09 April 2013
Meeting of the Marine Resources Advisory Council

Chairman Wise began the meeting at 2:05 p.m.

The Council's April meeting is generally devoted to the review of marine resource legislative bills that are under consideration by the State Legislature. The discussion focussed on bills newly-filed this year and on re-filed bills on which the Council has no existing position. Chairman Wise will contact the bill's sponsor with the Council's recommendation. Please see the summation at the end of each bill for the exact verbiage sent to the sponsor.

After introductions by the Council Chairman William Wise, Director of Marine Resources James Gilmore, and the councilors present, Mr. Wise made several announcements. Unfortunately, we did not have a quorum for the day's meeting.

Councilor Karen Rivera has asked to be replaced on the Council; since this seat does not need to be filled through legislation, Mr. Wise will speak to Mr. Gilmore and others to come up with a replacement. It was questioned since Ms. Rivera is an aquaculturist would her position need to filled again by an aquaculturist and the answer was...not necessarily. Mr. Wise asked for possible suggestions for someone to represent the commercial industry and said he hopes this change will take place quickly. Mr. Arnold Leo thought that Mr. Hank Lackner had been approved to sit on the Council and wondered where his nomination stood. Mr. Gilmore said the only active paperwork that he's aware of is for Mr. Bob Hamilton. His name had been forwarded through the Legislature – the two currently vacant seats on the Council must be filled through nominations from the legislative leadership, Ms. Rivera's seat does not.

Mr. Wise brought up the State's FY 13/14 executive budget, which makes the State marine angler registry permanent and does away completely with any associated fees. Mr. Wise reminded the Council that is is charged with monitoring the financial resources available to the Bureau of Marine Resources. While the Council has been more consumed with management issues, he thought it would be good to have a quick thumb nail sketch as to where things stand – financially. Mr. Gilmore said the bureau is essentially supported from three funds – the General Fund, the Marine Account of the Conservation Fund and federal aid, with almost equal distribution between the three. Recently, the Marine Account has been used more frequently and that is mainly because of the budget problems. The money received from the angler registry was slated to go into the Marine Account to help the Bureau with its day-to-day expenses. Previously, the registry was basically a free ride as far as administrative costs were concerned because the overhead was being covered by the Conservation Fund. However, now that the fee has been permanently eliminated and the contract for overhead has expired, the registry is going to cost about $1.50 per registrant, which will now cost the Department approximately $400,000 - $500,000 in 2013 (based on 2012 stats). Additionally, the required match on federal cost-sharing awards has gone up. The Department had a number of things it planned
on doing with marine recreational license fees, one being a New York State Fishing Guide. This would cost approximately $100,000 and for the time being, that has been put on hold. The Marine Account is now being tapped into very heavily. The Conservation Fund (of which the Marine Account is a sub account) is in great shape mainly because of the fees received from hunting and fishing licenses, they have made this account’s finances very healthy. However, that revenue cannot be used for marine resource-related activities under the Environmental Conservation Law.

Chairman Wise asked for someone to chair a small Council subcommittee to prepare a more thorough review of the financial resources now available to the Bureau of Marine Resources and to make a report at the Council’s September meeting. Councillor Charles Witek will chair the group; Councillor John Davi will represent the commercial industry and Councillor John Renaldo will represent the recreational side.

Mr. Gilmore reminded people that directly after the Council meeting today, the Department will be hosting a meeting regarding reducing harvests in New York’s menhaden fishery as a compliance measure with the new fishing mortality targets for this species imposed by the Atlantic States Marine Fisheries Commission (ASMFC). The meeting starts at 6:30 p.m. and is more for information than for decision making purposes.

