

REPORT
NEW YORK STATE CONSERVATION COUNCIL
MARINE RESOURCES COMMITTEE

September, 2022

2022 was a relatively active year for major marine resources issues that affect the State of New York.

So far this year, we have seen the Atlantic States Marine Fisheries Commission (“ASMFC”) adopt a new Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass (“Amendment 7”); the National Marine Fisheries Service and the New York State Department of Environmental Conservation prohibit the landing and possession of shortfin mako sharks; the Mid-Atlantic Fishery Management Council and ASMFC adopt a somewhat misnamed “harvest control rule” that will change the way recreational summer flounder, scup, black sea bass and, after the stock rebuilds, bluefish fisheries, will be managed, beginning in 2023; and the National Oceanic and Atmospheric Administration’s Office of Marine Sanctuaries seek public comment on whether Hudson Canyon should be designated as a national marine sanctuary.

The New York State Conservation Council (“NYSCC”), guided by its Marine Resources Committee (“Committee”), chose to engage regulators with respect to two of those issues, striped bass and the possible designation of Hudson Canyon as a national marine sanctuary. The Marine Resources Committee did not recommend that the NYSCC engage on the other issues, as their outcomes were, for all intents and purposes, already decided.

The details of the four issues are as follows:

Striped bass Amendment 7

The most recent benchmark stock assessment, released in 2019, found that the Atlantic striped bass stock was both overfished and experiencing overfishing. The ASMFC’s Atlantic Striped Bass Management Board (“Bass Board”) took immediate action to end overfishing, but despite clear language in the ASMFC’s management plan requiring it to rebuild the striped bass stock within 10 years, did nothing to end overfishing.

Instead, the Bass Board initiated a new amendment to the management plan which some Bass Board members hoped would lower the female spawning stock biomass target, and eliminate the need for strict rebuilding measures. However, public comment strongly supported maintaining the current biomass target.

In January 2022, the Bass Board released a draft of the proposed Amendment 7, which left the door open to weakening the so-called “management triggers” that require the Bass Board to act when the spawning stock biomass falls too low, fishing mortality rises too high, or recruitment of young bass into the fishery declines sharply. The draft also considered closed fishing seasons, both in the ocean and in spawning rivers such as the Hudson, placing restrictions on the gear anglers could use to land striped

bass, and limiting the use of “conservation equivalency,” a doctrine that allows states to adopt regulations different from those adopted by the Bass Board, so long as such regulations had a theoretically equivalent conservation impact.

NYSCC commented on the draft amendment, opposing such proposals as would amend the management triggers to allow the Bass Board to delay rather than take action to end overfishing or rebuild an overfished stock, and also opposing proposals to impose closed seasons, when not even catch and release would be permitted, in both the ocean and in the Hudson River. NYSCC supported gear restrictions that would prohibit the use of gaffs in the recreational striped bass fishery, and require the release of striped bass caught on bait fished on traditional J-hooks. NYSCC also supported a provision that would allow the Bass Board to fast-track a rebuilding plan, in order to rebuild the stock by 2029, and called for restrictions on the use of conservation equivalency when the stock is overfished, given the added uncertainty that conservation equivalency adds to the management process, and advocated for the creation of minimum data standards to support conservation equivalency proposals.

The version of Amendment 7 ultimately adopted by the Bass Board largely paralleled NYSCC’s positions. While the ASMFC did ultimately agree to a provision that will allow the Bass Board to defer adopting management measures in response to a management trigger if a previous management measure is not yet fully implemented, and some of the minimum standards for data used to create conservation equivalency proposals are lower than the standards endorsed by the NYSCC, the final Amendment 7 is a solid management document that should benefit striped bass and striped bass anglers.

