

**Endangered and Nongame Species Advisory Committee
Meeting Minutes
November 18, 2015
Assunpink Conservation Center
Robbinsville, New Jersey**

Members in attendance: Barbara Brummer, Jim Applegate, Jane Morton Galetto, Howard Geduldig, Rick Lathrop, Erica Miller, Howard Reinert, Jim Shissias. **Absent:** Joanna Burger, Emile DeVito, David Mizrahi.

Staff in attendance: Larry Herrighty (Assistant Director DFW), Dave Jenkins (Chief ENSP), Kathy Clark (ENSP), Mandy Dey (ENSP).

Guests: Tim Dillingham (ALS), Francis Rapa (NJ Conservation Foundation), Jamie Zaccaria (Sierra Club), Craig Tomlin (Bureau of Shellfisheries), Jenny Tomko (Bureau of Shellfisheries), Wendy Walsh (USFWS), Amanda Wenczel (Dept. of Agriculture), Dave Bushek (Rutgers Haskin Shellfish Lab), Betsy Haskin (oysterculturist), David Pringle (Clean Water Action), Russ Furnari (PSEG).

- Meeting was called to order by Chair Barbara Brummer.
- The public notice for this meeting was read by D. Jenkins.
- Introductions of those in attendance.

Approval of Minutes

Minutes of September 9, 2015 meeting were approved without changes. Motion to approve by R. Lathrop, seconded by E. Miller. Approved unanimously with J. Galetto, J. Applegate and H. Geduldig abstaining.

Intertidal oyster aquaculture and red knots: Review of Section 7 Consultation Draft Conservation Measures.

Public Comment

B. Brummer invited public comment on the shorebird-aquaculture topic. Several guests (T. Dillingham, F. Rapa, D. Pringle, J. Zaccaria) expressed concern regarding the potential impacts of aquaculture activities on red knots and other shorebirds, the need for considering the best and most recent information (e.g., the ENSAC Subcommittee White Paper, 2015 low tide shorebird surveys) and suggested that priority be given for red knot protection to promote the bird's recovery. They also suggested that the Committee's review of the draft conservation measures be tabled until several absent members of the Committee with particular expertise in this area (Drs. Burger, Mizrahi and DeVito) could participate in the discussions.

Update on and Discussion of the Draft Conservation Measures:

Lengthy discussion regarding the Programmatic Biological Assessment (PBA) in preparation by the Division of Fish and Wildlife (DFW) followed, and included:

- Description of areas covered by the PBA (Bidwell Creek, Middle Twp., south to W. Miami Ave, Lower Twp.).
- Permits and Tidelands Council approvals required to carry out aquaculture on leased areas vs. areas covered by riparian grants.
- Timeline and time constraints for the consultation process which in total provide 135-days for FWS to issue the Programmatic Biological Opinion (PBO) in response to the PBA submitted by DFW on behalf of USACE. The DFW was aiming to submit the PBA in sufficient time for the FWS to issue their PBO in March, before the onset of active oyster feeding and growth (approximately March through October).
- Explanation of the nexus (U.S. Army Corps of Engineers permitting) that requires the Section 7 consultation between USACE and the US Fish and Wildlife Service (FWS), the role of DFW and explanation that conservation measures will be included as permit conditions in permits issued by USACE and/or lease agreements for leases within the ADZ.
- Overall approach of the BA “Conservation Measures” that divide the “action area” into two (2) sections with different constraints on aquaculture activities (north areas with greater operational constraints vs. southern area is centered on the existing ADZ with fewer constraints).
- Differences in permit requirements, Shellfish Council and Tidelands Council approvals, and the processes for obtaining such permits and approvals for individual leases vs. leases within the ADZ.
- Areas not included in the “action area” addressed by the PBA/PBO (i.e., areas north of Bidwell’s Creek).
- Differences between “traditional” Bay bottom aquaculture and structural aquaculture.

During this discussion, Committeewoman J. Galetto noted that there are two concerns regarding birds: disturbance by tending and possible impairment to horseshoe crab movement by structures and Committeeman R. Lathrop commented that red knots are known sensitive to human disturbance and to the extent possible, aquaculture uses should be clustered to minimize area of disturbance. R. Lathrop was also concerned there was no map included with the measures (D. Jenkins acknowledged that a map had not yet been created but that mapping parameters were clearly defined in the draft Conservation Measures).

In response to a question raised by Committeeman H. Geduldig regarding Critical Habitat, W. Walsh provided a brief discussion regarding the designation of Critical Habitat under the ESA and its role in the consultation process. She added that Critical Habitat for red knot may be proposed in 2016 and explained her view that such designation would not likely make a big difference in federal project review (including permit review regarding aquaculture).

