

Endangered and Nongame Species Advisory Committee

Meeting Minutes

November 19, 2008

Assunpink Wildlife Management Area

ATTENDEES

COMMITTEE: Jane Morton Galetto (Chair), James Applegate, Barbara Brummer, Emile DeVito, Rick Lathrop, Dale Schweitzer, James Shissias.

STAFF: Dave Jenkins, Jeanette Bowers Altman, Dave Chanda, Amanda Dey, Larry Herrighty, Dave Golden, Amy Wells.

GUESTS: Michael Davenport (CWF), Rick Dutko (NJDEP-DPF), Howard Geduldig, Dan Hernandez (Stockton Univ. /Wetlands Institute), Annette Scherer (USFWS)

The meeting was called to order at 10:05 am. Notice of the meeting date and location was filed with and posted at the Office of the Secretary of State on September 23, 2008.

Minutes

A motion was made by J. Applegate, seconded by B. Brummer, and approved by the Committee to approve the minutes for September 17, 2008 with the noted correction.

ENSAC Administration

- a) D. Jenkins noted J. Wilkinson has stated she will be moving out of state and therefore will no longer be able to attend the meetings. Ms. Wilkinson will be submitting a letter of resignation shortly.

- b) D. Jenkins introduced Howard Geduldig, distributed his resume and suggested the Committee consider Mr. Geduldig fill the vacant position that will be created by Ms. Wilkinson's resignation. Mr. Geduldig is a retired Deputy Attorney General for the Department of Law and Public Safety (18 years) and has a broad background in environmental law including: lead litigating DAG for the horseshoe crab regulations; the lead counseling DAG for the game and nongame rules and the Regional Greenhouse Gas Initiative; Supervising attorney responsible for developing Freshwater Wetlands Protection Act rules and the Environmental Cleanup Responsibility Act. The resume will be distributed to the absent members and the recommendation revisited at the January meeting.

Mr. Geduldig stated he was interested in serving and had come to observe the Committee's meeting to get a better understanding of how the Committee conducts its business.

- c) The 2009 ENSAC meeting schedule has been provided to the members and posted on the Division's website. Members expressed an interest in, and arrangements will be made to hold an informal gathering with staff at Sedge Island in June 2009.
- d) On behalf of the Nominating Committee, R. Lathrop summarized the adoption of new bylaws which incorporates the position of Vice Chair, a rotation of terms, and officer appointment by election.

A motion was made by R. Lathrop, seconded by D. Schweitzer to elect B. Brummer as the new Chair and E. DeVito as the Vice-Chair. Hearing no other recommendations from the floor the nominations were closed. The incumbents were elected to the respective positions with J. Galetto endorsing the slate.

Ms. Galetto was recognized for her astonishing 20 years of service with ENSAC; her 18 years as Chair; her passion about the issues; her many years of outstanding work on behalf of the Committee and the endangered species in the State of NJ.

Ms. Galetto noted she has enjoyed being the Chair and hoped the Committee would continue to focus on building consensus and resist the urge to push for swift conclusions. She also encouraged the Committee to continue to embrace not only outside experts, but public attendees' input throughout the meeting process. Galetto maintained that the Committee's decisions have been improved by constructive public participation and she feels these attributes/traditions are a strength of the Committee.

- e) D. Jenkins provided a copy of N.J.A.C. 7:25-4:18 which defines ENSAC and explained that the regulation establishes a 4 year term for the Chairperson. Revising the length of the 4 year term for future Chairpersons would require lengthy regulatory changes. If ENSAC should seek to change the term length, such changes are best attempted when either readopting the code in 2013 – or - when making other regulatory revisions. The Committee decided to continue without making revisions to the currently established term length.
- f) D. Jenkins reported Mark Mauriello has been appointed as Acting DEP Commissioner. Mr. Mauriello will replace Commissioner Lisa Jackson. Commissioner Jackson will be joining Governor Corzine's office as Chief of Staff.

Status of Action Items

- a) D. Jenkins noted earlier discussions with NJDOT have determined NJ Transit is not considering expanding significant passenger service on a portion of the Central Jersey railroad system that runs through the core area of the Pinelands. Staff will investigate the possibility of and/or the status of Central Jersey Railroad's plans to reactivate a freight line (for movement of sand/gravel products) north of Lakehurst to Atco.
- b) D. Jenkins and J. Shissias meet with BPU regarding vegetative management on utility right-of-ways (ROWs). Current management rules prevent vegetation that can reach a height of 3 feet (3') under the wires and fifteen feet (15') along the border. BPU was asked to take wildlife into consideration and be more flexible by incorporating actions

that benefit wildlife. A stake holder meeting has been scheduled for 1p.m. on December 2, 2008 at BPU, 2 Gateway Center, 8th Floor, Newark. ENSAC members can expect an invitation to attend.

- c) D. Jenkins thanked the members for their participation and guidance during the conference call regarding the ENSP work plan and will take action accordingly.
- d) J. Galetto delayed the writing of the letter to BPU regarding the status of the Holly Farm property so that there may be discussion regarding how the site is affected by recent amendments to the Water Quality Management Planning rules and the resultant treatment of the site in Millville's sewer service area map. There was discussion regarding whether the Committee should make BPU aware that under the new rules it is unlikely that the DEP would approve inclusion of the Holly Farm property in the city's sewer service area. Members determined that D. Jenkins should advise ENSAC of actions that involve amendments to wastewater management plans that include approval of sewer service in areas with endangered or threatened wildlife on a case by case basis. The letter to BPU will be submitted.