Hudson Canyon National Marine Sanctuary

Hudson Canyon is the largest submarine canyon in United States waters, and one of the largest such canyons in the world. It allows cool, nutrient-rich deep-ocean water to well up to the sea’s warmer surface layers, and so creates a nutrient-rich hot spot that supports a marine food web that stretches from the smallest plankton to the great whales. It is one of the most important offshore recreational and commercial fishing areas on the East Coast, and because of its location about 70 miles south of Long Island’s Fire Island Inlet, is of particular importance to New York anglers.

About five years ago, the Wildlife Conservation Society nominated Hudson Canyon to be designated as a national marine sanctuary, in order to shield the canyon from various petroleum exploration and mineral extraction operations. During the summer of 2022, the National Oceanic and Atmospheric Administration initiated a scoping process, seeking public input on the proposed designation.

NYSCC, recognizing Hudson Canyon’s unique marine habitats and its ecological importance in the region, generally supported the sanctuary designation, *provided that* such designation placed no substantial restrictions on recreational fishing within the sanctuary. Such proviso is in accord with the Wildlife Conservation Society’s nomination, which specifically supports continued commercial and recreational fishing within any sanctuary that may be created, and is also in accord with the management of other, existing sanctuaries, which permit such fishing activities.

However, because the possibility of fishing restrictions remain, and such restrictions have been adopted in portions of other sanctuaries, NYSCC’s support was explicitly conditioned on recreational fishing remaining subject only to National Marine Fisheries Service regulations, and not to additional regulations unique to the sanctuary.

Shortfin mako landings ban

About five years ago, new research suggested that the North Atlantic stock of shortfin mako sharks had become badly overfished, and that strict management measures were needed to prevent a stock collapse. The International Commission for the Conservation of Atlantic Tunas (“ICCAT”) which, despite its name, also manages other highly migratory species, debated the issue for a number of years, with the United States and the European Union the staunchest opponents of mako conservation. However, the U.S. position changed along with the incoming presidential administration, and in November 2021, the assembled ICCAT delegations agreed to prohibit the possession of shortfin mako sharks in the North Atlantic.

That action was not absolute; if overall fishing mortality, including mortality resulting from sharks discarded dead in the swordfish and tuna longline fisheries, could be reduced below 250 metric tons (approximately 550,000 pounds), some low level of landings would be again be permitted, provided that overall fishing mortality remained at or below the 250 metric ton cap. Maintaining landings at such level would provide a 60 to 70% chance of rebuilding the North Atlantic shortfin mako shark by 2070.

As a contracting party to ICCAT, the United States was obligated to adopt conforming regulations, which became effective on July 5, 2022. Because such regulations could only be enforced in federal waters, between 3 and 200 miles from shore, or against vessels holding federal highly migratory species permits fishing elsewhere, the ASMFC’s Coastal Sharks Management Board, when it met in May 2022, passed a motion requiring all Atlantic Coast states to adopt a ban on shortfin mako possession as soon as practicable. New York complied, adopting emergency regulations in late July.

It is unlikely that New York anglers will be allowed to retain shortfin mako sharks at any time in the foreseeable future. Should discard mortality fall below 250 metric tons, the difference between such discard mortality and the 250 mt annual cap will be shared among all fishing nations in the North Atlantic, proportional to their past reported landings. The United States would thus be entitled to only 17% of any allowable landings, a very small amount that would probably be reserved for makos that were already dead when brought to the boat by a pelagic longline vessel.

However, NMFS has specifically authorized a continuing recreational catch-and-release fishery, noting that such fishery will provide biologists with information needed to gauge the success of the new management measures.

Because both the United States and the State of New York were legally obligated to adopt a ban on shortfin mako harvest, providing stakeholder comment on the proposed regulations would have served little purpose.

Harvest Control Rule

At their June joint meeting, the Mid-Atlantic Fishery Management Council (“Council”) and the ASMFC’s Interstate Fishery Management Plan Policy Board (“Policy Board”) agreed to adopt a so-called “harvest control rule” to manage the recreational summer flounder, scup, and black sea bass fisheries and, once the stock has been rebuilt, the recreational bluefish fishery as well.

