

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
AMERICAN EEL MANAGEMENT BOARD**

The Westin Alexandria
Alexandria, Virginia
August 5, 2015

Approved November 3, 2015

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2. **Approval of Proceedings of August, 2015** by Consent (Page 1).
3. **Motion to recommend to the ISFMP Policy Board that the State of Delaware be found out of compliance for not fully and effectively implementing and enforcing Addendum III to the Fishery Management Plan for American Eel** (Page 3). Motion by Louis Daniel; second by Doug Grout. Motion carried (Page 6).
4. **Move to adjourn** by consent (Page 6).

ATTENDANCE

Board Members

Pat Keliher, ME (AA)
Rep. Walter Kumiega, ME (LA)
Terry Stockwell, ME, proxy for S. Train (GA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Dan McKiernan, MA, proxy for P. Diodati (AA)
Jocelyn Cary, MA, proxy for S. Peake (LA)
William Adler, MA (GA)
Robert Ballou, RI (AA)
Eric Reid, RI, proxy for S. Sosnowski (LA)
Rep. Craig Miner, CT (LA)
Lance Stewart, CT (GA)
Dave Simpson, CT (AA)
James Gilmore, NY (AA)
Emerson Hasbrouck, NY (GA)
Katherine Heinlein, NY, proxy for P. Boyle (LA)
Adam Nowalsky, NJ, proxy for R. Andrzejczak (LA)
Russ Allen, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
J. Thomas Moore, PA, proxy for Rep. Vereb (LA)
Loren Lustig, PA (GA)

Leroy Young, PA, proxy for J. Arway (AA)
John Clark, DE, proxy for D. Saveikis (AA)
Roy Miller, DE (GA)
Craig Pugh, DE, proxy for W. Carson (LA)
Bill Goldsborough, MD (GA)
Lynn Fegly, MD, proxy for D. Goshorn (AA)
David Sikorski, MD, proxy for D. Stein (LA)
Rob O'Reilly, VA, proxy for J. Bull (AA)
Kyle Schick, VA, proxy for R. Stuart (LA)
Catherine Davenport, VA (GA)
Louis Daniel, NC (AA)
Doug Brady, NC (GA)
Ross Self, SC, proxy for R. Boyles, Jr. (AA)
Pat Geer, GA, proxy for Rep. Burns (LA)
Jim Estes, FL, proxy for J. McCawley (AA)
Thad Altman, FL (LA)
Sherry White, USFWS
Derek Orner, NMFS
Martin Gary, PRFC
Leroy Young, PRFC

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Jon Cornish, Law Enforcement Committee Rep.
Sheila Eyler, Technical Committee Chair

Staff

Robert Beal
Toni Kerns
Mike Waive

The American Eel Management Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of The Westin Alexandria, Alexandria, Virginia, August 5, 2015, and was called to order at 8:00 o'clock a.m. by Chairman John Clark.

CALL TO ORDER

CHAIRMAN JOHN CLARK: Good morning! The American Eel Board is now in session. Before we get started, I'd like to turn it over to Bob to introduce new commissioners.

EXECUTIVE DIRECTOR ROBERT E. BEAL: I just want to introduce two new commissioners or proxies sitting at the table. Tom Moore from Pennsylvania is a proxy for Representative Mike Vereb. David Sikorski is a proxy for Delegate Dana Stein from Maryland. Thank you.

CHAIRMAN CLARK: Another commissioner note, as you know our good friend Tom O'Connell, who chaired this board so ably, is not on the ASMFC anymore. I just wanted to thank him for the superb work he did getting us through Addendum IV and the great work he did as a commissioner here. I hope we see him back here on ASMFC in the future.

APPROVAL OF AGENDA AND PROCEEDINGS

CHAIRMAN CLARK: The first item is consent to the agenda and the proceedings. Does anybody have any additions to the agenda? Seeing none; I will ask for approval of the agenda and minutes. If nobody has any objections, we will consider those approved.

