

Marine Fisheries Council Meeting  
September 7, 2023

**Council Attendees:**

Joe Rizzo*	Dick Herb*
Bob Rush*	Jeff Kaelin*
Kevin Wark*	Dr. Eleanor Bochenek
Dr. Pat Donnelly*	Barney Hollinger*
Walter Johnson III*	

**DEP and Division of Fish and Wildlife Attendees:**

Joe Cimino - Administrator, Marine Resources Administration (MRA)\*  
Jeff Brust - Chief, Bureau of Marine Fisheries (BMF)\*  
Russ Babb - Chief, Bureau of Marine Habitat & Shellfisheries  
Jason Snellbaker - Deputy Chief, Bureau of Law Enforcement (BLE)\*  
Mike Celestino - Research Scientist, MRA\*  
Heather Corbett - Supervising Biologist, BMF\*  
Maryellen Gordon - Principal Biologist, BMF  
Jenny Tomko - Principal Biologist, BSF  
Lindy Barry - Research Scientist, MRA  
Colleen Brust - Research Scientist, MRA\*  
Matthew Heyl - Senior Biologist, BMF  
Jessica Daher - Program Specialist, MRA  
Pat Barker – Senior Wildlife Worker, BMF\*

**Public Attendees:**

Adam Nowalsky	Paul Haertel
Dman Extreme	John Fulmer
Kara Gross	Jim Hutchinson*
Reel Maxlife	Benjie Swan*
Tony Friedrich	Scot Mackay*
Michael Shepherd	

\* Denotes in-person attendance as opposed to virtual attendance

The meeting was called to order. Notice of the Marine Fisheries Council (Council) meeting was filed with the Secretary of State on August 23, 2023. Chairman Herb began the meeting with the Pledge of Allegiance.

**1. Approval of Minutes**

Minutes from the June 20<sup>th</sup> meeting of the Council were approved without revision. Motion by Dr. Donnelly, second by Mr. Kaelin. Motion carried unanimously.

Minutes from the July 13<sup>th</sup> meeting of the Council were presented. Mr. Rush noted that he was marked as present even though he was not at the meeting. A motion was made to approve the minutes as modified. Motion by Mr. Kaelin, second by Dr. Donnelly. Motion carried unanimously.

## **2. Enforcement Report – J. Snellbaker**

Lieutenant Petrucelli inspected two commercial fishermen that were in possession of live horseshoe crabs. Since there is a moratorium on harvesting horseshoe crabs in NJ, individuals in possession of horseshoe crabs for bait must be able to provide a receipt from a legal source of the crabs. The fishermen could not produce a receipt for the crabs they had onboard their vessel, but attempted to claim the crabs came from a distributor in another state. The distributor was contacted and acknowledged that they only sold frozen crabs, not live crabs. When interviewed further, the fishermen admitted to harvesting the horseshoe crabs from a small tributary during their fishing trip that morning. Summonses were issued for multiple violations.

Following a tip from the public, CPOs used advanced monitoring gear about the *P/V Integrity* to locate and recover unmarked lobster pot gear set illegally on the Shark River Reef Special Management Zone. The case was referred to NMFS for enforcement action.

## **3. Shellfisheries Council Reports**

- **Delaware Bay - B. Hollinger**

The Delaware Bay Oyster Industry have harvested just over 76,000 bushels of oysters so far this season. The 2023 shellplanting has ended with a total of over 140,000 bushels of shell being planted in 3 bed regions and in the oyster tongs area. Industry members plan on working with the NJDOH and the FDA on training for local, county and state health inspectors. The training is in response to recent incorrect media reports that Delaware Bay shellfish were the source of several recent illnesses. Having fully trained inspectors who are engaging with harvesters and retail businesses will ensure we can maintain the integrity of the local industry and product.

- **Atlantic Coast – W. Johnson III**

No report.

- **Shellfish Bureau Report – R. Babb**

No report.

## **4. Legislative/Regulatory Reports – J. Brust**

A spreadsheet of legislative items was provided in the meeting handouts. Bolded items are new items since the last update. Mr. Brust highlighted a few bills relating to marine fisheries:

- **H.R.4940** - Fishing Industry Credit Enhancement Act of 2023 to amend the Farm Credit Act of 1971 to support the commercial fishing industry.