Mr. Gilmore said that things seem to be looking up with State measure for the recreational fluke fishery in 2013. It looks very promising that the season will be May 1 – Sept 30; the Department is hoping it will be able to lower the minimum size limit but will not know for certain until the week of April 15th when the ASMFC Management Board meets to vote on an addendum put forward at the last meeting. The addendum allowed excess fish not being used by a state to be "shared" with other states. The addendum needs to be approved. When the distribution is finalized, they will then be able to see if there can be a ½ inch drop in size, through emergency rule-making.

Neal Delanoy questioned what the final decision was regarding black sea bass and scup. Mr. Gilmore said that summer flounder, scup and black sea bass will be filed together. The Council had agreed on Option 2 which was 13” size limit/8 fish bag limit/season July 23 – December 31 so that is what will be requested.

Councillor Paul Farnham would like to discuss pending federal restrictions on windowpane flounder, which he believes could prove to be a huge problem for New York fishermen. This issue will be placed on agenda of the May Council meeting.

Public Comment

Mr. John Schoenig is upset that New York was unable to take advantage of using retired subway cars to enhance New York’s artificial reefs especially because the subway cars were from the state of New York. The states who were able to benefit were Delaware, New Jersey, Maryland, Georgia and South Carolina. The success of the program has been proven and Mr. Schoenig brought up the construction taking place for the new Tappan Zee Bridge. He believes the rocks and boulders being displaced by the construction could also prove to be equally as productive toward creating artificial reefs in New York waters and hopes New York tries to take advantage of this before other states step in yet again. He worries also about the relatively poor compliance rate with New York’s marine angler registry. He feels that the number of registrants is just a fraction of those who should be registered. Will NOAA decide, based on the poor representativeness of the New York registry, to require all New York anglers to sign on with the federal angler registry program, which carries a substantial cost?

Mr. John German would like to discuss the inlet that was created at the eastern end of Great South Bay by Hurricane Sandy. Some folks believe it should be closed, but the last meeting had over 500 people in attendance and there were only 1 or 2 people who voiced their opinion in favor of a closure, the rest felt it should be left alone. He questioned blaming an inlet in Bellport for the flooding that’s taking place in Lindenhurst. Mr. German sees an influx of menhaden into the Bay and believes that having this new inlet is a good thing. There are many different opinions and Mr. German would like the Council to address this issue and
offer their recommendation. Mr. Wise explained that technical experts are working together on this very same issue, one expert being Professor Charles Flagg at Stony Brook University. Mr. Wise suggested having Dr. Flagg come to the next Council meeting for a briefing on the changes taking place; everyone thought it would be a good idea. A decision will not be made with respect to closing the area until the summer.

Councilor John Renaldo stated that the recreational Councilors had been talking about their displeasure regarding the late date in which the Council receives data and materials when a particular topic needs a vote or decision. The importance of receiving the materials in a timely manner is crucial to good and sound decision making and he would like this topic to be placed on next month’s agenda to see what might be done to make this happen in the future.

**Marine Resource-related Legislation**

**Newly-filed Bills**

**A01224/S01762**

*Authorizes the catching and possession of up to 5 times the daily limit of fish during any 7 day period of time; authorizes the catching and possession on a single vessel of the maximum daily limit for each species of fish a person aboard the vessel is authorized to take.*

**Discussion:** Councilor Danielson thinks this bill could be detrimental to the fishery, he feels the numbers can become impossible to deal with and the enforcement aspect could be ridiculous to enforce. Councilor Witek worries about stacking and concurs with the enforcement issue as well. Mr. Wise stated that this very issue came up in the surfclam industry and after much discussion regarding consolidation of permits; eventually there was an agreement that 2 to 1 consolidation might be acceptable but not unlimited consolidation. He thought that perhaps you could limit the stacking issue.

Even though this could not be voted on because of the lack of a quorum, Mr. Jordan wanted it on record that he was against this bill; the intent may be good but the sponsors need to speak to people in the industry before making something so all encompassing. He understands they are trying to do something good; however, as written, this would be detrimental to the industry. Mr. Danielson agreed completely. Mr. Davi believes after speaking to people in the commercial sector, that perhaps when rewritten this could be a good bill, however, as it is currently written would make the enforcement aspect extremely complicated and near impossible to uphold. He hopes we could revisit this to possibly help come up with the proper wording to make this bill feasible.

