

PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

HORSESHOE CRAB MANAGEMENT BOARD

August 15, 2006
Arlington, Virginia

ATTENDANCE

Board Members

Terry Stockwell, Maine DMR
Rep. Dennis Abbott, New Hampshire Leg. Apte.
Ritchie White, New Hampshire Gov. Apte.
Bill Alder, Massachusetts Gov. Apte.
Paul Diodati, Massachusetts DMF
Vito Calomo, proxy for Rep. Verga (MA)
Mark Gibson, Rhode Island DFW
Gil Pope, proxy for Rep. Naughton (RI)
Mark Alexander, Connecticut DMR
Lance Stewart, Connecticut Gov. Apte.
Gordon Colvin, New York DEC
Pat Augustine, New York Gov. Apte.
Peter Himchak, New Jersey DFG&W
Erling Berg, New Jersey Gov. Apte.
Roy Miller, Chair, Delaware DFW

Bernie Pankowski, proxy for Sen. Venables (DE)
Howard King, Maryland DNR
Bruno Vasta, Maryland Gov. Apte.
Jack Travelstead, Virginia MRC
Catherine Davenport, Virginia Gov. Apte.
Kelly Place, proxy for Sen. Chichester (VA)
Louis Daniel, North Carolina DMF
Robert Boyles, Vice Chair, South Carolina DNR
Spud Woodward, Georgia DNR
John Duren, Georgia Gov. Apte.
Luiz Barbieri, Florida FWC
April Price, Florida Gov. Apte.
Tom Meyer, NMFS
Jaime Geiger, US F&WS

Ex-Officio Members

Aaron Hurd, DE DFW, LE Representative

ASMFC Staff

Vince O'Shea
Bob Beal

Toni Kerns
Brad Spear

Guests

There were guests in attendance. However, the sign-in sheet was not circulated to record attendance.

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**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

HORSESHOE CRAB MANAGEMENT BOARD

**Doubletree Hotel Crystal City
Arlington, Virginia**

AUGUST 15, 2006

The Horseshoe Crab Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom, Doubletree Hotel Crystal City, Arlington, Virginia, on August 15, 2006, and was called to order at 3:30 o'clock p.m. by Chairman Roy Miller.

BOARD CONSENT

CHAIRMAN ROY MILLER: If the Board members could take their seats, we'll go ahead and get started with Horseshoe Crab. I would like to welcome everyone this afternoon to the Horseshoe Crab Board Meeting, with apologies to anyone who may not be here yet, anticipating that this would start later in the afternoon.

To accommodate anyone who arrives late, who might want to provide public comments, I think what we'll do is I'll have a public comment period initially, and then we'll have another one at the end of the meeting in case someone came in late.

We have just a short agenda, and my intention is to work through it rather quickly today. So without further ado, we need approval of today's agenda. Are there any suggested changes to the agenda for today? Pete Himchak.

MR. PETER HIMCHAK: Mr. Chairman, I would just like to add a brief update on an aquaculture proposal submitted within the New Jersey DEP, under other business. It's just a quick update.

CHAIRMAN MILLER: Okay. Any others? All right, seeing none, then I would look for approval of the proceedings from the May 2006 Horseshoe Crab Board meeting. Motion to approve, Pat Augustine; second, Bill Adler. Any discussion on that; any objection? Seeing none, the minutes were approved.

Now I would like to provide this opportunity for public comment. I'm not seeing very many members of the public back there, so I take it no one wishes to make a public comment at this time. I will provide an opportunity a little bit later for public comment if someone comes.

The next agenda item, I am going to call on Brad Spear, because that's Review of Addendum IV Implementation Plans.

ADDENDUM IV IMPLEMENTATION PLANS

MR. BRADDOCK SPEAR: Thank you, Mr. Chairman. You will recall at the last Horseshoe Crab Board Meeting, Addendum IV was approved by the Board and standard protocol is for states that are required to implement the provisions to submit implementation plans.

The four states that were required to do so did that, and I will go through each of the state's implementation plan and provide the plan review team's recommendation.

First, New Jersey submitted a letter noting that they have implemented a moratorium for the commercial bait fishery, and this started on May 15th, 2006. The moratorium is in place for the calendar year's 2006 and 2007.

The plan review team just noted that New Jersey will have to enact regulations consistent with the addendum for calendar year 2008, through September 30th, which is the life of that current addendum. They have plenty of time to do that.

Delaware submitted its plans to put the regulations consistent with Addendum IV in place. Their regulatory process showed that they would have the regulations in place, expected November 8th of this year, which is after the required implementation date. However, Delaware's fishery is closed already for 2006. They have reached their quota, so the delay past the implementation date of October 1st won't have any negative consequences for the stock.

Maryland also submitted its plan to implement the regulations. Their regulatory process is expected to end October 9th, and that is when the regulations will be put in place. Again, this is after the October 1st date; however, the plan review team did not expect that to have any negative consequence on the Horseshoe Crab Fishery. In years past Maryland's fishery is often closed at that point, reaching its quota by then.

