

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
TAUTOG MANAGEMENT BOARD**

**Crowne Plaza Hotel Old Town
Alexandria, Virginia
February 5, 2008**

Board Approved: August 2010

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2. **Move to accept Proceedings of October 30, 2007** (Page 1). Motion by Patrick Augustine; Second by William Adler.
3. **Move to recommend to the ISFMP Policy Board that the State of New Jersey be found out of compliance for not fully and effectively implementing and enforcing Addendum IV and Addendum V to the Interstate Fishery Management Plan for Tautog** (Page 4). Motion by Eric Smith; Second by James Gilmore. Motion Passes (Page 5).
4. **Motion to adjourn** (Page 5).

ATTENDANCE

Board Members

David Pierce, MA, chair/proxy for Diodati, (AA)
William Adler, MA (GA)
David Ellenton, MA, proxy for Rep. Verga (LA)
Eric Smith, CT (AA)
Dr. Lance Stewart, CT (GA)
James Gilmore, NY (AA)
Pat Augustine, NY (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)
Peter Himchak, NJ DFW, proxy for Chanda (AC)
Erling Berg, NJ (GA)

Roy Miller, proxy for P.Emory, DE (AC)
Jeff Tinsman, DE, proxy for T. Targett (GA)
Harley Speir, MD (AA)
Bill Goldsborough, MD (GA)
Russell Dize, MD, proxy for Sen. Colburn (LA)
Jack Travelstead, proxy for Bowman VA MRC (AA)
Catherine Davenport, VA (GA)
Ernest Bowden, VA, proxy for Del. Lewis (LC)
Harry Mears, NMFS
Wilson Laney, USFWS

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Staff

Vince O'Shea
Robert Beal

Nichola Meserve
Chris Vonderweidt

Guests

Mike Howard, ASMFC LEC
George Lapointe, ME DMR
Jay Odell, The Nature Conservancy
Matt Cieri, ME DMR
Arnold Leo, Baymen's Assn.

Louis Daniel, NC DMF
Craig Shirey, DE DFW
Gregory DiDomenico, Garden States Seafood Assn.

The Tautog Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Crowne Plaza Hotel, Alexandria, Virginia, February 5, 2008, and was called to order at 1:15 o'clock p.m. by Chairman David Pierce.

CALL TO ORDER

CHAIRMAN DAVID PIERCE: All right, our meeting is to end at 2:25. The relatively short in terms of items we need to discuss. We're here principally to deal with compliance issues, to hear a report as to whether or not states have implemented Addendum IV and Addendum V.

APPROVAL OF AGENDA

The agenda is before you. Is there any objection to our approving the agenda as worded? I see no objections; therefore, the agenda stands approved.

APPROVAL OF PROCEEDINGS

Proceedings from October 30, 2007, meeting; you all have copies. Motion from Pat Augustine to accept those proceedings; second from Bill Adler. All those in favor, please raise your hand. The proceedings from that meeting are adopted.

PUBLIC COMMENT

Next is public comment. As we all know, we take this opportunity at the beginning of all board meetings to invite members of the public to come to the microphone to express issues of concern to them that are not specifically addressed by the agenda, but they're issues you think should be raised for the Board's attention. Anyone members of the public who would like to speak at this time? Yes, Tom.

MR. TOM FOTE: Tom Fote, Jersey Coast Anglers Association. I know there probably will be some point in the discussion today about New Jersey and New Jersey's Marine Fisheries Council vote. I hope you understand it's a very controversial issue in New Jersey. It's not like all the other issues where there is no controversy, but this one I think needs more of your consideration.

New Jersey has very limited resources, and the Division of Fish and Wildlife put in a lot of time and effort. I guess a lot of the anglers on the New Jersey Marine Fisheries Council didn't feel that the proper recognition for that effort was put forward at the last meeting. I'm trying to be diplomatic on this. I wish

you could basically look at that and review the best science again.

I mean, nowadays it's so hard to get anything done because of the limited resources at the state level, and they put a lot of time and effort into that. I wasn't at the last tautog meeting, but some of the feelings were because two states came in together and they could do a better job because they had more money they're putting together. Because of the limited resources in New Jersey, I think we did a good job and maybe we need to take a look at that again. Thank you for your patience.

CHAIRMAN PIERCE: Thank you, Tom. Any other members of the public?

MR. GREGORY DiDOMENICO: Greg DiDomenico, Garden States Seafood Association. I'll make my comments brief. This fishery continues to be an important financial – or I should say this fishery is still important financially to the few fishermen we have left in New Jersey, pot fishermen.