Updates

D. Jenkins provided an update on the status of the Sea Girt beach-raking incident that resulted in the death of at least 1, and probably 2, piping plover chicks. A notice of violation (NOV) has been issued under Land Use regulations and another under the federal Endangered Species Act (ESA). Litigation is ongoing.

D. Jenkins advised members of an invitation to attend and participate in a DEP meeting regarding terrestrial wind turbines. The meeting is scheduled for December 11, 2008 at 2 p.m. in the DEP Public Hearing Room at 401 East State Street, Trenton.

J. Galetto noted two different aspects of regulating ORV being addressed by legislatures. One group of conservation organizations was testifying against the DEP constructing ORV parks. At the same time, some members of ENSAC were discussing with Assemblyman Van Drew a bill to implement stricter penalties on illegal riders/drivers. Ms. Galetto suggested that it may be beneficial for retired Conservation Officers to provide information/testimony on the problems associated with ORVs and present penalties such that legislators would have an understanding of the gravity of the enforcement problem.

Discussions continued regarding Fish and Game Council's (FGC) opposition to S2194 and A3252 which would implement a free recreation saltwater fishing registry at a cost of \$1million to administer the program. Marine Fisheries has an operating budget of only \$1.4 million. The FGC recommended the Legislative Committee meet with the Marine Fisheries Council (MFC) to discuss movement toward an ecosystem management approach and management plans that would enable the State Marine Fisheries program reach compliance with Federal management requirements for 20 federally regulated marine species.

Horseshoe Crab Survey - Methodological Problems

Dr. Dan Hernandez, Stockton University / The Wetlands Institute, presented information on the first three years of the standardized horseshoe crab egg survey by Delaware and New Jersey. The survey provides a baywide estimate of surface horseshoe crab (*Limulus polyphemus*) eggs available to shorebirds. The report shows consistently higher egg densities on Delaware versus NJ beaches and suggests possible causes that should be tested (e.g. – transect placement, volumetric egg enumeration versus total count). A summary of results for individual beaches showed NJ egg densities are low and are well below historic threshold densities of 50,000 eggs/sq. meter. While DE beaches had higher egg densities (even when excluding Mispillion Harbor) than NJ, most DE beaches also remain below 50,000 eggs/sq. meter. Vigorous discussion continued around methodological differences between the two states and potential for error in the use of volumetric measurement in areas of high egg densities.

Marine Delphi Review

J. Bowers-Altman presented a summary of the Marine Mammal Delphi Process. After 4 rounds of review:

- 1) A consensus was achieved on 25 out of 36 species:
 - a) 3 species were voted Endangered (fin, humpback, northern right whales)
 - b) 2 species were voted Special Concern (bottle nose dolphin, harbor porpoise)
 - c) 2 species were voted Secure/Stable (gray seal, harbor seal)
 - d) 2 species were voted Undetermined (striped dolphin, short-finned pilot whale)
 - e) 16 species were voted Not Applicable
- 2) 11 species remain unresolved
 - a) Group 1 - Globally *vulnerable to extinction* but are neither documented nor suspected within NJ waters (blue, sei and sperm whales). These 3 species are listed in NJ due to federal status and presence in the North Atlantic. Only sick, dying or dead individuals have been documented within NJ waters.
 - b) Group 2 – globally secure, neither documented nor suspected to occur within NJ waters (Atlantic spotted dolphin, Atlantic white-sided dolphin, common minke whale, long-finned pilot whale, and Risso’s dolphin). Only sick, dying or dead individuals have been documented within NJ waters.
 - c) Group 3 – globally secure, NJ waters represent the latitudinal or inshore extreme of the species range (harp seal, hooded seal, and short-beaked common dolphin).

Discussions continued and it was determined that there was a need to:

- Define “NJ indigenous species”
- Define “Indigenous marine species”

The Committee will review the presented materials and revisit the topic at the January meeting. Staff will check to see if a legal definition of “NJ indigenous” already exists in statute or rules.

Stafford Forge Pine Snake Study

D. Golden gave a presentation on the northern pine snake relocation study at the Stafford Municipal Landfill in Ocean County. Golden’s presentation summarized the first two years of a seven year study on the movements and behaviors of northern pine snakes in this area. The study resulted from a Pineland Commission permit that was issued to the Walter’s Homes, Inc.

for the construction of a large subdivision and commercial development on the Stafford Landfill Site. Part of the permit contained a Memorandum of Agreement between the Pinelands Commission and Walter's Homes, Inc. for pine snake habitat creation, capture and movement of pine snakes and continued monitoring/research. The study began in 2006, involved the relocation of 31 adult snakes and 71 hatchlings, creation of 6 hibernacula with temporary range restrictions (each a different size) and continued monitoring/research of the snakes/sites. During the first two years of this study substantial snake mortality occurred as a result of hawk predation and a forest fire that blazed through the site. Monitoring and research will continue until 2013.

Discussions continued, including recognition that the Committee originally recommended against the development and translocation of the snakes. Although the pine snake study will not be complete until 2013, early findings (including the reported pine snake mortality) reinforced the Committee's feelings that pine snakes should not be moved to accommodate any proposed development. The Committee praised the work of the staff on the science that was being gained from the monitoring of the snakes and many things have been learned from mitigation on this project.

The meeting adjourned at 2:45 p.m.