Currently, such stocks are managed by setting an annual recreational harvest limit for future seasons, based on the health of the stock, determining what the recreational harvest was in the immediately

preceding season or the average recreational harvest in the three immediately preceding seasons (the choice is made by the Council and ASMFC management board, usually at their joint December meeting), and then adjusting recreational management measures designed to allow anglers to catch most or all of their allocation, without exceeding the annual harvest limit.

The current adequate worked reasonably well for summer flounder, but did not seem to reliably set management measures for either scup or black sea bass, possibly because the abundance of both species is significantly above the target spawning stock biomass level, which makes it difficult for anglers to avoid catching such fish. Thus, the Council and Policy Board considered new management approaches that considered parameters other than estimated past and predicted future recreational harvest.

Neither the Council's Scientific and Statistical Committee ("SSC") nor Council staff were convinced that the so-called (but technically misnamed) harvest control rules considered were ready for implementation. There were multiple concerns, including SSC concerns that the proposed approaches would increase the level of management uncertainty in the resulting management measures, and Council staff concerns that such approaches would run afoul of the management standards included in the Magnuson-Stevens Fishery Conservation and Management Act.

However, the staff of NMFS Greater Atlantic Regional Fisheries Office ("GARFO") was insistent that some form of the Harvest Control Rule be adopted in June, with the Regional Administrator threatening that, if the Council and Policy Board took no action, he would seek to impose some version of such control rule through administrative action (note that the legal authority for such action was not cited, and is not completely clear, since the problems caused by the existing management approach did not seem to justify emergency action and could probably have been addressed by approving an annual catch target somewhat lower than the annual catch limit, as strongly suggested in NMFS' own regulatory guidelines).

The Council and Policy Board thus adopted what was the least radical of the possible alternatives, which combines the current approach with somewhat arbitrary, predefined levels of harvest increases or reductions (currently, any increase or reduction is calculated in accordance with the data available to fishery managers, and more closely aligns with expected fishery performance) which are determined by the health of the population, and may be both unjustifiably liberal, when the stock is at high levels of abundance, and unnecessarily conservative, when the stock falls below its target level.

Because of GARFO's insistence that some sort of control rule be adopted in time for the 2023 season, and because there was no scientific information provided which shed light on any of the proposed control rules' impact on the health of fish stocks, the Committee did not recommend that NYSCC provide comment on this issue. However, it is likely that the Council and Policy Board will consider further action on this matter, as their action in June was taken largely to satisfy GARFO's insistence that something be put in place for the 2023 season. If and when such action is taken, it is very possible that there will be an opportunity for NYSCC to provide comment on any changes to the harvest control rule approach.

Upcoming issues

It is generally impossible to predict all of the issues that might arise in the marine fishery management arena. However, there are a few things on the horizon that might call for NYSCC input, either later this

year or in 2023. Once such issue could involve further action on a revised harvest control rule; it is also possible that NOAA will move forward with the designation of Hudson Canyon as a National Marine Sanctuary, and seek additional shareholder input. Apart from those issues, an October stock assessment update for striped bass, and the likelihood of a resulting rebuilding plan, is probably the most immediate, although research-track stock assessments for both bluefish and black sea bass should be completed late this year, and might also result in management action.

In the case of striped bass, preliminary information coming out of the ASMFC's Atlantic Striped Bass Technical Committee ("Technical Committee") suggests that any rebuilding plan will probably require a fishing mortality reduction of somewhere between 10 and 27%; the final figure will be determined after the Technical Committee makes a final determination with respect to scientific and management uncertainty in the stock assessment update, and to the selectivity of the gear currently used to catch and sample striped bass (i.e., does the gear sample all year classes, or at least all adult year classes, equally, or are some older year classes underrepresented in the data).

