



Atlantic States Marine Fisheries Commission

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MEMORANDUM

October 27, 2015

To: Tautog Management Board
From: Law Enforcement Subcommittee
RE: Illegal Harvest of Tautog

At the August, 2015 meeting of the Tautog Management Board of the Atlantic States Marine Fisheries Commission (ASMFC), members requested that a subcommittee of Law Enforcement representatives to the ASMFC and members of the Tautog Management Board be formed to review and address the illegal harvest of tautog. The subcommittee includes the following members:

Commissioners

Adam Nowalsky, (Tautog Board Chair)
Dan McKiernan (MA)
David Simpson (CT)

Law Enforcement Committee

Lt. Jason Snellbaker (LEC representative to Tautog Board)
Capt. Timothy Huss (NY)
Capt. Doug Messeck (DE)
Major Pat Moran (MA)

Staff

Ashton Harp
Mark Robson

The subcommittee conducted a telephone conference call on October 20, 2015. After reviewing some of the public comments that have been received in response to the draft Public Information Document for Draft Amendment 1 to the Interstate Fishery Management Plan for tautog, the subcommittee discussed illegal harvest issues and provides the following comments and recommendations to the Tautog Management Board. While these comments reflect a consensus of the subcommittee, some variations on the nature and extent of illegal harvest and sale occurred among the states.

The Subcommittee believes there is significant illegal harvest of tautog.

This is primarily evident in the market for live tautog. Illegal harvest is coming from both the recreational and commercial fishing sectors. The market for live tautog, including undersized fish, is being driven by high demand for consumption purposes and consequent high prices. Evidence of illegally harvested fish has been documented in cases against fishermen, fish houses and at retail markets and restaurants. In Massachusetts there have been a number of large cases made against licensed commercial fishermen, whereas in Delaware, New Jersey and New York illegal harvest seems mostly concentrated in the recreational fishery. Regardless of source, most

undersized, out-of-season or illegal quantities of live tautog are associated with the demand for tautog at ethnic food markets or restaurants. These markets are often found in large cities such as New York City and Philadelphia. While the subcommittee agrees that the primary concern rests with the illegal harvest for the retail/restaurant markets, a subset of illegal activity does occur among individuals and small groups harvesting fish for personal consumption or subsistence. This latter group may not even be aware they are violating specific regulations. Additionally, a large number of cases are made against recreational fishermen in possession of illegal, dead tautog.

There are a number of factors making the illegal harvest intractable.

Language Barriers.—Because of the involvement of many ethnic food markets, enforcement officers frequently encounter language barriers with dealers and retail owners, especially in the live-fish market. The State of Delaware has attempted to address this issue by posting advisories in different languages. The subcommittee agrees however that an illegal harvester (poacher) is not likely to be from any particular ethnic group or age. When inspecting markets officers may encounter language barriers with owners or employees and be presented with written records or receipts in non-English languages.

Dispersed Activity.—Because of the amount of illegal activity among recreational fishermen, there is a very dispersed and fluid type of poaching activity. A state may make a large number of cases against illegal recreational fishing, but because so many individuals are moving in and out of the fishery, it is hard to have an impact. Small groups of fishermen are collaborating to post lookouts, coordinate landings and transport fish away from docksides. Illegal landings and transport is occurring very late at night in remote and unpredictable locations. High prices for fish and high demand seem to be exacerbating this dispersed and widespread activity.

Inconsistent Regulations.—In Delaware, where regulations are less strict than neighboring states, fishermen are going there specifically to take advantage of those less restrictive regulations, and also engage in illegal activity. In other words, variable regulations are placing more fishing pressure on states with more liberal harvest regulations. The lack of a uniform, coast wide minimum size limit and the absence of compatible regulations in federal waters is a major impediment to effective enforcement.

No Accountability Requirements.—The nature of the live fish market means that effective, focused enforcement could take place at local seafood markets and restaurants. Such inspections do in fact occur regularly, depending on the states' authorities. However, the lack of any tagging or documentation requirements for live fish in possession significantly reduces the effectiveness of such oversight. A restaurant may have a tank with live fish. There may or may not be any records for these fish, which could be a mix of legal and undersized fish from multiple sellers. They may have been in the tank for many months. The records, if they can be produced, may be written in a language that the inspecting officer cannot read. In some cases the subcommittee discussed, fish were tracked back to major market sources in Pennsylvania. However Pennsylvania officers have more limited inspection authority and must demonstrate probable cause or have a warrant to check for suspected illegal fish being purchased and held for resale.

Recommendations for Enhancing Enforcement.

Uniform, coast wide minimum size limit.—The subcommittee strongly recommends that a uniform, minimum size limit be established. It would allow standardization of enforcement effort in the field and eliminate loopholes when fish are moved across state lines. It is difficult to effectively enforce and prosecute cases involving undersized fish in markets and restaurants when those fish may be legal in one jurisdiction, and illegal in another.

Federal Waters Consistency.—The subcommittee strongly recommends that the ASMFC ask federal fishery managers for consistent harvest regulations for tautog in federal waters consistent with adjacent state waters. Ideally this would include a single minimum size limit for all federal waters.