**Summary:** “The Council understands the need for measures to make commercial fishing operations more economically efficient and to reduce risks to the life and property of commercial fishermen. However, as written, this bill would almost surely create more problems than it solves. The Council urges a re-drafting. Allowing the stacking of multiple commercial daily trip limits would present a major enforcement headache for DEC, as it would have to keep track of how many daily limits a particular vessel had already used within the 7-day period. Of perhaps more concern is the potential for consolidation of an unlimited number of licenses (trip limits) onto a single vessel. This opportunity represents a door to abuse that the Council is very wary of opening. At a minimum, a limit to the amount of consolidation allowed on a single vessel should be added.”

**A2298/S02178**

*Prohibits the taking of striped bass during the period of January 15 to April 15; changes from December 15.*

**Discussion:** The initial discussion was against this bill, people thought that since the species is in decline, there shouldn’t be any talk about expanding the effort. Mr. Witek said a new baseline stock assessment is being performed by the ASMFC and until the numbers are known, we shouldn’t make any decision about expanding the fishery. It is clearly not a healthy stock and we should definitely remain status quo until the assessment is completed.
Mr. Arnold Leo said this bill does not revise the recreational season. This bill proposes to change the closed season from December 15th to January 15th for both recreational and commercial. He disagrees with the unhealthy stock assessment, according to the ASMFC; striped bass are in great shape. The stocks are shifting; fish are frequenting waters that they never have before. This bill is simply to allow a little more time due to the warm waters and hurricane Sandy. By December 15 of 2012, there were hundreds of striped bass tags that went unused. This proposal was first discussed with Fred Thiele and at that time it was thought to extend the season to January 15th, however after subsequent discussions with Mr. Heins it was noted that this would create a technical problem. You would be harvesting from an allocation from one year and taking from allocation in the next year which creates a quagmire when figuring out future allocations. As a result, it was recommended to make the closing date December 31st. The fishery would be closed from January 1st – April 15th. This bill would extend the commercial fishing for 2 more weeks. Mr. Danielson said that we shouldn’t change the law for the future based solely on Hurricane Sandy. Mr. Leo said it’s for more reasons that Hurricane Sandy that this should be done. Mr. German agrees with the bill and thinks if you could fish through the holidays citing the economic boost it would bring as a good thing. He also thinks if you don’t catch your share, it should roll over into the next year but that’s another battle for another time. Mr. Jordan believes this is a matter of law and regulation, to get this passed would be a 2-step process. Mr. Wise agreed, you couldn’t have a regulatory change without the law being changed. Changing the law should come first.

Capt. Jim Schneider stated that as a person who is out on the water every day, he knows for a fact that there isn’t a shortage of striped bass. Also, by extending the season, the likelihood of a fishermen going out in bad and dangerous weather because he needs to fill his tag allotment would lessen because he has more days to try and use his tags – for many reasons it would be very beneficial to extend the season.

Mr. Wise polled the audience and most seemed to support this bill. Mr. Witek still believes a decision should wait for the stock assessment, why speculate? The Council was split down the middle recreational on one side, commercial on the other; Chairman Wise moved forward.

Summary: The Council did not reach consensus on this bill. The commercial fishery representatives supported it, on the basis that the availability of striped bass seems recently to be increasing in the early winter, when it is easier and safer to fish than in mid-winter, and extending the open season might allow a greater fraction of commercial striped bass tags to be used. The recreational fishery representatives opposed the bill, citing some evidence that the coastwide population of striped bass may be beginning a decline and suggesting that any relaxation of State management measures for striped bass should be deferred until the next official (benchmark) stock assessment of this species is completed. This assessment will be initiated by the Atlantic States Marine Fisheries Commission in 2013.

