting had been cancelled so the Councilors could attend the Governor's announcement regarding the artificial reef program. The afternoon's meeting will be followed by a 5:00 p.m. meeting which will cover the current agenda topics. Councilors present then introduced themselves.

Melissa Dearborn

Vincent Finalborgo

Thomas Jordan

Hank Lackner

Minutes of March 6, 2018

Joseph Paradiso

Councilor Witthuhn wanted his letter on Black Sea Bass to be included as part of the official record for March's meeting notes. With that noted change, the Minutes were approved unanimously.

Christopher Squeri

Announcements

Charles Witek

Announcements will be covered in the second portion of the meeting.

Steve Witthuhn

Bills Currently Under Review

Dean Yaxa

***S1153** – Proposing an amendment to the Constitution, in relation to the right to hunt, trap and fish – currently in Committee. Councilor Danielson, made a motion to support this bill, Councilor Paradiso seconded.*

Discussion: Mr. Gilmore questioned what the purpose of this Bill truly is. Councilor Danielson believes it protects the rights of the individual to hunt, trap and fish in New York. Mr. Gilmore believes this is moving away from Environmental Conservation law and putting it into the Constitution. Councilor Witek said this would completely override the statute. He also wondered what is meant by (line 11) "...pursued by hunters, anglers and trappers." His understanding is that an "angler" is a person who uses a hook to fish. He would be happier to substitute the word angler with fishers, Mr. Gilmore concurred. Councilor Witek also thought the words "by traditional means and methods" (line 10) could be misconstrued because it would give someone the argument in court that something is traditional means and is protected by the NYS Constitution thus the regulation is Constitutionally invalid.

Councilor Danielson believes this is an effort to overcome groups such as PETA and the PEW Charitable Trust. He modified his motion to say that he would support this bill if they change

Michael Frisk
Chairman

Kim Knoll
Staff Assistant

"anglers" in line 11 to "fishers" and eliminated the words "by traditional means and methods" in line 10. Councilor Paradiso seconded.

All in favor – 10, Opposed -0, Abstentions – 1. Motion passes

S2602 – *An Act to amend the environmental conservation law, in relation to prohibiting the disposal of dredged spoils containing toxic pollutants into the waters of the marine district (currently on Floor calendar)*

Discussion: Mr. Gilmore said he believes this Bill has come up because of what is happening right now in the Long Island Sound. There are currently Federal laws regarding pollutants that are also copied in State law. This Bill is extremely vague – there would need to be pages and pages listing all the pollutants involved. Mr. Maniscalco said a similar Bill has come up twice before and both times the DEC Marine Habitat has opposed it.

Councilor Danielson made a **motion to oppose** this Bill until such time that the language is amenable to all. Councilor Davi seconded.

Further discussion: Mr. Ralph Vigostad said that during the Long Island Sound dredging project, he made close to 300 phone calls to officials in New York, Connecticut, Rhode Island and New Jersey, and while he found out a few things, he found it very difficult to get a completely straight answer. He did find out that when testing the dredging material, they look for PCBs, mercury, and about 5 or 6 more. Should the material contain any of those key ingredients, it cannot be dumped; everything else gets placed in a tank of sorts along with small fish where they will be watched for approximately 2 weeks. Should they die; the materials will need to be looked at more closely. Anything that does contain PCBs is being buried in areas that have been dredged with deep holes, (the shallow parts of NY Harbor) and then covered with clean sand.

Councilor Jordan said it's difficult enough to get rid of *clean* dredged spoils. The lack of a definition could preclude legitimate projects and hurt businesses. It needs to be defined.

All in favor – 10, Opposed – 0, Abstentions – 1. Motion passes.

S3003 – *An Act to amend the environmental conservation law, in relation to party and charter boat licenses (passed Senate not Assembly)*

Chairman Frisk said this Bill relates to a random drug testing program that complies with the Federal Government's regulation. Councilor Jordan said this Bill reveals the difference between regulations for the party boat industry and charter boat industry. In the party boat industry – the captain and the crew must participate in the random testing program – they get tested originally and then re-tested randomly. In the charter boat industry the captain must go through testing upon application as well as renewal which is every 5 years but his crew does not. The Bill is to level the playing ground – the thinking is why do captains and crews who carry 30 people need to be tested but a boat that only carries 6 people doesn't - - are those 6 lives less valuable than the 30? This is a good regulation and *should* be spread across both areas.

Councilor Davi wonders what happens if a crew member tests positive? Councilor Jordan said that person should not be working. If there is any type of accident, the very first thing is for the captain and crew to be tested and if it comes to light that you have someone working for you that you know has failed their drug test, you might as well just turn over your boat. This does not apply to commercial vessels and Councilor Danielson said what is to prevent the captain of a commercial boat being completely under the influence of a controlled substance and hits a charter boat filled with people? The answer was nothing.

Councilor Davi made a motion to support the Bill, Councilor Jordan seconded.

All in favor – 10, Opposed – 0, Abstentions – 1. Motion passes

A3262 – *An Act to amend the environmental conservation law, in relation to allowing fishing guides and individuals holding a party or charter boat license to issue certain licenses (In Committee)*

Discussion: It was determined this Bill really relates to the Great Lake area and not something we should vote on.