While the magnitude of any needed fishing mortality reduction will be decided by the Technical Committee, and while the Bass Board, in order to begin rebuilding as soon as practicable, will not be holding public hearings on proposed management measures, it is virtually certain that the Department of Environmental Conservation ("DEC") will seek stakeholder input, probably in late October or early November, on how to achieve the needed mortality cut (e.g., would stakeholders prefer combining a different slot size limit with some sort of closed season, or would they like to achieve the entire reduction by adopting a different slot; another alternative mentioned is to protect the commercial fishery by imposing a smaller landings reduction on that sector, and requiring the recreational sector to compensate by taking a disproportionately large cut in its fishing mortality rate).

The Committee stands ready to advise the NYSCC board if and when comment is required.

Whether the bluefish and/or black sea bass stock assessments will trigger management action is not completely clear.

A DEC biologist informed the Committee Chair that the black sea bass assessment is very likely to pass scientific peer review; that being the case, unless such stock assessment indicates a problem with the health or trajectory of the black sea bass stock, which seems unlikely given that the most recent assessment update indicated that abundance was more than twice the target level, any management action will probably only establish a recreational catch limit, something that is relatively routine and probably does not justify formal comment.

The results of the bluefish assessment are somewhat more likely to trigger more significant management action. The bluefish stock is currently overfished, and the most recent data indicates that the recreational harvest limit was exceeded in both the 2020 and 2021 seasons. The current bluefish population model, while it passed peer review, has significant deficiencies, and it is possible that the stock assessment workshop will decide to either adopt a new model or make significant changes to the inputs used in the current one. If either of those things occurs, the possibility of the model not passing peer review is increased, although such changes might also significantly improve the model, and make passing through the peer review process easier than it was before.

Changes to either the inputs or the model itself could result in a change in biologists' views of the stock's status. It is very possible that the recreational overages, coupled with past underestimates in the number of bluefish that die after being released by anglers (among other factors), could lead scientists to decide that the stock is in worse condition than previously believed, and so lead to modifications of the current rebuilding plan. It is also possible that new inputs, or a new model, could find that a greater proportion of the bluefish stock is remaining offshore, or find other reasons that support a conclusion that the bluefish stock is healthier than originally thought, and possibly lead to liberalized management measures. There is also a good chance that the new research-track assessment will be little different than the last one, and that things will remain the same.

In any event, should any significant changes to bluefish management be proposed, the Committee will, again, notify the NYSCC board.

Respectfully submitted,

Charles A. Witek, III
Chair, Marine Resources Committee

NYS Hunter Education Committee Report.

This is my final report as chairman of the Hunter Education Committee. As of 8-8-2022 I resigned as a Hunter Education Instructor, so in turn I am stepping down from the Hunter Education Committee.

In spring we had a Zoom meeting as follows: Hunter Education Committee Meeting held 4/2/2022 attended by Mike Donahue Orleans County Region 8, Brian Krawczyk Wyoming County Region 9 and Glen Adams Genesee County Region 8

Brian Krawczyk
2533 Wethersfield Rd.
North Java, NY 14113

Date: August 2020

To: NYS Hunter Education Instructors, Coordinators and Administrators and all Conservation based organizations

Re: The recent challenges and changes within the NYS Hunter Education Program

To whom it may Concern;

We are in unprecedented times and facing challenges in nearly every aspect of our lives as a result of the COVID-19 crisis of 2020. The disruptive effects of this pandemic have reached far beyond the obvious health concerns. How we work, how we learn, how we travel, how we socialize and how we conduct business are just a few of the examples of the adjustments that have been brought to our door step by this unwelcome visitor. Certainly, the NYS Hunter Education Program has not escaped unscathed.

The program administrator's along with the management team realized early on that the uncertainty swirling around the Corona virus would force decisive action and significant changes to allow the program the opportunity to continue its vital mission of serving NY's hunting community. This goal was prioritized in light of the quickly approaching New York State youth & spring turkey seasons.