It is noted parenthetically that the open/closed seasons for striped bass in New York are a matter of State law and regulation. Revising the closed season in law would, by itself, not change the actual season. A companion measure would need to be adopted through DEC’s rule-making authority. Some commercial fishery representatives at the meeting indicated that a two-week extension of the closed season (i.e., through 31 December) would be an acceptable alternative than the bills’ proposed 1-month extension. Keeping the season open into a new year would introduce complications in the management of this annual quota-managed fishery”.

A4837/S03707
Relates to granting tidal wetlands

Discussion: A tidal wetland permit currently is open for 10 years; this new one would change it to 5 years. After 5 years, you would need to reapply to the DEC for an extension. Mr. Gilmore said that the current law is that the permit is valid for 10 years, should you not begin your project within that time frame, and you apply for an extension. Essentially this could go on indefinitely. With this bill, the permit is only valid for 5 years and at that time should you wish to extend your permit, you would have to completely reapply, you cannot get an extension. The second part of the bill states that if you receive your 5 year permit and do not begin your
project within 3 years, the DEC is required to evaluate your need for the permit and can rescind it. Mr. Gilmore said quite frankly the Department does not have the manpower to handle what this new bill would require; this is a work load problem. Since the Department only received the bill the day prior, they haven’t had a chance to make comments but they hope to do that shortly. This bill would also encompass maintenance permits.

An audience member used the example of receiving a bulkhead permit. He stated that just getting the bulkhead permit is extremely arduous - it’s costly and can take time. When Hurricane Sandy hit, he lost most of his home, luckily, his bulkhead suffered no damage during Sandy, however, many of his neighbors did in addition to terrible damage to their homes. Their first priority is to get their homes fixed which takes time and money, their bulkhead repair would need to take a backseat and three years can come and go very quickly. He personally doesn’t think this is a good bill. This could potentially place a financial hardship on people who are already in dire straits. Another audience member said that receiving a new permit could run you up to $50,000 because of what entailed, the cost for new studies which are needed and other aspects can be staggering. It was the general consensus for the Council and the audience as well to not support this.

Summary: This bills aims to ensure that DEC’s issuance and monitoring of tidal wetlands permits stays as responsive as possible to the changing conditions along our coastline associated with climate change. While this is a laudable goal, the provision in the bill that requires the Department to fully re-evaluate any permit that has remained inactive for three years after its issuance would impose a heavy administrative and technical burden on the staff of the Bureau of Marine Resources, at a time when they are not able to bear it. To accommodate that requirement, DEC staff would have to drop other high priority tasks and activities, and the Council does not believe this is desirable. It was also noted that three years can pass quickly in the timetable of a large and complicated project, and other priorities may intercede before the permitted activity is begun. For example, a homeowner who suffered major storm damage to a bulkhead and his/her home will understandably focus initially on repair to the home, attending to the bulkhead when time and money allow. It is reasonable to potentially penalize such behavior?

A05421
Limits the taking of sharks to the use of non-stainless non-offset circle hooks

Discussion: Mr. Witek believes this falls under "much ado about nothing" - there is no shark fishing in state waters, it's an enforcement nightmare and quite honestly the expense and bother is not worth the reward. Councillor Renaldo said this would have an impact on tournaments which are considered offshore. Essentially you would have the State trying to regulate something that is covered under Federal regulations. We shouldn’t be heading there.

Summary: This legislation would only affect sharks taken in the waters of New York State. In fact, there are no directed commercial or recreational shark fisheries now conducted in State waters. All shark harvests in State waters are a by-catch in a fishery directed at other species. In offshore waters, shark fishing is tightly regulated by the federal government. The Council also questioned how enforceable this prohibition would be. The issue putatively addressed by this bill is not really an issue.

