

Approved
5/18/2016

Endangered and Nongame Species Advisory Committee
Meeting Minutes
March 16, 2016
Assunpink Conservation Center
Robbinsville, New Jersey

Members in attendance: Barbara Brummer, Jim Applegate, Joanna Burger, Jane Morton Galetto, Howard Geduldig, Erica Miller, David Mizrahi, Jim Shissias.

Absent: Emile DeVito, Rick Lathrop, Howard Reinert.

Staff in attendance: Dave Jenkins (Chief ENSP), Kathy Clark (ENSP), John Heilferty (ENSP), Jeanette Bowers-Altman (ENSP), Shawn Crouse and Lisa Barno (Bureau of Freshwater Fisheries).

Guests: Jason Howell (PPA), Pam Straeter (Princeton Univ.), Mike Davenport (CWF-NJ), Russ Furnari (PSEG).

- 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 January 7, 2016, meeting were approved without changes. Motion to approve by J. Burger, seconded by J. Applegate. Approved unanimously.

Status of Action Items

D. Jenkins noted that today's agenda included an update on the Red Knot / Aquaculture Section 7 consultation.

Director's Report

The director and assistant directors are attending the North American wildlife conference. B. Brummer expressed concern re. lack of attendance by Dir. Chanda or Asst. Dir. Herrighty.

J. Burger used the opportunity to update the Committee on the annual Pinelands "snake dig" (31st year). She reported that this year's dig was conducted on 2/29/16, and she presented results of surveys at three sites. They counted more snakes than any year since 1992. While in the field they found a freshly vehicle-killed pine snake, tracked by transmitter and found on a trail where vehicle use is illegal. Discussion followed regarding the DEP's input on the DEP policy re. enduro events on Parks and Forest lands. ENSP is involved in the advisory group to set limits on season and location limits.

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J. Burger made a motion that no DEP permits be granted for motorized vehicle events in the Pine Barrens for the period 3/1 to 11/15. J. Shissias seconded. Discussion followed.

D. Jenkins noted that ENSP will provide a presentation on snake management issues, including road issues, at the next meeting.

J. Heilferty noted that the DEP has had ongoing meetings on this policy and with stakeholders. Many also note many of the problems are an issue of law enforcement. B. Brummer will bring up the need for enforcement at the next Fish and Game Council meeting.

J. Burger reported in the last three years there's been a reduction in hatchling survival, which could be due to poaching. Based on last year's repatriation of hatchlings, mortality occurred at a higher rate in the August-to-denning period than the October-to-denning period.

The motion was tabled.

ACTION ITEM: ENSP will provide the Committee with current DEP policy regarding motorized recreation on state lands (Parks & Forests and WMAs) as well as a map of pre-approved enduro routes (Wharton) and timing restrictions (primarily targeting snakes). ENSAC also requested information on the level of enforcement by DFW and DPF and what those enforcement agents can do; ENSP will invite DFW law enforcement representative and a rep from Parks Police.

ACTION ITEM: Look for a more southern location for the May 18th meeting.

Legislative Report

D. Jenkins provided the DFW's list of ongoing legislation actions as of 3/7/16. Of interest to ENSAC:

- S 1625 and A-2949 provide protection to diamondback terrapins via listing as nongame species subject to ENSCA. Bill is out of committee. At the same time, the DEP has been developing regulation under the marine fish code to close the season.
- S-1309 and A-432 propose a prohibition on the use of snares. Does this bill except the use of snares for research or agency management? ENSP wants the ability to use snares for research and predator management in beach-nesting bird areas.

Public Input

P. Straeter asked if the legislative update is available publicly. D. Jenkins noted they are all available on the NJ legislative website, but this distillation of potential wildlife-related bills is made available to the F&G Council.

J. Howell wanted to note that often single-track trails are opened up illegally and subsequently maintained as open trails. Discussion followed that new trails only get opened by illegal use, because legal vehicle use is confined to designated roads and, in the case of enduro events, to roads and plow-lines. Exception was noted when previously *private* land used for enduro events is subsequently acquired by the state with that “historic” off-road vehicle use.

