

Questions and Answers Concerning Enforcement of Tautog Regulations

Compiled comments by Michael Howard, ASMFC LEC consultant
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The questions and answers below are a consensus of law enforcement comments relating to the Tautog Fishery along the Mid Atlantic region. The LEC hopes this information is helpful when discussing management options regarding tautog.

In recent years there has been a steady increase in the demand for live tautog in seafood restaurant businesses. Law enforcement has also noted a significant number of hook and line fisherman using tautog (almost always undersize) as live bait for species such as striped bass. Both of these uses of tautog may not have been an issue when the legal possession size of the fish was at 12 inches or below.

The minimum size has increased now to 14 inches as the result of efforts to rebuild the stock. Widespread availability of smaller tautog along with a demand for these smaller fish in certain markets has created concerns and forced law enforcement to take a closer look at illegal activities concerning this species. Five years ago New Jersey, Connecticut and New York made several cases concerning the illegal harvest and sale of tautog to live markets. There is a premium price for those who can manage to catch and transport these fish to a retailer alive. The per- pound price is three to four times as much as a dead fish. In addition, as the minimum size for tautog has risen, the demand for a smaller, illegal fish has increased.

During the past year alone, conservation officers from the states of New York and Connecticut have made dozens of cases involving undersize tautog in restaurants, in possession by dealers, both licensed and unlicensed and in the possession of fisherman, both commercial and recreational. This is similar in other states including undersize tautog being found in live wells and on the end of a line being used as bait for another species.

During the last few months the ASMFC LEC has asked it's members the following questions in an effort to better understand the illegal harvest and sale of live tautog.

Is there a difference in how live tautog are caught verses other fish that makes enforcement of regulations different?

No. Live tautog are caught by the exact same method as many other species including, traps, hook and line, seines, and as a by-catch in other targeted fisheries.

Is there a difference on how tautog are held on board a vessel and transported to shore and does that make a difference on enforcement of the regulations?

Tautog are transported in totes and boxes just like other harvested fish. They are also stored alive in live wells on or below deck for marketing as a live fish. These live wells range from smaller fish coolers on recreational vessels to large holds with aerators. Live lobsters are also transported in a similar manner along with several other species of seafood that are regularly sold to a live market. Law enforcement officers must have gear or use the fisherman's gear to capture the fish for measuring and counting. This is not a significant problem according to the LEC.

Is there a difference in how live tautog are sold, transported and marketed once they reach shore?

Live fish such as tautog are marketed the same way other live species are sold. They are also sold in conjunction with other species dockside in many cases. Live tautog are also caught, transported and sold directly to retailers in some cases by unlicensed dealers. In many respects finding these violations are made somewhat easier due to the fact that the fish are being transported and sold alive which requires efforts on the part of the transporter that is often obvious to the trained law enforcement officer. Inspections are also easier in retail establishments due to the fact that the fish are displayed in plain view as a marketing technique. *In general, it is difficult to move large numbers of live fish as they require comparatively larger spaces with aeration.*

Is the fact that a fish or crustacean is alive create an enforcement problem?

Not significantly. Officers are trained and experienced in retrieving live seafood products from containers for inspection. It is more time consuming to inspect live fish, but total fish numbers in a live well are generally smaller than individual numbers of dead fish packed together in a box or tote.

Do high prices for fish or seafood make enforcement more difficult?

No. Occasionally more law enforcement effort is required to monitor increased effort. Increased prices along with unmonitored harvest and sale may encourage more people to violate the regulations and keep undersize and over the limit if there is a market. Many factors go into whether or not a species is profitable to harvest. Enforcement has often run into increased violations when demand and prices are high while there is a decrease in abundance of legal sized fish. *The mere fact that a per- pound price for a fish is high doesn't make it more difficult for law enforcement to enforce.*

Is it more difficult to enforce high priced live fish markets than dead fish ones?

No. There is no evidence to suggest that there are enforcement problems with live fish vs. dead fish markets.

When there is an illegal market for a seafood product such as undersize live tautog, does that affect enforceability?

Yes. Law enforcement personnel must concentrate efforts on that market from the catcher to the transporter/dealer to the retail outlet. In New York and several other states, there have been many cases reported. These efforts and successful prosecutions provide substantial deterrents to other fisherman and restaurants that may be considering this illegal trade.

If the price for illegal tautog or other illegal seafood is higher than legal prices for the same species, will illegal sales increase?

Possibly. The incentive to violate the law will increase as long as the penalty for the violation seems acceptable and worth the risk or there is little or no fear of apprehension. Strong law enforcement efforts along with stiff and progressive penalties offer the best deterrent.

Would concentrated law enforcement efforts reduce illegal harvests of undersize tautog in these situations?

Yes, if law enforcement resources were made available to concentrate efforts on all aspects of this market from catcher to retailer/ consumer. At some point the issue becomes reducing enforcement in one area to increase it in another. Most states advise they have seen increased responsibilities in recent years and in most circumstances no new personnel or funding. Directing efforts to enforce new regulations without decreasing efforts on other species is always a challenge to law enforcement managers.

Could a prohibition against the possession of live tautog be easily enforced?

Yes. This is the equivalent of a closed season for live tautog. Provided that the regulations were written in an appropriate manner, the possession or sale of live tautog could be easily enforced. Tautog are a hardy species and remain alive for some time out of the water. Possible regulatory wording could prohibit tautog in live wells or other containers designed to keep the fish alive. This enforcement effort would also have to include a substantial public relations effort to educate the public and businesses at large on the prohibition. This action would also have to consider the economic impact on the fisherman.

To summarize, the existing FMP on tautog is enforceable as written. The question really is, what degree is the plan enforceable? It is clear that there are some violations of tautog regulations by all sectors of the fishery. The “degree” or “rate of violations” appears to be similar to the violations in other fisheries whether live or dead. The demand for live undersize tautog is of concern to law enforcement officers along with over the limit violations. New Jersey and New York and Connecticut specifically have targeted violations of tautog regulations that have resulted in dozens of cases and seizures of undersize and illegal tautog. All other states where tautog can be found have been alerted to this type of activity. These efforts have not eliminated the ongoing problem but certainly have provided a deterrent and prevented second and subsequent offenses.