S04367
Extends the authority of the Department of environmental conservation to manage sharks; relates to the definition of the term "shark:"

Discussion: Mr. Gilmore said there are taxonomic differences in naming of sharks and it was thought for clarity, all written areas where sharks are referenced, the classification should be the same. Mr. Danielson said the DEC should investigate this further. Mr. Delaney stated that while a dogfish is considered a shark, it is handled differently in state law and regulations. It's important not to lump everything together. He also wanted it known that dogfish are responsible for consuming approximately 44 million fluke and codfish and their population has exploded over the last 20 years. This means that a low value fish that has completely taken over the environment is making it difficult for other species to rejuvenate. He referenced an article he read in
Sea Grant magazine wherein it says that dogfish should be targeted to try and eliminate as many as possible because we may have reached a point where the desirable species cannot rejuvenate, by removing them the rest of the environment will be more apt to return to normalcy. Mr. Wise thinks we should get back to the Legislators and relate that this is much more complicated than this bill implies and it needs revision. Everyone concurred.

Summary: This bill seeks to clarify what is and what is not officially termed a “shark” in State law. This may be a desirable goal, but two issues need to be addressed before this definition can be made final. Firstly, commercial fishing for one species of shark (spiny dogfish) is managed in New York through a unique set of regulations that do not apply to other shark species. Any definition of “shark” needs to accommodate this fact. Second, and perhaps more importantly, the term “shark” is mentioned/defined in several places in State law and regulation and the definitions are not consistent. This proposed bill would add to, rather than solve, this legal, if not taxonomic, confusion. A more holistic recodification regarding this term is necessary to achieve the sponsor’s stated objectives.

A03355/S02922
Relates to party and charter boat licenses

Discussion: The purpose of this bill is to require submission of proof by the owner of a qualified vessel that the owner and crew of such vessel are currently enrolled in a random drug testing program in order to obtain a license for a party or charter boat. Capt. Jim Schneider thinks they do enough as is; currently in order to renew your license you must show proof to the Coast Guard when inspected that you are involved in this program, additionally you have to have a drug test for a twix card. The Coast Guard also requires an MIS Report which lists the number of reports you are mailed to have drug tests through the year, this would include the number of tests you received and the number of times you forwarded the request to your crew. Mr. Delanoy thinks there is enough paperwork and wonders why this has come up. The Montauk Captain's Association is the originator of the bill and they want it on record they support this it. Mr. Jordan says this is already on the books – all party and charter vessels need to be in a drug program. The difference right now is the level of enforcement between inspected and non-inspected vessels. With inspected vessels you go through top side inspection and you must show them your marine consortium paperwork, drug testing paperwork, etc., however, when it comes to six pack uninspected boats no one checks. So, even though the law is on the books the level of enforcement is different. With this law, you must submit the proof of drug testing to the state thereby making sure that everyone is playing by the same rules. Mr. Davi thinks it's an invasion of privacy. Mr. Delanoy changed his view; he thought everyone should follow the rules. Mr. Danielson didn’t feel this would make people play by the rules but Mr. Wise didn’t feel that argument held any validity – people speed while driving every day – does that mean you shouldn’t set speed limits?

Mr. Wise polled the audience, more were for the bill than against, however, it was thought the wording should be changed to remove “owner” because sometimes a person may own the boat but never take it out on the water, he might hire a crew instead. The wording should be “operator and crew of vessel.”

Summary: The purpose of this bill is to require submission of proof that the owner and crew of a “for-hire” vessel are currently enrolled in a random drug testing program as a condition of obtaining a state commercial charter/party boat operators license. While some felt that this was simply adding an unnecessary administrative burden to those seeking the “for-hire” vessel operators license, the majority of the Council thought the bill was a good one. Proof of enrollment in a random drug testing program is required to obtain a license from the U.S. Coast Guard for inspected vessels. This bill would just require the submission of the same document/proof to DEC. The “for-hire” industry has a clear interest in doing what it can to assure the fishing public that it operates in as responsible fashion as possible.