Results of the Delphi status review of NJ freshwater fish

D. Jenkins noted this is the first review of freshwater fish completed by the DFW, and a collaborative effort by ENSP and BFF. The full report was posted on the Division’s website and provided to ENSAC members by email and portal. S. Crouse provided a handout on the life history of selected fish species.

J. Bowers-Altman provided a brief overview of the status review (Delphi) process and how it progressed for this specific review. Sixty-five species were selected by BFF biologists for the review, but 12 species were dropped from the review due to marine dependence. A separate review of anadromous species may be done in the future. Ten reviewers agreed to participate but one dropped out during round one.

Results are listed in **Table 1** of the draft report provided to ENSAC and on the web. Consensus species were: Shortnose Sturgeon and Ironcolor Shiner as Endangered; Slimy Sculpin as Threatened; Comely Shiner, Northern Hog sucker, Brook Trout, Shield Darter and Eastern Mosquitofish as Special Concern (J. Bowers-Altman noted that eastern mosquitofish consensus was by two panelists, with most voting as No Opinion). Thirty-six species had consensus as Secure/Stable; four species as Not Applicable due to extirpation (Longnose Gar) or non-native origins. No consensus was reached on five species.

B. Brummer moved to accept the consensus species as listed in Table 1, seconded by J. Burger.

Committee voted: Motion passed unanimously. The motion was clarified to exclude eastern mosquitofish, which is covered in a separate motion below.

J. Burger moved to accept the DFW recommendations for five non-consensus species as listed in the table identified as Appendix 4. Seconded by J. Shissias. Discussion followed on the DFW recommendations for the five non-consensus species. The DFW recommendations for three of the five species in this list coincide with panelists’ majority. For two species, Mud Sunfish and Blackbanded Sunfish, DFW recommendations was not consistent with the majority of Delphi panel members. For these two species BFF biologists and J. Applegate noted that the panelist comments describe species in ways that meet Special Concern category. S. Crouse explained the additional threats to those two species including predation and competition by non-native fish, and increasing pH, as well as reduced range within and outside NJ.

Committee voted. Motion passed unanimously.

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EM moved and JB seconded to accept the Undetermined/Unknown status for eastern mosquitofish. J. Burger seconded. Discussion followed that there is uncertainty as to its historical distribution in NJ; it's very tolerant of poor conditions, and the difficulty of conclusive field identification with Western Mosquitofish (*G. affinis*) with which it may hybridize.

Committee voted. Motion passed unanimously.

J. Applegate gave kudos to the staff that provided the results and added to the discussion.

D. Jenkins explained the implications of listing on the endangered and/or nongame lists. By definition, nongame species are those for which there is not a legal season for hunting or trapping (it doesn't specify fishing or taking). DFW can add species as endangered without amending definitions or categories, but as "threatened" is currently a status assigned to "nongame" species, there must be internal discussions and guidance from counsel regarding whether fish that can be legally taken can be listed as nongame with status such as threatened or special concern. D. Jenkins noted that an alternative strategy (under consideration) re. threatened status would be to amend the regulations to add threatened species to the endangered species list as a sub-category of "endangered" which would be more consistent with the statutory definition of "endangered" which has two components: species "...whose prospects of survival or recruitment are in jeopardy..." and those that "...are likely within the foreseeable future to become so..." that are currently reflected in the regulatory definitions, but within two separate lists (endangered species and nongame species). Of the fish species recommended for endangered, threatened or special concern, the Brook Trout is a game fish, and several species of shiners are allowed for taking as baitfish. BFF will recommend to the Fish and Game Council to amend the "2018-2019 Fish Code" to remove these species as baitfish and provide proper protections to species of concern. BFF is now considering their future management of trout in relation to native populations and stocked populations; current policy is that Brook and Brown Trout are not stocked in Brook Trout production waters, small streams with native Brook Trout have also been removed from the stocking program.

