

Approved
11-18-15

Endangered and Nongame Species Advisory Committee
Meeting Minutes
September 9, 2015
Assunpink Conservation Center
Robbinsville, New Jersey

Members in attendance: Barbara Brummer, Rick Lathrop, Erica Miller, David Mizrahi, Howard Reinert, Jim Shissias. **Absent:** Howard Geduldig, Jim Applegate, Joanna Burger, Emile DeVito, Jane Morton Galetto.

Staff in attendance: Dave Jenkins (Chief ENSP), Kathy Clark (ENSP), Mandy Dey (ENSP).

Guests: Russ Furnari (PSE&G), Wendy Walsh (USFWS)

- Meeting was called to order by Chair Barbara Brummer.
- The public notice for this meeting was read by D. Jenkins.
- Introductions of those in attendance.

Approval of Minutes

Minutes of 5/20/2015 meeting were approved without changes. Motion to approve by Jim Shissias, seconded by Rick Lathrop. Approved unanimously.

Update on Action Items

There was discussion on the shorebird/aquaculture white paper that was revised based on comments by this Committee. D. Jenkins had prepared a cover memo for the Assistant Commissioner for the revised white paper; it was delayed pending joint action by ENSP and Bur. of Shellfisheries to update Asst. Commissioner Boornazian on how the two Bureaus were working on the issues raised. D. Jenkins will provide the Chair with a copy of the internal cover memo. D. Jenkins had sent a courtesy copy to E. Schradig, USFWS, in the end of July. In response to question by an ENSAC member, D. Jenkins noted that it is now considered a public document.

A recommendation from J. Burger made at the May meeting to urge the Commissioner to work with the USFWS was explicitly included in the cover memo; however, the Division is already working directly with the USFWS on the aquaculture issue. The Committee may discuss with W. Walsh, USFWS, broader coordination across all shorebird issues.

Public Comment

None.

Legislative Report

Legislative update by D. Jenkins: The bill that would transfer diamondback terrapin to the nongame list has not made it out of committee in the state Senate. However, the Commissioner's office is taking the lead to make an emergency rule to close the diamondback terrapin harvest. The season would normally open on November 1, so it is hoped there could be action prior to that date. Last year's Administrative Order had a one year time duration. An emergency rule could either close the season completely or allow a "personal-use only" limit of one per day.

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The “backyard habitat” bill (A-3133, S-2624) passed in the state Assembly (awaiting action in the Senate) would require DEP to establish a wildlife habitat certification program that would create an affirmative defense against municipal nuisance ordinances for properties certified under the program. DEP would have to administer this program and establish private “habitat certifiers” but the bill does not provide any funding for its administration and oversight. ENSP supports the promotion of backyard habitat, but would like to make sure it doesn’t become a burden on the program.

D. Jenkins will provide information as to whether this bill will provide funding for administering the certification program and/or whether that can be provided for.

OLD BUSINESS

Nominations Committee

D. Jenkins reported the recommendations for appointments to terms that expired in April, 2015 will be forwarded to the Commissioner’s office soon. He also noted that the appointment recommendations from last year (April, 2014) are also pending action.

State Wildlife Action Plan Revision:

D. Jenkins reported that ENSP held three workshops in July with stakeholder group representatives, to develop 1) policy/planning actions, 2) habitat management/protection actions, and 3) marine actions. ENSP staff conducted a threat assessment affecting 107 top tier species, and the workshops were designed to develop actions that addressed those threats. We are using a standard lexicon so that the NJ Plan will be comparable to other states’ plans. The NJ Plan will be more focused than our 2005 Plan to make progress on the species and habitat areas most in need. We are also developing Conservation Focal Areas to identify those parts of the state where conservation actions can have the most positive impact. So far we have draft maps developed using GIS tools to identify high biodiversity areas, and will then identify threats for those specific areas.

The deadline for Plan submission is October 1, and NJ will not meet that deadline. D. Jenkins has discussed with USFWS regional office. Formal communication regarding delayed submission of plans will be provided by USFWS later in month.

ENSP will continue posting on the DFW website the major milestones of the revision process as they are completed (next up “threats assessment” and initial Conservation Focal Areas mapping).

WOMP Rules

The draft rule revision is at the Governor’s office now. D. Jenkins indicated that the approach presented at June meeting update has not changed.

Red Knot/Oyster Aquaculture and Section 7 Consultation

Following the June meeting, revisions were made to the review paper prepared by the ad hoc subcommittee on Red Knots and oyster aquaculture (Potential Adverse Effects of Near-Shore Intertidal Oyster Aquaculture on Shorebirds and Horseshoe Crabs: A Critical Need For Assessment). A cover letter was prepared and signed by B. Brummer and sent with the report to the Commissioner in late August.