- **H.R.4936** – A bill to amend the Inflation Reduction Act of 2022 to repeal restrictions on onshore wind and solar.
- **H.R.4051** – “Supporting the Health of Aquatic Systems through Research Knowledge and Enhanced Dialogue Act” or “SHARKED Act”, a bill to direct the Secretary of Commerce to establish a task force regarding shark depredation and for other purposes.
- **H.R.5103** – This Act may be cited as the “Fishery Improvement to Streamline untimely regulatory Hurdles post Emergency Situation Act” or the “FISHES Act” to require the Director of the Office of Management and Budget to approve or deny spending plans within a certain amount of time, and for other purposes. The term “spend plan” means a spend plan submitted to the Secretary under section 312(a)(6)(D) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)(6)(D)) by a requester with an affirmative fishery resource disaster determination.

Mr. Hollinger requested clarification on HR4936. Mr. Brust responded that it was lifting restrictions on how BOEM can offer areas for future leases but would follow up with additional information after the meeting.

Mr. Kaelin commented that HR 5103 will be helpful in times of fishery disaster. He recounted how NJ harvesters were eligible for assistance from the Atlantic herring disaster declaration a few years ago, and they are considering a similar request for Atlantic mackerel.

- **Spiny Dogfish** – At the July 2023 Council meeting the Council approved notice of administrative change allowing for commercial harvest of 4,000 pounds per trip. The notice has been signed and implemented.
- **Georges Bank Cod** – At the March 2023 Council meeting, the Council conditionally approved changes to recreational cod regulations consistent with new regulations in Federal waters, which were still under consideration at the time. NOAA recently published their final rule, effective August 14. Staff has submitted a Notice of Administrative Change, and our regulations will be consistent with federal regulations upon adoption.

K. Wark commented that the fisherman who participated in the spiny dogfish advisory panel meeting wanted to thank staff for support getting trip limits in place which extend the season and optimize the fishery.

## 5. MRIP Effort Survey Data update – J. Brust

Dr. Cody was not present to give an update.

J. Brust addressed the Council about an update from NMFS regarding recreational fishing effort and suggested that it be discussed later in the meeting.

## 6. Atlantic States Marine Fisheries Commission (ASMFC) Report – J. Brust

- **Shad and River Herring Board** - The Board received an update from the Technical Committee and USGS staff on expanding collection efforts for the alosine genetic repository. As anadromous fishes, alosines spend much of their life in estuarine and marine environments, where they may form mixed stock aggregations and where they are sometimes captured as bycatch in other fisheries. There is a critical need to be able to distinguish between populations or management units when individuals are encountered away from natal areas. An enhanced understanding of stock composition will provide critical information on the status and trends of specific populations and offer much needed insight into how fisheries bycatch may be impacting recovery efforts. The alosine genetic repository is intended to address this issue.
- **American Eel Board** – The Board accepted the American Eel Benchmark Stock Assessment and Peer Review Report for management use. The Report indicates the stock is at or near historically low levels due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, and toxins, contaminants, and disease. The Board initiated an investigation into potential management actions through the development of two plan development teams – one for the yellow eel fishery and one for the glass eel fishery.
- **Coastal Sharks** - NOAA Fisheries is currently scoping for Amendment 16 to the HMS FMP. The scoping document considers a broad range of issues and potential options. Amendment 16 could implement substantial changes to the commercial and recreational shark fishery, including commercial and recreational shark quotas, shark management groups, shark retention or bag limits, and shark minimum size limits. NOAA Fisheries will accept public comment on this proposed rule through August 18, 2023. NOAA also informed the Board that they recently released a proposed rule for changes to seasons, quotas, and possession limits in the Atlantic shark commercial fishery.
- **Cobia Board** - The Coastal Pelagics Management Board approved a total harvest quota for the Atlantic migratory group of cobia of 80,112 fish for the 2024-2026 fishing seasons. This total quota results in a coastwide recreational quota of 76,908 fish and a commercial quota of 73,116 pounds. The Board also reviewed a recent stock assessment for Spanish mackerel which found the stock is not overfished and overfishing is not occurring. The South Atlantic Fishery Management Council has proposed an Annual Biological Catch of 8.024 million pounds.
- **Tautog Board** - The Board received reports from the Technical Committee (TC) and the Law Enforcement Committee (LEC) on reported issues with the

commercial tagging program. Harvesters have reported injury and mortality of their product after application of the tags. A survey conducted by the TC found that the issue was present in all states, with New York reporting the most complaints. Work is ongoing to evaluate potential new tags and tag locations to reduce damage to the fish.

K. Wark asked if the fish were dying in the tank being held for the live market. Mr. Brust confirmed that the injury and mortality is occurring while the fish are being held for the live market.