We understand that New Jersey's proposal to us seems scientifically sound. We would hope, because of that, that the Commission consider I say hastily pursue non-compliance. The commercial industry has been impacted by many regulations. These are small owner/operator fisheries that another reduction or another moratorium in an already difficult situation could put people under serious, serious financial stress. We just ask for a little leniency and just to consider all the information. Thank you.

CHAIRMAN PIERCE: Any other public comment? I see none; therefore, we'll go to the next item on the agenda, which is state implementation of Addendum IV and V. Chris has a presentation to provide.

STATE IMPLEMENTATION OF ADDENDUM IV & V

MR. CHRISTOPHER VONDERWEIDT: Thank you, Mr. Chairman. I'm just quickly going to review state compliance with Addendum IV and V reductions. As everyone here probably remembers, Addendum IV stipulated a fishing mortality rate of 0.20, and it said that you could only achieve that in the recreational fishery. Addendum V said that you could achieve the fishing mortality rate in the recreational of commercial fishery, however you see fit.

Just as background, the fishing mortality rate of 0.20, which is a 25.6 percent reduction in exploitation rate

based on the years 2003 through 2005; and, if everybody remembers at the summer meeting the technical committee brought forth recommendations on a methodology to calculate the exploitation rate; and based on the variability in the landings, they recommended using the years 2003 through 2005.

The technical committee presented this to the Board and the Board approved that method for achieving the reductions. All states have gone through that. Also, to go along with that, Addendum IV says that if states can bring forth a regional assessment that shows a fishing mortality rate lower than 0.20, then they only have to reduce by the percentage down to 0.20.

The technical committee endorsed an assessment by Massachusetts and Rhode Island which showed that their fishing mortality rate only required a 12 percent reduction to achieve a fishing mortality rate of 0.20. States were required to implement the new regulations by January 1st of 2008.

Just stepping back a second, the really key element of Addendum IV and the regional assessments is the addendum says if you can provide at the same level of precision as the coast-wide VPA, so that is the methodology that the technical committee was looking at, so they're trying to compare a metric with the VPA precision; so, if it's as precise, then they can compare.

So, moving forward, Massachusetts has implemented a commercial quota of 67,000 – and actually staff has passed out two documents. One of them is the Tautog Plan Review Team conference call summary. On the last page there is kind of a key which shows the old regulations and the new regulations and the percent reduction and when they take effect.

The other document is a document that has been provided, I believe, to the prior Board meetings, and it just talks about the technical committee's take on the Massachusetts/Rhode Island regional assessment and the New Jersey regional assessment. If you would like to follow along with the specific regulations, go to those documents.

Massachusetts, they've brought forth a commercial quota of 64,753 pounds, which gives them a 12.7 percent reduction. They're only required to reduce by 12 percent. Connecticut has reduced by 27.5 percent by using bag reductions and season reductions in both the recreational and commercial fishery. They have implemented this through emergency rule.

Rhode Island is currently at an 18 percent reduction. If you recall the 2003 to 2005 methodology that the technical committee recommended, Rhode Island implemented regulations in 2006, so they've been at 18 percent for a while. On March 12th, I believe, they're implementing more regulations to reduce the bag limit, and they're going to achieve 5.4 percent more reduction in their state waters. This will actually happen before the fishing season starts in Rhode Island, so they're going to achieve the full 23.4 percent reduction.

Continuing on with states which implemented the regulations, New York implemented through emergency rule 26.1 percent reduction through bag and season changes to the recreational fishery only. That was implemented through an emergency rule. Maryland implemented through an emergency rule a 25.6 percent reduction in the recreational and commercial fishery with bag and season reductions.

Maryland is a little bit tricky in that they missed the first five days of their closure because the regulations weren't place yet. However, the regulations in Maryland, they calculated their reduction for the recreational-only fishery, and so the commercial fishery just mirrors the recreational landings.

Because it's so insignificant, that kind of the way it was easiest for that state to implement it. So, there is credit for the commercial fishery which wasn't factored in here because they didn't need more than 25.6 percent reduction. The takeaway message here is that the commercial reductions more than exceed any loss that happened in the first five days of the fishing season. This is the consensus of the plan review team, so they'll have no problem achieving those reductions for the 2008 fishing season.

Virginia has achieved a 28.1 percent reduction. This is through bag limits and seasonal closures in the recreational fishery and seasonal closures in the commercial fishery. Delaware has not implemented regulations yet. They brought 12 approved options which the technical committee reviewed at a meeting in late 2007 and recommended that the Board approve as well.