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D. Mizrahi provided copies of a paper recently published in Wader Study:

Burger, J., L.J. Niles, A.D. Dey, T. Dillingham, A.S. Gates & J. Smith. 2015. An experiment to examine how Red Knots (*Calidris canutus rufa*) and other shorebirds respond to oyster culture at Reed's Beach, Delaware Bay, New Jersey. *Wader Study* 122(2): 89–98.

D. Jenkins introduced the topic. Consultation under Endangered Species Act Section 7 is required because a federal permit (Clean Water Act Section 404 Nationwide permit 48 – shellfish aquaculture) is required of anyone engaging work in the intertidal area. The state's ADZ must have an (Section 404) Individual Permit under the ACE's administration. The Division is putting these activities together for Programmatic Endangered Species Act (ESA) Section 7 review. With input from USFWS and the USACE, the Division has decided to have the programmatic review apply to the existing ADZ, to the areas between the ADZ and Reed's Beach, and to the areas south of the existing ADZ. D. Jenkins noted that areas north of Reed's Beach do not provide the conditions that oyster growers are currently interested in for pursuing structural oyster aquaculture. The agencies (DFW- ENSP, DFW- Bur of Shellfisheries, USFWS, and USACE) have been meeting and working toward a Biological Assessment; the USFWS will then develop and respond with a Biological Opinion that would include non-discretionary conservation measures and agreements. D. Jenkins noted that the concerns for the structures placed in the intertidal zone (as reflected in the ENSAC sub-committee review paper) are: direct and functional loss of foraging habitat; disturbance of foraging knots from tending activities; possible impacts on horseshoe crab spawning movements; and possible impacts suitability of habitat for spawning crabs.

W. Walsh described the ESA Section 7 review process, which usually begins in Informal Consultation (which must entail "no take" of federally listed species, and a finding of no adverse effect. When the USFWS began this process, there were already aquaculture permit applications pending. USWs authorized (4/6/15) under nationwide permit one applicant just south of Dias Creek, and has a pending permit modification approval just north of Dias Creek. Both applicants agreed to the USFWS guidelines already in effect since last year.

USFWS conditions as of 12/11/14 (provided at March and June meetings):

- Seasonal restricted period
- Gear requirements to minimize HSC impingement or interference.
- Phased implementation and adaptive management (e.g., <50% in year one)
- Driving plan if access is by driving; restrictions during 5/1-8/31
- Intertidal area limits: 500' buffer from creek inlets; gear cover limits
- Access plan that limits access to 2 or 4 days per week (depending on location)

The adaptive management condition is important because of the unknown or unanticipated effects and the potential for cumulative impacts that would result in "adversely affecting" Red Knots even if individually they did not.

The programmatic consultation approach is preferable so that the agencies can avoid individual piecemeal permits and more effectively address cumulative impacts. However, the USFWS had to act on the pending permits and not leave them in limbo for years during development of the larger approach. The USFWS has committed to Formal Consultation for a programmatic permit that will consider the larger context of aquaculture and potential adverse impacts on red knots.

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B. Brummer: Ask the Asst. Commissioner for DEP's response to the white paper, and whether its recommendations are being followed.

R. Lathrop: Can the white paper be posted publicly? Answer: yes, at this point it is considered a public document.

Action: Request a response from the Commissioner's office to the white paper.

Presentations on DFW Habitat Enhancement Projects:

B. Brummer temporarily adjourned this session at 12:08 PM for lunch and the afternoon joint meeting with Fish and Game Council at the Central Region Office.

Meeting was rejoined at the Central at the Central Region Office

Endangered and Non-Game Species Advisory Committee members, Fish and Game Council members and Division of Fish and Wildlife Staff introduced themselves.

Three Power-Point presentations given by DFW staff.

- Weldon Brook Forest Stewardship - Sharon Petzinger began her presentation at 1:08 p.m. and concluded at 1:42 pm; Dr. Brummer asked if there were any questions;
- Paulins Kill Restoration Project - Lisa Barno began her presentation at 1:43 and concluded at 2:14; Dr. Brummer asked if there were any questions;
- Beneficial Reuse of Dredge Material to Restore Coastal March Habitat - David Golden began his presentation at 2:16 and concluded at 2:47 – Dr. Brummer asked if there were any questions.

Dr. Brummer thanked all presenters for a job well done.

Adjournment

R. Lathrop made a motion to adjourn the ENSAC Meeting seconded by E. Miller: all in favor – no opposition;

Councilman VanMater made a motion to adjourn the Fish and Game Council Meeting and Councilman Gundmonsson seconded – Vote taken; all in favor; no opposition.

Meeting adjourned at 2:56 p.m.