A4817 – *An Act to amend the environmental conservation law, in relation to recreational and commercial spearfishing in New York's marine and coastal waters*

Discussion: Councilor Barrett is very much in favor of this Bill. He said spearfishing is an extremely selective method of harvesting fish. Of all the fishing techniques, this is viewed as the most sustainable; its efforts results in zero by-catch of protected or undesired species. Even if a fish is labeled short for the slot size, mortality is dramatically lower than any other gear types. It should also be considered that this style of fishing does not damage/destroy fishing habitat.

It is only because of a wording error which made commercial spearfishing illegal in New York and this bill would rectify that error. The error appears in the bill (subdivision 1 of section 11-0103): "Allows recreational spearfishing in the York's marine and coastal waters; defines "speargun" and "under-water gun" and provides for the repeal if such provision upon the expiration thereof." The new paragraph (f) in the ECL now read: (f) Except as otherwise prohibited by law, fish may be taken by spear or speargun in the marine and coastal district only for recreational purposes."

Councilor Jordan completely agrees with Councilor Barrett. When the issue had first come up, his initial reaction was to be against this because he believed there was no chance for survival of the fish should an error in size have been made. He has come to realize that the amount of mortality is so minute that it truly is the most sustainable of all the fishing gears; you can't begin to compare the scale. He has made a 180 degree turn on this.

Councilor Yaxa questioned DEC Officer Sean Riley, asking approximately how many tickets have been issued regarding this type of gear to which Lt. Riley replied, "Probably average less than one a year."

Councilor Davi made a motion to support this Bill; seconded by Councilor Jordan

Further discussion. Councilor Danielson said he is still concerned about the slot size to which Councilor Jordan said that was exactly his point. The size concerns every fishing gear and most of the gears are fishing blind. You're fishing with nets or trawls and have no way to be selective whereas this gear type does have that ability. Councilor Witek does not like the idea of the Legislature getting involved in fisheries management and starting to pick out which gears are legal/illegal and mandating that certain gears must be permitted and overriding the judgement of the agency. He would much prefer this to be a regulatory issue with a clear understanding of what fish may be harvested unless regulation prohibits.

Mr. Gilmore said that no matter what, you are going to increase harvest. Councilor Jordan said if you have the same number of tags – how are you increasing harvest? Mr. Gilmore replied because when the fish is caught and it's the wrong size, you can sort of just walk away from it. Perhaps not a significant increase in harvest, perhaps catch is a better word, but it will increase.

All in favor – 7, Opposed -1, abstentions -2. Motion passes

S4820 – *An Act to amend the tax law, in relation to exempting fuel used in vessels used directly and predominantly 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 (in Committee)*

It was noted that this has been discussed in previous years. Councilor Davi said this is a service industry and as such, tax will be collected and he doesn't believe there is any way around that; this will not pass the Ways and Means Committee.

Former Councilor Mr. McBride said commercial fishers became tax exempt when they were considered “farmers of the sea” – they received the same benefits as land farmers.

No action will be taken by the Council.

S6534- An Act to amend the environmental conservation law, in relation to the management of certain marine species by order, crab permits, and whelk sales (in Committee)

Discussion: Mr. Gilmore said this is the declaratory authority bill that will give the Department the authority to implement changes to fishing regulations within 48 hours as opposed to having to go through the entire emergency rule making process which takes a minimum of 2-4 weeks. Councilor Davi isn't happy giving the DEC regulatory authority and he thinks there should always be a public process. It was explained that this would not preclude going through the public process, this is simply a grant of regulatory authority, the same as all the other species. Whelk, however, is separate.

Councilor Davi worries if the department bills go through, what happens if something needs to change, he worries that the control date that was voted and agreed on and won't be used. He worries because it goes until 2020. Councilor Jordan said that until it is actually enacted, there isn't anything that needs to be done right now.

Motion to approve the Departmental Bills in addition to S6534 by Councilor Jordan, Councilor Danielson seconded.

All in favor – 8, opposed – 1, abstentions -2. Motion passes.

S7229 – An Act to amend the environmental conservation law, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic Bays

Discussion: Councilor Barrett said this is an aquaculture Bill and refers to an initiative that is being supervised by Professor Christopher Gobler of Stony Brook University to grow seaweed and sugar kelp. There is an increased demand for the products in restaurants and currently their needs are being met by receiving it from out of state sources. Sugar kelp is indigenes to Long Island and grows completely wild around Montauk. This will take place in Suffolk County's aquaculture's leased area; this will also help to diversify the oyster grower's crop. Councilor Yaxa worried that this will impede navigation for boats, however, it was stated that since this will be taking place using aquaculture lands, there won't be a problem. Councilor Barrett said the sugar kelp/seaweed sequesters carbon from the atmosphere and pulls nitrogen from the water. Dr. Gobler is especially interested in the nitrogen run off that the kelp farms will actually suck that nitrogen back into the kelp which will also be sold as fertilizer to local farms. Another positive note is that the kelp farms will help to mitigate storm damage by reducing beach erosion. It really is a win-win proposal. Mr. Davi worried that the growing may spread and get out of hand but Lieutenant Reilly alleviated that fear by explaining that the seaweed will only bloom once the water is less than 52 degrees, so it grows during the winter but begins dying off come Spring. It is completely dormant during the summer. When asked what it looks like, its appearance was compared to a lasagna noodle.