Virginia, the Marine Resources Commission passed regulations consistent with Addendum IV provisions at its June 26th meeting, and those regulations, I believe, are in place.

Therefore, the plan review team recommends that the Board accept the implementation plans from those four states for Addendum IV.

CHAIRMAN MILLER: Are there any comments on the report of the plan review team? We do need a motion. Mr. Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I move that we accept that we accept the report as stated by Mr. Spear for the four states.

CHAIRMAN MILLER: Second to the motion? Tom Meyer seconds.

MR. AUGUSTINE: Mr. Chairman, would we like the states noted for the record? It would be Delaware, Maryland, New Jersey and Virginia.

CHAIRMAN MILLER: Thank you, Mr. Augustine. Is there any discussion on the motion? Pete Himchak.

MR. HIMCHAK: Mr. Chairman, I just have a question. Are we accepting the report of the plan review team, or are we actually voting on the implementation plans of the four states?

CHAIRMAN MILLER: We think it's okay the way it's written there, Pete. Go ahead, Pete.

MR. HIMCHAK: I'm compelled to bring up an issue on implementation plans only because of how we addressed this to the Commission. I accept the plan review team's recommendation that we would have to submit a proposal for 2008 that would have to meet the measures of Addendum IV.

You know, this point is a little confusing. It seems that New Jersey is making an issue for what happens when somebody precedes an implementation date?

I know this is a rare event, I think, but essentially what our director wrote to the Commission was that – I mean, we were interpreting the two-year moratorium or two-year management program as the years 2006 and 2007.

Acting rather expeditiously on a board's motion to develop an addendum, we actually implemented stuff before the timeline of the addendum. I hate to use

the word "credit" because I know that doesn't go over well in board proceedings.

But in this particular case, we didn't implement management measures that were divorced from any ASMFC proceeding. They were intricately linked to board recommendations to do something before the spring of 2006.

This all might be a moot point because the question then is, well, even if you accept our two-year implementation program as being 2006 and 2007, what will we have in 2008, and I would suspect that, yes, we would have to submit a fishery management proposal that would still bind us to the conditions of Addendum IV.

I'm not sure what I'm exactly arguing for other than to bring up the point that at some point in the line this may become more critical of an issue if you take action before an implementation date.

We just want to recognize that – you know, I'm not sure again how to word this correctly, but maybe somebody else could comment.

CHAIRMAN MILLER: I'll entertain some comments that anyone cares to make. I also have an opinion on that as well that I'm willing to share, but first I'd like to hear from everyone else. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. It is my understanding that any state can be more conservation oriented or can take actions within their own area of responsibility, this being each state, as long as you're more – you can be more conservative than the plan calls for, but you cannot be less conservative.

So, this particular case, without having us creating an addendum or an amendment, as the case may be – this would be an addendum – New Jersey, I think, has all the authority in the world to go ahead and put in a two-year moratorium on the harvest of horseshoe crabs, as long as it's been reviewed, I guess, or brought before the Board to let us know, basically, and we're approving it.

I think that's my understanding, and staff might clarify it more than that, but I think that's my understanding.

CHAIRMAN MILLER: That's my understanding, as well. Staff, any differences of opinion in that regard? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Well, the obvious. You know, the issue here isn't being conservative in '06 and '07. What is going to happen in '08 is what the concern is.

We looked at the letter from New Jersey's commissioner, and we prepared a response back, and the Board has a copy of that. It outlines some options on how you might look at that in the future.

CHAIRMAN MILLER: Anyone else have an opinion on that? In my view, New Jersey would have to submit an implementation proposal for 2008, whatever that may be, whether it's ASMFC standard, a continuation of their harvest moratorium or whatever it would be.

But in terms of compliance, they are in compliance for 2007. The peer review team has already told us that. It's just that we'll need a further submission from them in 2008. Is there anyone that disagrees with that? Pete.

MR. HIMCHAK: In that respect, hearing the comments, yes, I would go along with the recommendation of the plan review team in that we would have to submit a Horseshoe Crab Management Proposal for 2008, and then you would see if it's as restrictive compared to Addendum IV.

CHAIRMAN MILLER: That sounds good to me. Anyone else on that issue? All right, any further discussion on the motion? Do we need to caucus on the motion? I am not seeing any heads nod affirmatively, so I take that as a, no, we don't need to caucus. Bob.

MR. ROBERT E. BEAL: Just a quick comment or question. The motion reads Addendum IV implementation plans. Is that with the understanding that the Board just stated, which is for New Jersey, essentially this is only approving the implementation plan for 2007? For the three other states, it's '07 and '08.

Then the Board will wait for pending implementation plan for the 2008 fishery in New Jersey. Is that what this motion essentially means?

CHAIRMAN MILLER: That's what it means to me; is there anyone who would like to see that wording in the motion, to clarify it?

MR. AUGUSTINE: If you need to add it for clarification purposes, for anyone to read it later, yes, let's add it. If not, let it stand. Bob, would you

like to add that, any specific words to clarify it, from your point of view?