Dr. Donnelly asked when the date of the preliminary report regarding the recreational data was released. J. Kaelin responded that it was between the MAFMC and ASMFC meetings. B. Rush stated that the information had been available since May but was not distributed to the public until August.

### **7. Mid Atlantic Fisheries Management Council (MAFMC) Report- J. Brust**

The MAFMC June meeting summary was provided in the meeting handouts. Mr. Brust provided a summary of specific meetings as follows:

- Set 2024-2025 specifications for summer flounder, scup, and bluefish and 2024 specifications for black sea bass. Overfishing is occurring for summer flounder, so NMFS is recommending a 42% reduction. Scup populations are doing well and fishing mortality is low, resulting in a 48% increase to the ABC. Bluefish is still under a rebuilding period, so 2024 and 2025 recommendations are for 43% and 29% reductions, respectively. Black sea bass recommendations are for a 5% reduction for recreational and a 25% increase for commercial in 2024.
- Reviewed an evaluation of commercial scup discards and scup gear restricted areas and agreed to consider the issue further in 2024.
- Reviewed progress and provided input on a framework/addendum to consider revisions to the process for setting recreational management measures for summer flounder, scup, black sea bass, and bluefish. The current methodology is set to sunset in 2025, and work is continuing to evaluate improvements and other methods.
- Set preliminary Atlantic mackerel specifications for 2024-2025 and requested that NOAA Fisheries take emergency action to limit directed fishing for mackerel in 2023. The stock has been overfished for years and is not responding to rebuilding efforts, so MAFMC is recommending an 89% reduction in quota for 2025.
- Adopted a status quo river herring and shad cap for the Atlantic mackerel fishery in 2024-2025.
- Discussed NOAA Fisheries' Draft Climate Governance Policy and directed staff to develop a letter based on the SSC and staff comments presented at the meeting. The policy will implement "rules" for determining which regional Council(s) have authority over stocks and fisheries that cross Council boundaries.
- Agreed to continue the suspension of the Research Set-Aside program and work with regional management partners to prioritize cooperative research and identify funding opportunities to support the Council's research needs.

- Developed comments in response to the NOAA Fisheries Advanced Notice of Public Rulemaking regarding potential future changes to the guidelines for National Standards 4 (allocations), 8 (communities), and 9 (bycatch).

Mr. Rush noted the recommended reductions for summer flounder and bluefish of over 40% coupled with the recent information that MRIP is overestimating harvest by as much as 40%. He asked whether the validity of the data used to develop the harvest recommendations has been questioned.

- Mr. Brust responded that the MRIP announcement is based on results of a limited pilot study. NOAA will be conducting a full study in 2024, with results being announced in early 2025. Until the full study is completed and the data analyzed, the current MRIP data are considered the best available science. Mr. Cimino also noted that the situation with some species is not an issue with catch, but with other factors, such as recruitment. For example, summer flounder harvest has been within the target in recent years, so the MRIP estimates are not concerning. However, recruitment has been below average, which requires harvest reductions as those small year classes enter the fishery.

Dr. Donnelly commented that on the inconsistency that when data support a harvest reduction, people are expected to accept it as truth, but when data suggest there might be an opportunity to increase harvest, more studies are often recommended before action is taken. Using MRIP data, ASMFC implemented emergency regulations for striped bass without sufficient public input. Now, even though some of those data are under question, nothing will change for at least two years. It is unfair to us to make regulations that affect people's livelihoods.

- Mr. Cimino mentioned that one disconnect with black sea bass and scup is between regulations the harvest. There are issues with harvest estimates, but when the stocks were in good shape, we increased the harvest target but not necessarily the regulations because those regulations still got us to the increased harvest target.

Dr. Bochenek commented that we should include striped bass along with black sea bass because we were forced to take regulatory action by ASMFC. She asked why we should proceed so cautiously when a new pilot study shows issues with MRIP. She expressed concerns that there isn't going to be any fisheries for people to fish for next year and that we are going to lose a lot of industry.

Mr. Rush commented that the justification to take harvest cuts is so that things will improve in the future, but we've been doing it for years and there have been no benefits.

Mr. Kaelin noted that when ASMFC and MAFMC met to consider next year's specifications, there was no individual species data regarding the MRIP data error to consider, so there was no justification to consider alternative proposals. Regarding striped bass, the ASMFC decided to keep the emergency action in place for the next year or until the new addendum is in place. ASMFC Board members want to reduce the commercial allocation of striped bass which could affect the Striped Bass Bonus Program.