The bill would require the owner of the vessel to submit proof that he/she was enrolled in a drug testing program. That should not be necessary in a case where the owner is an absentee owner and the vessel is run by captain and crew. It's the captain and crew that count.
Refined bills – revised

A01218
Provides motor fuel tax exemption for sales of diesel motor fuel used in vessels used directly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes.

Discussion: The Council's original discussion of this bill thought the wording was too vague – who specifically were they including? Since then, the wording has been specified to remove any doubts. Mr. Davi doesn't feel it should include people from the for-hire industry because it is very different from the commercial fishery. However, he wouldn't be upset if this bill does goes through, it's more the point of the comparison aspect that bothers him. Someone from the audience thought this bill is trying to lump sportfishing and tourism in with aquaculture, he doesn't feel it works. Mr. Leo said this topic has come up before in the town of East Hampton when the fishery advisory committee was first set up; what might be helpful here is to think you're "commercial " if you make money catching fish". That was their broad and general definition. Mr. German feels that anyone who puts fuel in a boat should be eligible. The tax is actually an “on road” tax in which money is designated toward highway repairs and such. A boat is technically never on a highway. Mr. Delaney doesn't feel the issue here is whether or not you're a commercial fisherman – these taxes are given arbitrarily. The real justification for this bill is the intent for people to use mass transit; this bill was designed to cut down on fuel consumption. It would encourage people to go on a party boat with 40 people rather than having 40 individual boats all going out and burning fuel.

Mr. Wise pointed out that the Council's original unease with this bill regarded what vessels would qualify for this exemption, page 2 of the new bill now states "a commercial sport fishing vessel, if such vessel provides its owner with at least fifty percent of his or her total annual income" thereby getting away from the lack of definition.

Mr. Danielson wanted to clarify to Mr. Davi that this bill does NOT say that the commercial sportfishing industry is a commercial fishing industry, it simply says the for hire fishing vessels get the same business related fuel tax exemption commercial fishing vessels gets. He also wanted to point out to Mr. German that boats brought to the dock via a trailer are in fact using the highway infrastructure.

Mr. John Mihale would support this bill and he recalls a time in the 1970's when the federal government was assessing taxes and at that time you could fill out a form and receive a certain amount of tax credit for gas and oil. This was for everyone for off road use of fuel.

Mr. Jordan thinks that we can now support this bill since the wording has been changed. It was almost unanimous in support from both the Council and the audience.

Summary: The Council opposed this bill when it was first introduced some years ago. Its language was vague as to whether it applied solely to charter ("six-pack") boats only or to charter boats and party boats. The current bill resolves this ambiguity and the Council now supports this measure.

A5179/S03823 & A03890/S03059
A5179 (new bill) - Allows recreational spearfishing in New York’s marine and coastal waters; define "spear gun" and "under-water gun".

A03890 (previous bill) - Allows the use of spears, spearguns and underwater guns in commercial and recreational bass fishing.

Discussion: It was thought to discuss the two bills simultaneously because of the similarity of the context. The problem with the original bill was the enforcement aspect. Enforcement would be extremely difficult to do because of the varying definitions for the word speargun. This has been dealt with in the new bill to include the words "speargun and under-water gun means any speargun that stores potential energy provided from the
spearfisher’s muscles only. Such gun may only release that amount of energy that the diver has provided to it from such diver’s own muscles”.

Councilor Witek still believes there is work to be done with regard to the wording. The new bill doesn’t apply to blackfish, trigger fish, scup or anything else because it talks about “…migratory fish of the sea”. This is apparently a defined phrase in State law and includes anadromous and catadromous fishes – striped bass, shad, sturgeon, etc. There is still a language problem because of the ambiguity. Mr. Witek’s biggest problem with this bill is that he doesn’t think legislation should preempt DEC’s ability to decide what’s an appropriate tool for harvest.