Additional public comment during this discussion included:

- B. Haskin commented on the White Paper, prepared by the Aquaculture Subcommittee of ENSAC and offered her opinion with respect to the likelihood of expansion of aquaculture in light of multiple constraints.
- B. Haskin also offered her opinion on the likely contribution of sea-level to the availability of crab spawning habitat.
- D. Bushek commented that there are opportunities to work collaboratively among all the

agencies involved.

Before leaving W. Walsh added the following clarifications with respect to the PBA/PBO:

- Draft Conservation Measures will include a cap (to be determined) on the total footprint of aquaculture in the southern zone.
- The BA (prepared by DFW on behalf of ACE) and the USFWS's BO will include an "effects analysis" that considers the total footprint.
- The effects analysis is at the heart of the BO and examines the status of the species in the "action area," the threats posed by the "action," and determines whether and how the proposed action would affect the red knot.
- The ultimate determination of the BO is that of jeopardy or non-jeopardy to the species.
- BO includes an "incidental take statement" that acknowledges and permits some low level of take.
- Review and processing time constraints start when the ACE submits a completed BA: 90 days for USFWS to draft BO; 45 day comments/changes, before completion.
- This is a programmatic approach rather than individual permit-by-permit approach.

Additional discussion focused on intertidal shorebird surveys performed in 2015 by Dr. Joanna Burger and associates to document the extent of red knot use of the intertidal zone and the degree to which the preliminary findings of these surveys had or had not been adequately considered and addressed in the PBA proposed conservation measures.

R. Lathrop made a motion: The ENSAC endorses the Draft Conservation Measures (dated 10/29/2015) for the southern zone, and recommends that the Draft Conservation Measures be amended to include a moratorium placed on issuance of new, or renewal of existing, permits for intertidal structural aquaculture in the northern zone. J. Galetto seconded.

Discussion:

H. Geduldig suggested minor amendments (reflected in the above motion). A. Dey said the structures existing in the northern zone may pose a problem for crab movement. D. Bushek said other Rutgers researchers are working on shorebird research. C. Tomlin suggested identifying "intertidal structural" aquaculture permits in the northern zone (included in above).

Vote: The motion passed unanimously with one (H. Reinert) abstention.

LUNCH

Review of Action Items

The shorebird-aquaculture white paper was sent to the Commissioner's office with cover letter by ENSAC.

Director's Report

D. Chanda is the chair of AFWA and involved in the Blue Ribbon Panel investigating funding options for nongame wildlife.

D. Jenkins reported the federal budget Continuing Resolution keeps SWG funding in place and there may be a slight increase in SWG funding.

Legislative Report

D. Jenkins notes there are a number of bills related to aquaculture (many of them resolutions with no real effect).

No movement in the Senate on the backyard habitat bill that passed the Assembly.

A new bill (A-4808 / S-3416) would add additional species to the prohibition on trade in endangered species. It references CITES I and II lists and IUCN "Red Data" lists and would extend protection to species on those lists as well the "Big 5" African Animals. D. Jenkins noted that NJ ENSCA already protects species listed as Endangered under federal ESA and so already protects nearly all of the species this bill aims to protect.

UPDATES (old business)

Progress report: Review and revision of the New Jersey Wildlife Action Plan

Updates are being posted on the website and alerts are being sent via the Division's list server.

Update on turtle harvest regulations (snapping turtle and diamondback terrapins)

A Fish Code hearing was held last week regarding proposed changes to tighten regulations regarding commercial harvest of snapping turtles. The proposed changes would, raise the size limit, adjust the closed season to more closely correspond with the nesting season, and would limit commercial permits to those already have a permit and have reported a harvest within the past five years. Some minor changes to the proposal may result from comments received during the public hearing and comment period.

Diamondback terrapins: there was a large (apparently illegal) harvest two years ago that brought this issue to the forefront. Recent information shows that terrapins overwinter in very large aggregations that could make them vulnerable to over collection. Unclear at this time whether the Department will move forward with regulations to close the season for legally harvesting diamondback terrapins.

NEW BUSINESS

Delphi Technique for species status reviews: proposed measures to increase transparency.

At upcoming meetings, ENSP will present the results of the status reviews for herps and freshwater fish. D. Jenkins reviewed some of the considered changes to increase transparency, including announcements for initiating status reviews, ENSAC meetings that review status assessment reports, and making the reports more easily available. Committee members generally agreed with the transparency measures suggested.

January 20, 2016 meeting: B. Brummer and R. Lathrop will be absent. Need to determine how many members can attend or whether it must be rescheduled. D. Jenkins indicated he would poll members for alternative dates.

ADJOURNMENT

Motion to adjourn at 2:30 PM by R. Lathrop, second by H. Geduldig.