Motion to approve by Councilor Barrett; seconded by Councilor Jordan.

All in favor- 10, opposed -0, abstentions – 1. Motion passes.

A10506 – Relates to the taking of menhaden; provides that menhaden (*Brevoortia tyrannus*) from which oil or meal is made may not be taken from the waters of the marine district with a purse seine

Discussion: Councilor Danielson said that purse seines were banned from the western long Island Sound for various reasons. He thinks it is a positive idea to prevent the purse seiners to re-enter New York's waters along the South Shore

to harvest for reduction or bait fisheries these menhaden which are just starting to come back. We're just beginning to see large aquatic mammals (i.e., humpback whales) and the more we keep the menhaden plentiful, the more the water benefits. He is for this bill. Mr. Witek completely agreed with Mr. Danielson and also added he is happy to see that fishers are once again making some money on Menhaden, we've gotten a larger quota and it's nice to see the smaller scaled menhaden fisheries, the fish traps, the gill netters, the cast netters – all folks who support the tackle and bait shops. The last thing we need is to have the larger scaled fisheries come in and scoop up large numbers of menhaden.

Mr. Gilmore said it's a good thing in theory however what happens when we have an episodic event? New York does not have the capacity to harvest such a large quantity of fish if you take purse seines out of the equation. As an example, Mr. Gilmore said that he was sitting in Port Jefferson with Brookhaven Town Supervisor, Ed Romaine, along with 4 other Town Supervisors and what they were all looking at was a solid wall of bunker that spanned from the dock to the middle of Port Jefferson Harbor. They were all impressed but said that it could really turn into a problem and what was Mr. Gilmore going to do about it. He replied that if he could catch them, they are indeed his problem, however, if he can't, they die and wash up on the beach, then it becomes their problem. He doesn't think there will be a massive expansion of purse seiners in New York but he thinks it may be important to have this safety valve.

Mr. Davi wonders if we could add a stipulation that in a case of an episodic event, only someone with a special permit (something granted by the DEC but not given out to the general population) could come forward to remove the fish? Mr. Maniscalco said that most purse seiners will not come up for 50,000 lbs. and even the smallest of the purse seiners have the capacity to hold 125,000 lbs. Since the DEC has regulatory authority, perhaps if we set the limit to a number just shy of making it economically feasible, we could retain control. Councilor Jordan doesn't want to open a door that we may have to close later. We do not have any state operators now and he doesn't think we want either in-state or out-of-state folks to be able to continue this type of operation with the quota numbers we have right now BUT still wants to maintain the ability to deal with an emergency. This bill still doesn't have a Senate sponsor so that might be where we get the language cleared up.

Mr. Carl LoBue of the Nature Conservancy said in 2012 after over a decade of lobbying by fishers that brought scientists on board, the ASMFC constrained the industrial menhaden harvest fishery that operates out of Virginia. Right now they are harvesting over 400,000,000 lbs. of menhaden a year. When the fishery was constrained, it allowed the fish to get older and swim north and we saw the fish recover. This has helped NY waters tremendously – we have seen an increase in numerous species throughout our waters.

If we started using a purse seine net in New York, it would be detrimental. He recalled that the episodic event was actually man-made; the lock operators did not allow fish to pass through – only boats. He would not be opposed to having an emergency plan added to the wording but he really would like the Council to vote for this bill.

Councilor Barrett said there is a book coming out in July that really explains the dark side of the Menhaden fishing industry – it's called The Omega Principle by Paul Greenberg and he recommends folks to read it. He worries that now that Virginia is pushing them out – where do you think they will head?

Mr. LoBue said that eight other states have taken similar actions including Connecticut.

Councilor Danielson made a motion to support this Bill providing the sponsor add language pertaining to an emergency episodic event approved by the DEC. Councilor Davi seconded.

All in favor – 11, Opposed -0, abstention -1. Motion passes.

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## 2018 Meeting Schedule

July 10<sup>th</sup> – 6:30 p.m. School of Marine & Atmospheric Sciences – Stony Brook University

September 11<sup>th</sup> - 2:00 p.m. DEC Offices

November 13<sup>th</sup> - 2:00 p.m. DEC Offices

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For further information about the Marine Resources Advisory Council, past and present bulletins, as well as any pertinent graphs, charts or data, please check the Council's web page: <http://you.stonybrook.edu/mrac/meetings/>

Should you wish to suggest an agenda topic, contact the Chairman, Michael Frisk, ([Michael.frisk@stonybrook.edu](mailto:Michael.frisk@stonybrook.edu)); phone 631/632-8656; Staff Assistant, Kim Knoll, ([kim.knoll@stonybrook.edu](mailto:kim.knoll@stonybrook.edu))