ACTION ITEM: BFF will provide ENSAC with the Freshwater Fisheries Digest when released in the end of March.

LUNCH

Report of the Nominating Subcommittee

J. Shissias reported the Nominating Committee met on Jan. 12 to discuss three expiring terms (Brummer, DeVito, Geduldig). **J. Shissias made a motion that all three of these members be nominated to serve an additional term. Seconded by J. Galetto.** Discussion followed. DJ noted the Division may have a recommendation different from the ENSAC's.

The ENSAC membership by statute is: 4 academic (JB, RL, HR, JA), 3 NGOs (BB, JMG, DM), 3 public-at-large (ED, HG, JS), and 1 Vet/public health (EM).

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Existing requests for reappointment (for terms that expired in 2014 and 2015) are awaiting action. D. Jenkins noted that there has been greater attention paid to ENSAC appointments in the Commissioner's office than previously and it may be prudent to consider this in making recommendations, especially with respect to the "public-at-large" seats.

The motion was withdrawn.

The committee decided to wait before making additional nominations until the previous recommendations are acted upon.

Progress report on the New Jersey Wildlife Action Plan

ENSP continues to post new information and progress on the website for public input. A dataset of all threats and actions relative to species is being completed that will generate the SWAP report. NJ has a deadline this summer to submit a SWAP that is at least conditionally approvable.

Intertidal oyster aquaculture and red knots -- Section 7 consultation update.

D. Jenkins provided copies of the Programmatic Biological Assessment (PBA) that was submitted to the USFWS. USFWS is in the process of developing the Programmatic Biological Opinion (PBO) based, in part, on the PBA. The USFWS expects to issue the PBO by April 1.

D. Jenkins noted that the primary change since the last update provided to the Committee was a change from a ban on *tending* structures during the shore birds stopover in the "northern segment" to a ban on the presence of *structures* in the northern segment during the stopover, with the exception of two existing permittees grandfathered for a maximum of three years. Those two permittees may either relocate within one year from the time they are offered an alternative location or three years from the date of issuance of the PBO, whichever is earlier, after which, if they choose to continue to operate in the northern segment, they would be subject to the conservation measures prescribed for that zone, including no gear present during the stopover. Alternatively they could pursue their own Section 7 consultation process.

These measures were the result of demonstrable shorebird disturbance impacts from tending and from structures, at a minimum covering some foraging habitat. There is additional concern that the structures may affect horseshoe crab movements or may have other impacts on horseshoe crabs. D. Mizrahi reported that there is a study from Scotland showing impacts on invertebrate communities due to compaction (in alley ways) and the structures in the intertidal zone, which, he suggested could in turn lead to impact to horseshoe crabs. He suggests we need better information on the possible impacts of activities on horseshoe crabs. D. Jenkins noted that the impacts being considered are to red knots, so any adverse impacts to horseshoe crabs would have to rise to a level that measurably affected knots. D. Mizrahi also suggested that not all stakeholders are being included in the larger discussion of impacts to shorebirds and crabs, and evaluation of studies that are necessary.

Next meeting agenda items to be considered:

Presentation on snake research and management.

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Lands management and forest stewardship planning, and DEP's process for decision making.
Possible location to be south, perhaps Batsto

Adjournment:

Meeting was adjourned at 2:25 PM.

SUMMARY LIST OF ALL ACTION ITEMS

ACTION ITEM: ENSP will provide the Committee with current DEP recommendations and restrictions on state lands, as well as a map of the geographic areas involved. ENSAC requests information on the level of enforcement by DFW and DPF and what those enforcement agents can do; ENSP will invite DFW chief and a rep from Parks Police.

ACTION ITEM: Look for a more southern location for the May 18th meeting.

ACTION ITEM: BFF will provide ENSAC with the Freshwater Fisheries Digest.