On April 15th the NYS DEC in partnership with Kalkomey Enterprises, LLC launched a New York State approved, fully online hunter safety education course. The state website and press releases made it clear that this was a limited time offering to help deal with the pending hunter education certification demand. The online opportunity was and remains a very popular option for many families as witnessed by the registration numbers. The numbers early on clearly revealed that online enrollment outpaced historic class registration numbers for the traditional classroom/hands-on HEP classes held in the early spring.

This dramatic shift in New York's hunter education policy & procedure drew wide ranging opinions from across the spectrum of interested parties. Concerns about the application of distance learning in the arena of hunter education circulated even though several states have used this approach with no reportable rise in hunting related incidents or game law violations.

After speaking with members of our local HEP teaching team I decided to reserve making a definitive judgement on the new class until after I had registered and actually completed the course. I knew that it would be difficult for me to experience the course through the prism of a twelve or thirteen-year-old boy or girl or even someone who is older yet, new to the world of hunting. I tried to set aside my experience in the fields and woods as well as my previous exposure as a long time HEP instructor to form a meaningful an objective opinion. At the same time, I thought my personal experience as an active instructor would be beneficial in noting the strengths and weaknesses in the new offering.

Mike Donahue started the discussion about the exam on line and then a hands on class for safety. The concern was about the time the exam would take if we were doing all the range work. Brian brought up

the concern of who was taking the test and making sure it was the student. Brian acknowledged that currently there has been no increase incidents and accidents among the youth taking online class. Last year was the safest on record.

Brian went online and took the online course to see what it taught. The test is timed so you cannot skip ahead, the weird part is the field real life demonstrations are skippable. Brian expressed concerned about lack of in person classes and Pitman Roberson funds that reimbursement for volunteer hours. It was expressed concern about future attendance of in person classes.

There is concern about the 8 hour class being so compressed and the lack of educators leading the DEC in the education process, has moral of Hunter Educators at an all-time low.

Brian, Mike and Glen would like to see a hands on range supplement to the online class tried.

It appears that the DEC may be trying an on hands range supplement to the online class but they did not share information with us other than they were trying things. The DEC has to this date never shared their plan of action of contents of what they were trying.

The DEC has never seen fit to ever attend this Committee in a spring Meeting in the time that I have been a participating member and representative of Genesee County. This has been many, many years!

Sincerely Glen Adams NYSCC Hunter Education committee chairman.

NYSCC Big Game Committee

2021/ 2022 Report to the Council

The NYSCC Big Game Committee (BGC) remained active despite the continued challenges presented by the Covid-19 Pandemic and the fluid pandemic rules implemented by NYS. We nonetheless conducted much business during this period of time, as follows: Fall/ Winter 2021 Shortly after the August 2021 NYSCC Convention, the BGC worked to collect comments to be submitted concerning the regulatory proposal from NYSDEC to allow counties to opt out of the newly established Holiday Hunt in NY's Southern Zone:

- Our efforts were statewide.
- More comments than normal were submitted to regulators than normally would have been received.
- We would like to believe these efforts helped "table" the rule-making effort.

It is noteworthy to mention that, as stated in numerous comments, the trails lacked snow pack to open for snowmobiling – the primary objecting group to this new season, and the interest group pushing for the opt out law by county – proving the regulation to be a moot point, for at least 2021.

The BGC also commented on the proposed lead ammunition ban for state lands as an unnecessary initiative/ bill made so by our education to the existence of lead alternatives, and promoting a voluntary change for those hunters who were concerned about lead and potential poisoning.

Winter/ Spring 2022

The BGC held a committee meeting prior to the NYSCC Spring Legislative Meeting to discuss the 2021 season and conditions experienced, the impact of the new youth hunting initiative, while expressing disappointment in the law that required county opt-in for youth age 12 and 13 to hunt deer with a firearm under supervision. We also discussed the change in shooting hours and the mandatory blaze orange/ pink regulations. We found that the youth participation appeared solid, and the extended shooting hours were not as concerning as initially thought by some. The mandatory orange rule was received with mixed feelings, but did not cause any detriment to hunting success.