The Board reviewed those and approved them, so there are 12 options that they brought out to a January 23rd hearing. On January 29th they were closed for comments. There is a March 10th implementation for these regulations. In talking with staff from Delaware, they're deciding on two of those options which would either be a May 12th or a June

1st closure, both of which would achieve the reductions.

The March 10th implementation date would allow Delaware to have a little bit of leeway – or, they would still get the full reduction because the closure is going to start after they’ve implemented the date. So between January 1st and March 10th, it’s not going to take away from the reductions that they would get.

New Jersey has not implemented any regulations. The New Jersey Marine Fisheries Council voted not to implement any additional measures for the 2008 Tautog Fishery. In a letter that they sent to the Atlantic States Marine Fisheries Commission, they cited the Trawl-Based Assessment Method Analysis which the TC reviewed and brought forth to the Board.

The TC felt that they could not endorse it at the same level of precision as the coast-wide VPA, which is what Addendum IV requires. This is because of the precision. There is no comparable metric. If you would like to see the exact wording, it’s on the last page of the technical committee conference call.

The technical committee was also a little bit concerned with one of the assumptions that goes into the beginning of the model. So after the technical committee brought that forth to the Board and gave their input, there was a motion passed to allow New Jersey to not take any reductions. That motion failed at the Board meeting.

Through the New Jersey Department of Environmental Protection System, they cannot make changes without the approval of the Council, so until the Marine Fisheries Council approves this, they can’t really do anything. Thank you.

CHAIRMAN PIERCE: Thank you, Chris, that’s an excellent and very thorough account of where we’ve been and where we are and where we need to go. Any questions for Chris? Pete.

MR. PETER HIMCHAK: Mr. Chairman, I just have a – you know, Chris referenced the last line in a conference call handout that we just received at the table. Previously, he had said that the technical committee – it sounds like I’m splitting hairs here, but I’m really not. He said that the technical committee determined that the TBAM model was not as precise as the VPA F estimate on tautog.

My understanding is that the technical committee couldn’t determine that the level of precision of the

TBAM was comparable to the VPA because of the different methodologies. I think there is a big difference in the way this is stated. What conference call – there were just two handouts on conference calls, so which last line are you referring to, the plan review team or the technical committee?

MR. VONDERWEIDT: I apologize if I did word it – I thought that I had worded it that the technical committee could not endorse the New Jersey TBAM Analysis. But, you’re absolutely right in your statement, they could not endorse. The document that I’m referring to is a document that was handed out at the annual meeting and was also handed out at the summer meeting of 2007, so this is nothing new. I provided it to the Board as kind of a refresher, but it’s the third page that says “Tautog Technical Conference Call, September 14th, 2007.”

I can read just the assumption that being the coast-wide F produced by the VPA is a good proxy for New Jersey F estimates prior to 2003, and conversely that this relationship ends after 2003. I apologize for Jason McNamee, the technical committee chair, not being here. He was very sick. He was planning on coming, but I’ll do my best to field these questions.

CHAIRMAN PIERCE: Any other questions for Chris? Pat.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I guess I was wondering what New Jersey’s thoughts were. Peter just responded to your writeup, and I guess I’d like to know whether or not they’re going to take a different approach between now and the next meeting, because it sounds like right now they’re not in compliance.

CHAIRMAN PIERCE: Pat, let’s hold off on that for bit. We’re just, again, asking questions of Chris regarding the comments that he has just made. Bill, did you have a question for Chris?

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. Did Rhode Island have a reason why – I believe they only had to go down by 12 and they had a much bigger drop. What is the rationale behind dropping further than they had to?

MR. VONDERWEIDT: Well, if somebody from Rhode Island would like to say the reason for the 5.4 percent extra reduction, but the regulations use the average from 2003 to 2005, and that’s when Addendum IV started going through the works. In 2006 Rhode Island implemented new reductions as a state; so once they were required to only do 12

percent, they had already implemented other reductions. So before any of this even happened, they were at 18 percent. And then why they did the 5.4 percent, I'm not really sure. It does provide more conservation, obviously.

CHAIRMAN PIERCE: Bill, I don't have the answer to that either; however, Rhode Island is a very conservation-minded state, as you know, with regard to tautog in particular. I would assume that it was just an initiative that they undertook because of the importance of tautog to Rhode Island; am I correct, Gil? Thumbs up from Gil.

Any other questions of Chris? All right, I see none; therefore, we get the issue of compliance. There was a question from Pat. Pete, you know the situation. It's difficult for New Jersey, certainly. Would you care to update us as to where New Jersey is at this time and if you have any suggested course of action that would get New Jersey back into compliance?