There was some confusion as to two bills were submitted with apparently the same general purpose. Mr. Miller, a spearfisherman who originally came to the Council seeking support on the spear-gun issue, stated that the first bill prepared concerned commercial fishing and the second bill included the recreational industry as well. When the recreational community saw the bill, they did not want to be put together with the commercial sector because they thought it would be harder to get the bill passed and wanted the sectors to go separately. Mr. Bill Pfeifer, editor of Northeast Dive News, said that he was part of the group that put together the bill to get the recreational speargun bill in motion and the migratory foodfish clause was given to them by legal advisors because they thought it would cover any recreational fish in the marine environment that could be taken by rod and reel. This bill was brought about because there has been so much confusion by the very folks who spearfish, however, it seems that certain words have been chosen incorrectly and if that’s the case they would be happy to go back to the sponsors with the correct wording, they would just like to know what it should be. Mr. Jordan and Mr. Witek worry about people shooting striped bass out of the commercial slot size. Mr. Jordan also worries about public perception, he’s nervous about the folks who will be out there fishing sloppily - what happens when a fish is speared that’s too large to keep, they let it go and it washes up on shore. It’s found by someone who sees a fish wash up on shore with a spear puncture – the public perception will be negative. Mr. Danielson thinks this will need to go back to the sponsor for further clarification.

Mr. Mihale questioned what the law is right now? Mr. Miller answered that it basically follows the rod and reel law. Mr. Gilmore said the problem comes in because of the different sections of the ECL where the word speargun is mentioned, it’s defined differently and when you add the term striped bass, or recreational fishing – you have just added different sections to the mix and the various sections do not coincide. It was then asked what the enforcement level was concerning spearfishing and it was agreed that it falls under the radar. Mr. Gilmore said the Department could work on the wording, unfortunately, when prioritizing, this issue is very low on their urgency level. The speargun fishermen in the audience were frustrated because they believe there is a definition out there that could be used and they feel like they are excellent judge of gauging fish size unlike trawlers or even hook and line fishermen where there is no control over the size of the fish caught. They consider themselves to be the most conservative of all fishing groups and feel they are being discriminated against unnecessarily. Mr. Wise said this needs a more comprehensive approach and he would be willing to find the correct people to sit down and put together wording for a bill that will be successful.

Summary: When A5179 was originally introduced last year, it was opposed by the Council for two reasons: the terms “spear”, “spear gun” and “underwater gun” were not at all defined, presenting a potentially large enforcement problem and the concern that it is difficult to accurately determine the length of a fish underwater, an issue in the case of striped bass, for which there exist both recreational and commercial size limits. A5719 still does not contain the needed definitions, but A3890 does, and they appear to be generally reasonable and acceptable.

The provisions of A3890 would apply to fishing for, “…migratory food fish of the sea,” a term that apparently has a very specific meaning in State law, viz. anadromous or catadromous species such as shad, Atlantic sturgeon, striped bass and American eel. Is it the true intent of the sponsors of this legislation to limit its impact to fishing for just these species? Others were more concerned that this matter of what fishing equipment/gear can or cannot be allowed to legally harvest marine fish should be left to the regulatory authorities of DEC and should not be pre-empted by the Legislature.
As with the term, "shark" the terms, "spear", "speargun," etc. appear in several places in the Environmental Conservation Law. There was a general view on the Council that any bills like the subject bill(s) should deal more comprehensively and consistently with these terms wherever they appear. The Council felt that the issue of explicitly allowing hand-held underwater devices to harvest striped bass, especially, is a charged one. The Council encourages the sponsors to revisit the proposed language to ensure that the words achieve the desired effect; it is willing to give assistance in this task.