PUBLIC COMMENT

CHAIRMAN CLARK: We will move on to the next item, which is public comment. We have not had anybody sign up for public comment, which brings us to Agenda Item 4, the technical committee report. I will turn it over to Sheila Eyler.

TECHNICAL COMMITTEE REPORT

MS. SHEILA EYLER: The technical committee was asked to review a life cycle survey that was submitted by the state of Maine. I just want to give some background on the life cycle survey requirements. As part of Addendum IV, a life cycle survey was required for states that have glass eel harvest that is greater than 750 pounds. At this time that only applies to the state of Maine.

The survey requirements require sampling of all life stages of eels, including the glass, yellow and silver eel. The sampling needs to be done in at least one river system within the state. There are several sampling requirements that are listed in Addendum IV; and I'll go through those later as we talk specifically about Maine's proposal.

Maine submitted this life cycle survey design to the technical committee this summer; and the technical committee reviewed that on a conference call in July. Just to give an overview of the proposed survey from Maine, it is a three-year proposed survey to be conducted on all life stages of eels, including glass, yellow and silver eels.

It is going to occur in the Cobboosecontee Stream Drainage. Just to give an idea of the intensity of sampling required for this effort, it is seven months' worth of daily sampling on various different life stages and using different gear types. Some of the details of the proposed survey is that it falls under the requirements of Addendum IV. It looks at an index of abundance by life stage, biomass by life stage, mortality, prevalence of the parasitic nematode and average length and weight of eels in all life stages. In addition, age analysis will also be done on yellow and silver eels.

TECHNICAL COMMITTEE RECOMMENDATIONS ON THE MAINE LIFE CYCLE SURVEY DESIGN

MS. SHEILA EYLER: The technical committee commended Maine for the survey design that they had put together, but we did have some

concerns over the science and the management applicability to the results from the study. The biggest concern from the technical committee was the duration of the study. Maine proposed a three-year study.

The intent from the technical committee is this would be a life cycle survey to be conducted over at least one life cycle of the American eel, which in Maine could be 15 to 20 years. The fact that it was a three-year study, we were very concerned that we couldn't do the cohort analysis that we wanted to do on the survey results.

We also had some concerns about the size of the watershed. It seemed to be relatively small. We weren't sure of the applicability of the results to the other watersheds in Maine where the glass eel harvest is occurring. We had some concerns about the tagging models that were being used in the study. Tagging early life stages of eels, both glass and elver eels has not been conducted vigorously in the field, and so a pilot study might be necessary to verify some of the model assumptions used for those tagging methods.

The technical committee is supportive of the designs at this time, but we'd like to see a little bit more development of that. We would like to reestablish a subcommittee that we had working on the life cycle survey design. Prior to the development of Addendum IV, the technical committee had a subcommittee working on an ideal life cycle survey.

We would like to work with Maine not only to develop this ideal life cycle survey that other states could use if they want to implement a life cycle survey but also refine the survey that is being proposed by Maine. We're hoping that we can follow up again with the survey approval in the November meeting and that Maine will be able to implement the survey starting in 2016. That's the end of my presentation, Mr. Chair.

CHAIRMAN CLARK: Thank you, Sheila. Do we have any questions for Sheila? Pat.

MR. PATRICK C. KELIHER: Thanks, Sheila, for that overview. I do want to just create a little clarity around the issue of the duration of the study. There was some miscommunication between myself and my technical staff regarding this. The three-year timeframe that was referred to my staff related to the budget associated with it.

As you all know, many states are budgeted on a biennium process; and so my commitment to start the life cycle study was for the remainder of the fiscal year that we were in and the following biennium year; so for FY '15 and '16. The commitment from the state of Maine is to fully follow through with the full life cycle study, which would be roughly 15 to 20 years, and to follow it through to the end.