MR. BEAL: It the Board is comfortable with my interpretation, then I don't think we necessarily need to modify the motion. If folks want to change it, we can.

CHAIRMAN MILLER: Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, the other alternative is you approved an addendum, and it covers through '08. New Jersey has this proposal that's out there. One could argue the cleaner way to do it is you're approving all the proposals up through '08 with any of the states having the option by '07 of asking for a new plan.

So, if you do nothing and nobody asks for anything different, you're covered up through '08, with the ability for somebody to try to make an exception at the end of '07 to change the thing for '08.

I mean, that's the other way to look at this, Mr. Chairman. Your interpretation was somebody is going to have to do something in '07 for New Jersey to figure out how you're going to deal with '08. I guess that's what you're setting yourself up for.

CHAIRMAN MILLER: My interpretation was New Jersey is in compliance through '07. The '08 is yet to be decided. Dennis, did you have a comment?

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chairman. I guess if you wanted to be very strict about it, which I'm not really trying to be, is the motion indicates that the four states has implemented Addendum IV, which has a requirement for '07 and '08, when the truth of the matter is that New Jersey has an implementation for '06 and '07; therefore, making the motion for New Jersey incorrect, being included there, because they are not in compliance with Addendum IV without having the second year requirements.

CHAIRMAN MILLER: If we were to add some wording to the motion, Mr. Maker to the motion, with the caveat that New Jersey needs to submit an implementation plan for '08. I think that would put it in writing what everyone's intent is.

REPRESENTATIVE ABBOTT: Yes, or put New Jersey, parenthesis, on only 2007, or something like that.

MR. AUGUSTINE: Could we add that, Mr. Chairman?

CHAIRMAN MILLER: Certainly, would you do that, please, Pat.

MR. AUGUSTINE: Move to approve Addendum IV – I'm sorry, implementation plans – she has got it.

REPRESENTATIVE ABBOTT: I think that would work for everybody on the Board.

CHAIRMAN MILLER: Thank you, Pat. Pete, does that meet your needs and your understanding?

MR. HIMCHAK: Yes, I mean, our current moratorium sunsets – the regulation sunsets December 31st, 2007, so we will have to come up with a new management program for 2008 in light of Addendum IV.

CHAIRMAN MILLER: Dennis Abbott.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chairman. I mean, it's also entirely possible that in 2007 we may want a further or a different moratorium or different regulations, so that's really on the Board also. I think we should deal with New Jersey's situation next year or whenever it's practical to do so.

CHAIRMAN MILLER: Any other comments on that? Seeing none, we will need to read the motion, and then have the vote. The motion reads: Move to approve Addendum IV implementation plans for New Jersey (only for 2007), Delaware, Maryland and Virginia.

Motion by Mr. Augustine; seconded by Mr. Meyer. All those in favor of the motion, raise your right hand; those opposed; any abstentions; any nulls. All right, the motion passes unanimously.

This brings us to other business. I am going to call first on Brad Spear and then I will recognize Pete Himchak as well.

OTHER BUSINESS

MR. SPEAR: Just real quick; included in your supplemental mailings to the Board, there were two revised memos that were from the Law Enforcement Committee to the Plan Review Team.

These were revised from earlier memos that you received at the May Board Meeting, with regard to state compliance. There was an error in the May memos. They have since been corrected.

The correction was to reflect that the instance of under-reporting in Delaware was not with regard to the biomedical industry but the commercial bait industry. Again, it did not reflect incidence in the biomedical industry. That's it.

CHAIRMAN MILLER: Other items? Pete Himchak, you had requested an item.

MR. HIMCHAK: Yes, Mr. Chairman, this will be very brief. There is presently a scientific collecting permit issued to three fishermen under the supervision of Dr. Jon Kraeteur, with Rutgers University.

They are doing pilot studies on hatching horseshoe crab eggs in tanks under different scenarios, sediment types, flow-through systems, trying to keep fungal growth down, et cetera, et cetera.

And then most recently there is a three-year proposal submitted by Dr. Jon Kraeteur from Rutgers University for a three-year study on horseshoe crab aquaculture and is presently being reviewed within the State Department of Environmental Protection.

What I would like to ask is that if I can provide Brad – I will try and get you an electronic copy. Perhaps you could distribute it to the technical committee members. The department would appreciate the feedback from technical committee members on the pilot study, the three-year aquaculture program. That's it.

CHAIRMAN MILLER: Are there any questions from the Board to be directed to Pete concerning that aquaculture proposal? Seeing none, are there any other items for the consideration of this Board that we can classify as other business?

Seeing none, I will go to our audience again. One or two folks have joined us since we started, and I will provide once again an opportunity for public comment on any of the actions taken by the Board at this particular meeting. Is there anyone?

Seeing none, do I have a motion to adjourn? Moved by Dennis Abbott; second by Tom Meyer. We're adjourned. Thank you.

(Whereupon, the meeting was adjourned at 3:55 o'clock p.m., August 15, 2006.)