Re-filed Bills with no position

A04617/S02690
Provides for aquaculture and shellfish regulation

Discussion: Ms. Debra Barnes of the DEC said one of the purposes of this bill is specifically to try and shift regulations of shellfish aquaculture from DEC to Agriculture and Markets. However, the language shifts all of the DEC's regulatory authority over various shellfish species to the Department of Agriculture and Market, along with the regulatory authority over surfclams, oysters, clams, scallops and the issuance of new shellfish diggers permits but leaves the DEC with the permitting authority for aquaculture. This runs directly counter to the apparent general intent of the bill. Mr. Wise said it appears to also get involved with regulations for wild harvested shellfish digging which is pretty clearly not the purview of Agriculture and Markets. This would be a mistake. Ms. Barnes said Agriculture and Markets do not want to assume the regulatory authority over shellfish. Mr. Wise feels the Council should send a message that we are extremely resolute about this bill -- the Council concurred.

Summary: This far-reaching bill is poorly drafted and, some would argue, misguided in its intentions. Its objective appears to be to move responsibility for shellfish aquaculture from DEC to the Department of Agriculture and Markets. In fact, it shifts all of DEC's current regulatory authority over various shellfish species Agriculture and Markets, including the authority over wild-harvested surfclams, oysters, clams, scallops and the issuance of new diggers permits (some of which is primarily related to wild harvests, not culture operations), but it leaves DEC with the actual permitting authority for shellfish aquaculture. The Council does not support this legislation.

A00069/S00765
Clarifies which New York commercial fishing vessels qualify for an exemption from the current 70' minimum length law

Discussion: Ms. Barnes explained that this law clarifies that people who purchased vessels already on the grandfathered list but weren't able to buy one at that time, this bill helps retain their right to do so. This clarifies the replacement right of a vessel. Mr. Wise questioned how the Department felt on this situation and Ms. Barnes said they weren't for it but they weren't against it either. Mr. Farnham was in favor of it. On the original 70' bill from 2010 the Council had voted to accept it but Mr. Wise said this is NOT the same bill. This bill is specifically for replacement rights — they go with the owner. Mr. Wise questioned how many boats that are on the grandfathered list have been replaced — Ms. Barnes said since the grandfathered list came out in 2010 - one. This will affect who has replacement rights, NOT which vessel. Mr. Mihale said that boats that are 70' in length have federal permits and if they sell the vessel to someone who is out of state, what they will retain is the vessel permit history. When they retain the history, the National Marine Fisheries Services is going to allow them to take the stats of that vessel, say its 70', and you can increase the length by 10% and the horsepower by 20% if they have a document from the previous owner relinquishing the permit history. There is actually a mechanism which you can obtain to get the vessel's permit history. You have to renew it each year. He doesn't believe there are that many vessels of that length. Most folks were in agreement with this bill although they did find it confusing.

Summary: The Council supports this clarification of the rights of fishing vessel owners to a "one-time" right to replace their vessel with one that is 10% longer.
2013 Council Meeting Schedule

The following are the dates of the regularly scheduled meetings of the Marine Resources Advisory Council in 2013:

14 May
09 July
17 September
12 November

Meetings of the Council are held at 2:00 p.m. at DEC’s offices at 205 Belle Mead Road in East Setauket, New York unless otherwise noted.

14 May 2013 Council Meeting Agenda

The following are the tentative agenda items to be addressed at the Council’s 12 May 2009 meeting:

• windowpane flounder issues
• environmental impacts of barrier island breach/inlet in eastern Great South Bay
• providing information to Council re management options in timely fashion

Check the Council’s web page http://www.somas.stonybrook.edu/community/MRAC/index.html for other agenda items, added to the list after this bulletin is distributed. For further information about the Marine Resources Advisory Council or items covered in this bulletin, to make arrangements for addressing the Council on an agenda item or submitting written comments on an agenda item, or to suggest an agenda item, contact: William M. Wise, Chairperson, Marine Resources Advisory Council; phone 631/632-8656; FAX 631/632-9441; wwise@notes.cc.sunysb.edu.