Mr. Rush asked how willing we as a state are to keep the striped bass bonus program. Mr. Cimino responded that we will fight with everything we have. Mr. Wark recalled when the commercial striped bass fishery was closed. The selling point was if we didn't use it for the bonus program it would be taken completely away. Mr. Cimino said the biggest issue with the bonus program is that it's seen as a conservation equivalency (CE) and we need to justify it every year. However, it predates CE in the striped bass management plan and staff feel that the justification process is an unnecessary hurdle.

Dr. Bochenek asked if there was any talk of protecting the large breeding fish. Mr. Cimino stated that Virginia did away with its trophy season, but Massachusetts still allows harvest of large fish. Dr. Bochenek asked if we could convert the bonus program to a commercial hook and line fishery like Massachusetts in order to protect it. Mr. Cimino indicated there are legislative hurdles to converting it to a commercial fishery, but staff is looking into all possible options. Mr. Hollinger suggested a legislative fix to provide more flexibility to the program as a way to protect it from being taken away.

Dr. Donnelly requested a striped bass committee meeting to discuss many of these issues. Mr. Rush asked if the socioeconomic data we had requested for striped bass was provided. Mr. Celestino reminded that no additional information has been provided and doesn't think the data that was requested actually exists. Mr. Cimino indicated that ASMFC is not obligated to use socioeconomic data in their decision making. Dr. Bochenek recalled that the request was for the state to provide socioeconomic data also and asked if that had happened. She suggested the state collect that data if they do not already exist, perhaps using funding from the offshore wind Research and Monitoring Initiative. Mr. Rush recalled a socioeconomic study conducted after Hurricane Sandy. Staff will look into finding those and other data sources.

Mr. Rush asked what the short term options are regarding the emergency 3-inch slot limit regulations for striped bass. He commented that the regulations are providing no benefit to NJ anglers or the recreational industry. Mr. Brust stated the Council voted for the emergency action in June, and it went into effect on July 2. From that point, Council had 60 days to change their mind and veto the action. Since we are past the window, the Council can vote to rescind the action, but the vote would a 2/3 approval to pass, and it would only be a recommendation to the Commissioner. Staff's recommendation to the Commissioner would be to keep the emergency regulations in place because removing them would put us out of compliance, which would result in a moratorium. A timeline of the non-compliance process was presented, showing that the moratorium would likely coincide with portions of the popular fall fishery. Dr. Donnelly agreed with Mr. Rush that the current regulations are very unfavorable, but he cannot support voting for regulations that will result in a moratorium. Dr. Bochenek agreed with Mr. Rush and understood Dr. Donnelly's point. She would like a committee meeting. Mr. Wark agreed with Dr. Donnelly that tackle shops wouldn't benefit from a moratorium.

Mr. Brust provided an update of the ASMFC Striped Bass Management Board meeting. The Board extended the current emergency action through October 28, 2024, or until the implementation of Addendum II to Amendment 7 of the Interstate Fishery Management Plan, to allow more

time for development and evaluation of management options. The draft addendum is scheduled to be approved for public comment at the October meeting, followed by public hearings which will be summarized for the Board during their January 2024 meeting.

M. Celstino provided a presentation that explained how the overestimation of MRIP harvest would likely not affect estimated fishing mortality rates or stock status determinations. Catch data are used in stock assessments to scale the population size. Correcting overestimated harvest will scale the estimated population size down, but will not change trend in biomass. He also provided an update on analyses staff has conducted to provide conservation equivalency options for the striped bass bonus program as part of Addendum II. Given the timeline for developing the options, it was not possible to hold a Striped Bass Committee meeting to get input from advisors on what the options should be, but staff is planning a meeting to get input on which of these options (or others) would be preferred before Council makes a final decision.

Mr. Rush asked how the large striped bass in the EEZ are accounted for in the stock assessment and decision making process. Mr. Celestino responded that, because striped bass spawn in freshwater, we can survey them during spawning season to understand population trends, even if they spend most of their time outside our survey areas. All three of the main spawning areas – Chesapeake Bay, Delaware Bay, and Hudson River – have long term striped bass sampling programs.

Dr. Donnelly asked about the amount of commercial vs recreational harvest of striped bass. Mr. Celestino responded that approximately 90% of total removals is from the recreational fishery. Dr. Donnelly also requested that the bonus program options be made available to advisors before the Striped Bass Committee meeting. Mr. Brust responded that they would distributed to advisors before the meeting so that advisors could get input from their constituents to bring to the meeting.

Dr. Bochenek asked if ASMFC is looking into striped bass producer areas shifting north as the population seems to be moving north. Mr. Celestino that ASMFC has received funding to support a multi-stock population model that could evaluate changes in recruitment from the different producer areas.