MR. HIMCHAK: Thank you, Mr. Chairman. I'll give the Board a quick overview of where we are in this process. The Marine Fisheries Council – I mean, you have copies of the letter that went back from the Council to George LaPointe and then the response from Vince O'Shea to Gil Ewing, our Council Chair.

The next meeting of the Marine Fisheries Council is March 6th. That's our regularly scheduled meeting at which the time the Council entertain any action on either taking the required reduction or maintaining their current position. We typically have Marine Fisheries Council meetings every two months, the first Thursday of every month.

I bring this up only to avoid some confusion. We do have a Council meeting next Monday night. It's a special, rare Marine Fisheries Council meeting just devoted to horseshoe crabs so tautog will not even be on that agenda. Our Council, again, we cannot adopt regulations – the department cannot. There are three ways to adopt regulations. We can go through the Administrative Procedures Act, which would take about 12 months, and then the Council could still veto that at the end.

We could do emergency rules which usually pertain to health and safety. The third mechanism is what we call an Notice of Administrative Change where if it's a management action that maintains or gets us into compliance or optimizes utilization of a quota, it can be approved by the Council and then put into effect by the department, I don't know, three weeks or so, but the Council would have to move first.

We can't do a Notice of Administration Change without the Council's approval. And then if the Council – we have to wait for the Council's decision March 6th, and then we have to decide which option would be picked – I don't know if it would be picked at that meeting or the Council would maintain their position. That's the update. Again, I think they're standing by the integrity of the TBAM model. I can't speak for the council. Thank you.

CHAIRMAN PIERCE: All right, thank you, Pete. Board members, what is your pleasure. Eric.

MR. ERIC SMITH: Thank you, Mr. Chairman. When we get to compliance time in the Commission process, I don't take that lightly, but I am a strict defender of the process set forth in the Atlantic Coastal Act. Some of you will recall that more than once I've argued for and voted for finding my own state out of compliance.

I'll tell you that two years later I still get criticized back home by lobstermen for so strongly advocating that we be bound by the requirements of the Commission plan even it meant being out of compliance. The time is past for reviewing the science and the method. We did two iterations of that last year, and the Board ultimately did not approve New Jersey's method.

New Jersey was required to adopt the regulations specified by Addendum V. New Jersey has not. The duty of the Board today is simple. Do we find that New Jersey has not complied with the provisions of the FMP? If so, we're obligated to vote them out of compliance.

I move that the Tautog Management Board recommend to the ISFMP Policy Board that the State of New Jersey be found out of compliance for not fully and effectively implementing and enforcing Addendum IV and Addendum V to the Interstate Fishery Management Plan for Tautog. The State of New Jersey has not implemented management measures to achieve the required 25.6 percent reduction in exploitation. This reduction in exploitation is necessary to initiate rebuilding of the overfished Tautog stock. In order to come back into compliance, the State of New Jersey must implement management measures that achieve the required reduction in exploitation as required by Addenda IV and V.

CHAIRMAN PIERCE: Motion made by Eric Smith; do I have a second? Seconded by James Gilmore. Discussion on the Motion? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was as concerned as Eric was, and it's very, very unfortunate that this situation has occurred. It's not so much a matter of putting pressure on the recreational anglers. I think the part of it that bothered me more than anything was the previous commercial regulations that allow a 103,000 pound quota from January 1st to January 15th to be harvested. We do know in New York that we're fishing in common waters. More than anything, I'd like to see a cap put on that in this case that will restrain that. I would support the motion.

MR. HIMCHAK: I would just like to comment that I don't know what Mr. Augustine means by 103,000 pound quota starting in January. We have an annual 103,000 pound quota. We only have a spring season and a fall season, two-month fall season.

CHAIRMAN PIERCE: Thank you. Again, to the motion. I see no other desire to comment. Board members, do you care to caucus? Yes, all right, a few moments to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN PIERCE: All right, I assume that everyone is through with the caucus. It's time for the vote. All those in favor of the motion, please raise your hand; all opposed; any abstentions; any null votes. The motion passes, 7 for; 1 against with 2 abstentions.

OTHER BUSINESS/ADJOURN

Board members, I believe that concludes our business regarding compliance issues. We, therefore, go on to the next item on the agenda, which is other business. Does anyone care to raise any new business? I see no interest in doing so; therefore, I will entertain a motion to adjourn. Motion has been made and seconded by Pat Augustine. We are adjourned.

(Whereupon, the meeting was adjourned at 1:43 o'clock p.m., February 5, 2008.)