- Although the deer harvest was not available at the time of the meeting, we did have the chance to review the bear harvest and the safety reports.
- It was reported that challenges in updating the processor survey information to get to the reporting estimate and related missing harvest numbers took longer than anticipated, as this was the second year of the new licensing and harvest reporting platforms.

The BGC evaluated 4 resolutions, including two which dealt with setting a formal position for NYSCC to oppose regulation and legislation that allowed counties to opt in or out of statewide wildlife management decisions and established programs.

- The committee recommended supporting the Deer Search/ Erie County Resolution as an emergency to be voted on during the Spring Meeting, as time was of the essence.
- The committee recommended the Orange County Resolution be withdrawn, as language was not quite the same as the Deer Search/ Erie County Resolution.
- We recommended Orange County sign onto the Deer Search/ Erie County Resolution, which had multiple counties signed on. 2 Resolutions considered that were of normal process included:
 - Erie County “real-time big game harvest dashboard” as a means to increase transparency with harvest reports and to encourage greater hunter reporting. We recommended support of this resolution provided a pilot would be implemented first so BGC members and DEC could collaboratively examine the tool and the information, as to understand how to set expectation with public data consumers.
 - Depew Rod & Gun/ Erie County Resolution to allow jr. Hunters to hunt big game with a firearm from an elevated stand under supervision. The BGC recommends strong support for this resolution, as the best way to ensure safety is through mentoring and with the rise in treestand incidents and related tracking by DEC, affording a mentoring on how to properly and safely hunt from elevated stands for our youth was strongly supported – especially in light of Jr. archers being allowed to hunt from elevated stands under supervision. The new tandem stands available today make this more than just possible. The BGC recommends support of this resolution.

We also discussed the push for wind and solar projects across NY’s Southern Zone and impacts to the big game species that we currently do not know. We continue to have deep concerns that no serious environmental impact studies exist concerning these facilities and impacts to our wild treasures. The people have a right to know.

The BGC reported these recommendations to the Council during the Spring legislative meeting.

The BGC met July 26, 2022 to briefly review activity for the year, virtually via Webex.

During this meeting we decided it would be of utmost importance to seek guidance from the Council concerning the new gun control measures passed in haste this past legislative session. Many impacts are seen, and yet not well understood that will impact hunters and hunting this coming season. We request the Legislative Committee craft guidance for all hunters, and trappers using a firearm to dispatch trapped quarry, to be relayed by the committees to the regions, counties and clubs, as to provide the best advice we can in advance of the hunting seasons opening.

Respectfully Submitted on August 1, 2022 R. Davenport NYSCC Big Game Committee Region 9 Rep, BGC Co-Chairman

Waterfowl Committee Report

DEC set up a Regional Waterfowl meeting on March 4 which I attended.

The first half of the meeting was informational by DEC. They reiterated that Mallard populations are still dropping. They are doing a banding study with 22 states and Canada over the next four years using GPS transmitters. Bag limits will again be lowered to no more than 2 mallards with only one hen. DEC will still set bag limits. Not us in the task force.

The daily take for ducks will be 6. Canada Geese will 15 for early goose season and 1 for the regular season and for late season will be 1 for Hudson Valley and East Central, 5 for south and Lake Champlain.

The seasons were set as: North Duck Season will be Oct 1-23 and Oct 29- Dec 24. South Duck will be Oct 15- Nov 27 and Dec 3- Dec 18. Goose seasons will be: North Oct 22- Oct 23 and Oct 29- Nov 25, South will be Oct 22- Nov 17. Hudson Valley will be Nov 5 - Nov 18 and Dec 3-18, East Central will be Oct 22- Nov 30. Early Goose season for all zones will be Sept 1-25. Also, there are various youth days and military days.

Our next Waterfowl meeting will be March 2023 unless they add an additional one this fall. I also attended the Cons. Council meeting Sept 4 in Cobleskill representing Albany County.

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