Jack Fulmer commented that sport divers will have difficulty identifying a legal sized fish with only a 3-inch slot limit. The regulation is eliminating divers from the fishery. He stated that the bonus program is helpful because it effectively increase the size limit to a 7-inch slot. He mentioned there is a similar issue with the 1-inch slot limit for summer flounder.

#### **8. Marine Fisheries Bureau Report - J. Brust**

- When commercial regulations are changed, staff are required to send official notification by email or letter. Recently, when changes to spiny dogfish trip limits were implemented, staff also sent a mass text notification to over 450 harvester and dealer phone numbers on file. Approximately 82% of them were delivered successfully. Staff asked Council whether this



notification method was worth pursuing. Mr. Wark responded that he was surprised to see it but thought it was helpful and thinks it will be an effective way to reach industry. Mr. Brust indicated that we will continue to send letters and emails as the official notification, but will continue to pursue the text notification option.

#### **9. Committee Reports – J. Brust**

- Nothing to report.

#### **10. Regulatory Actions – J. Brust**

- NMFS implemented a recreational closure for scup in federal waters from January through April but are currently considering removing the closure. The season in NJ currently opens in May. A black sea bass/scup committee meeting will be held to discuss participating in the winter opening if NMFS approves it. Council can take final action in November so the regulation can be implemented before the season opens.

Mr. Rush recommended we implement whatever opening NMFS allows. Mr. Brust responded that a committee meeting before the November Council meeting would allow Council to approve, and the State to implement, an opening before the beginning of the year. Right now, there are still uncertainties in how landings would be monitored since MRIP doesn't sample in January and February.

#### **11. Old Business – J. Brust**

- Letters were sent from the Marine Fisheries Council and both Delaware Bay and Atlantic Coast Shellfish Councils to the Governor and Senate Judiciary Committee requesting they take action to fill Council vacancies.
- A letter was sent from the Council to Tom Fote thanking him for his many years of service at ASMFC.
- The Council was presented with fishery liaisons from all of the offshore wind development companies with leases in the MidAtlantic region.
- Ms. Brust gave a presentation on offshore wind.
  - DEP has submitted comment letters to BOEM regarding the draft Programmatic Environmental Impact Statement for the Mid Atlantic Bight lease areas, and for the final proposed Wind Energy Areas in the Central Atlantic region.
  - DEP is reviewing applications from four developers who submitted bids for the third OSW solicitation. The review will consider not just the overall project, but other relevant aspects, such as the Fishery Protection Plan, the Environmental Protection Plan, and the Data Sharing and Management Plan.
  - Updates were provided on the status of several projects funded by the Research and Monitoring Initiative.

- Staff is working with industry and research partners to evaluate the feasibility of a surf clam stock enhancement program as an avenue for mitigation of impacts to the fishery from offshore wind development.
  - The NJ Offshore Wind Strategic Plan is being updated and will include an analysis of the constraints for placement of export cables, such as sand borrow areas, prime fishing grounds, and artificial reefs.
  - The Ocean Wind 1 project has received all of their required state and federal permits and will begin onshore construction activities this fall.
  - A pre-application meeting has been scheduled for the Atlantic Shores South project, and the meeting is open to the public.
- Mr. Brust provided a list of potential committee meetings that were requested at tonight's meeting or previously. Council discussed priorities and requested meetings of the Striped Bass, Black Sea Bass/Scup, and Executive Committees. Other potential meetings include Offshore Wind, Weakfish, and Summer Flounder Committees.

## **12. New Business – J. Brust**

- Mr. Brust informed Council that the November meeting will need to be moved because the Galloway library will not be available. The meeting can either be postponed for a week and/or be run as a webinar only. Mr. Brust will follow up with an email to get Council's preferences.
- Tentative dates for 2024 Council meetings were provided to Council for review. These will need to be finalized at the November meeting.
- Dr. Bochenek reported that she has heard from several people requesting regulations for sheepshead which is becoming more popular. Mr. Brust replied that he has heard similar comments for a number of "non-traditional" species, such as sheepshead, mole crabs, and sand eels. The plan is to develop a committee to consider regulations for all of these species. It would be best to wait until the two vacancies are filled so that committee memberships do not need to be reshuffled when the new members are appointed.

## **13. Public Comment**

Paul Haertel commented that the letter to Tom Fote was well written and appreciated the gesture. He also mentioned that the conference room should be rearranged so online participants can see who is speaking.

The meeting concluded. Details of the next Marine Fisheries Council Meeting will be provided when available.