Implement a Tagging System.—The Subcommittee strongly supports development of some form of tagging system, especially for live-harvested fish. The subcommittee recognizes the difficulty in developing a safe and effective tag for live fish. However, a tag requirement would take care of a number of problems and limitations currently hindering enforcement efforts. It would greatly enhance the effectiveness of inspections at dealers, markets and restaurants, allowing officers to determine when, where and from who fish were obtained. To be successful, tags must be useable only one time, and they must prominently identify state of origin, year and a unique identifying number or code. Fish should be tagged immediately upon harvest.

Members of the subcommittee provided examples of significant monetary penalties for possession of illegal fish, including elevation of penalties to felony-level depending on the amount and severity of the illegal harvest. The subcommittee believes that current fines and penalties are in some cases significant, but cannot say whether stricter penalties across the board would have a damping effect on illegal activity. For reference, existing penalties for some states are presented below.

APPENDIX

Pennsylvania Regulation

The subcommittee discussed problems with illegal fish in markets and restaurants in Pennsylvania. Following is the pertinent regulation for tautog in these markets:

63.50. Importation of tautog.

It is unlawful for a person to import into this Commonwealth, sell, offer for sale or purchase tautog (*Tautoga onitis*) measuring less than 15 inches in length.

Fines and Penalties

Delaware

There is a \$50.00 fine plus assessments (\$107.00 total) per violation. Each fish is a violation and each time the daily limit is exceeded is a separate violation.

New York

71-0923 (generally for recreational violations, but can be applied to commercial offenses)

8.a. for violations involving one to five fish, shellfish or crustaceans, twenty-five dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

b. for violations involving six to twenty-five fish, shellfish or crustaceans, fifty dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

c. for violations involving more than twenty-five fish, shellfish or crustaceans, one hundred dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections; or by both such fine and imprisonment.

For purposes of determining the applicable fine pursuant to this subdivision, the number of fish, crustaceans or shellfish shall be the aggregate number involved in the violation, regardless of species.

Sec. 71-0924. Illegal commercialization of fish, shellfish, crustaceans, and wildlife.

Notwithstanding any other provision of this chapter, when a violation involves the sale, trade or barter of fish, shellfish, crustaceans, wildlife, or parts thereof, the sale, trade or barter of which is prohibited by the fish and wildlife law, the following additional penalties shall be imposed:

1. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is two hundred fifty dollars or less, the offense shall be a violation punishable by a fine of five hundred dollars and/or not more than fifteen days of imprisonment;

2. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is more than two hundred fifty dollars but does not exceed one thousand five hundred dollars, the offense shall be a misdemeanor punishable by a fine of five thousand dollars and/or not more than one year of imprisonment;

3. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, exceeds one thousand five hundred dollars, the offense shall constitute a class E felony under the provisions of the penal law; and

4. where the value of ivory articles, as defined in section 11-0535-a of this chapter, exceeds twenty-five thousand dollars, the offense shall constitute a class D felony under the provisions of the penal law.

5. For the purposes of this section the value of fish, shellfish, crustaceans and wildlife shall be the fair market value of or actual price paid for such resource, whichever is greater. For purposes of this section, "sale" shall include the acts of selling, trading or bartering and all related acts,

such as the act of offering for sale, trade or barter, and shall also include the illegal possession of fish, shellfish, wildlife or crustacea with intent to sell. It shall be presumptive evidence of possession with intent to sell when such fish, shellfish, wildlife or crustacea is possessed in quantities exceeding the allowable recreational quantities, or is possessed in a retail or wholesale outlet commonly used for the buying or selling of such fish, shellfish, wildlife or crustacea, provided, however, that nothing in this subdivision shall preclude the admission of other evidence which may serve to independently prove a defendant's intent to sell.

Massachusetts

Tautog regulations at 322 CMR 6.40 are promulgated pursuant to the authority at G.L. c. 130 s. 17A. Per state law, the criminal penalty would be \$50-\$1,000 w/no potential jail time (G.L. c. 130 s. 2) and the non-criminal citation would be \$50 (G.L. c. 21A s. 10H). So it would be a \$50 citation for 1 fish up to some unspecified number, unless criminal charges are filed.

If the violator is commercially fishing w/o a commercial permit, the criminal penalty is \$10 - \$10,000 and up to three years imprisonment but not both (G.L. c. 130 s. 80) and the non-criminal penalty is \$100 (G.L. c. 21A s. 10H). The same goes for any entity involved in the primary purchase of tautog without a commercial dealers permit authorized for the primary purchase of finfish.

We do not have a per-fish penalty although it is something we have desired for years. We can talk to the courts and make recommendations of a per-fish penalty and although in some cases they have gone along with our request, ultimately it is the judge's discretion.

New Jersey

Currently the penalty for undersize, over-limit, and closed season tautog is \$30 per fish. The penalty will be increasing to \$100 per fish in the near future due to the documented and continued noncompliance with the current regulations. The commercial penalties are \$300 to \$3000 for 1st offense and \$500 to \$5000 for 2nd Offenses.