Obviously, from a budgetary standpoint, I can't say I'm going to commit money every year for 20 years. The focus is to fully fund it. The money is within the budget through our Eel and Elver Management Fund. The funds are there for three years; and we anticipate with the continuation of this fishery and the continued sale of licenses, as well as other funds that are put into it such as fine money and the money associated with what we consider pecuniary gains – if some somebody goes over their quota, they have to actually pay the state the value of that quota back – that is what will continue to secure funding into the future for this study. Thank you, Mr. Chairman.

CHAIRMAN CLARK: Thank you for that explanation, Pat. Any other questions? Okay, seeing none, we will move right along. It is time for me to turn the meeting over to Executive Director Bob Beal as we have an item that affects the great state of Delaware.

UPDATE ON ADDENDUM III IMPLEMENTATION

EXECUTIVE DIRECTOR BEAL: In order to introduce the topic for this agenda item, I'm going to ask Mike Waine to go over a summary of Delaware's management program under Addendum III.

MR. MICHAEL WAINE: Just to bring everybody up to speed, this is Addendum III. It is the addendum that was implemented prior to Addendum IVA. This Addendum III was completed in 2013 and implemented on January 1, 2014. This was impacting the 2014 fishing year. Going through the requirements for Addendum III, there was a change in the minimum size for the yellow eel recreational and commercial fisheries to nine inches.

Remember these measures that I'm going through were in response to the depleted stock condition that came out of the assessment and our looking to lower the fishing mortality on the species. A nine-inch minimum size with an increase from six inches; there was a half inch by half inch minimum mesh size put in for yellow eel pots with the allowance of the four by four inch escape panel of this half by half inch mesh beginning January 1, 2014, for three years.

That was intended to give the industry some ability to transition their current gear to the new regulation that was an interim step. The recreational bag limit was decreased to 25 fish per day per angler, but there was still an allowance for crew and captains of the for-hire industry to have a 50-fish bag limit per day for charters and their clients.

For Delaware's measures with Addendum III, they maintained their six-inch minimum size limit in the commercial and recreational fisheries for yellow eel. They have no minimum mesh size for pots, and their recreational possession limit was kept at 50 fish per angler. Delaware's measures are not currently consistent with Addendum III to the American Eel FMP. Thank you, Mr. Chairman.

EXECUTIVE DIRECTOR BEAL: Thank you, Mike. Any questions for Mike on Delaware's current management program? Not seeing any questions; what is the pleasure of the board? Mike has pointed out some inconsistencies between Delaware's management program and the requirements under Addendum III. Dr. Daniel.

DR. LOUIS B. DANIEL, III: I'm prepared to offer a motion.

EXECUTIVE DIRECTOR BEAL: That would probably be good to get the conversation started.

DR. DANIEL: That should do it. **I'd move that the American Eel Management Board recommend to the ISFMP Policy Board that the State of Delaware be found out of compliance for not fully and effectively implementing and enforcing Addendum III to the Fishery Management Plan for American Eel.** Delaware has not implemented the following regulations required by Addendum III: the nine-inch minimum size for yellow eel recreational and commercial fisheries; half by half inch minimum mesh size for yellow eel pots; allowance of four by four inch escape panel in pots of half inch by half inch mesh for 3 years (beginning on January 1, 2014); recreational 25 fish bag limit per day per angler; crew and captain involved in for-hire are exempt and allowed 50 fish bag limit per day.

The implementation of these regulations is necessary to achieve the conservation goals and objectives of the FMP to rebuild the depleted American eel stock. In order to come back into compliance the State of Delaware must implement all measures listed above as contained in Addendum III to the Fishery Management Plan for American Eel. If I get a second, Mr. Chairman, I'd like to speak to my motion.

EXECUTIVE DIRECTOR BEAL: **Is there a second; Doug Grout.** Go ahead, Louis.

DR. DANIEL: My comments here are just related to the process. This is not an indictment of the folks from Delaware. I know that the staff and our members are concerned about this issue, but Delaware's legislature has had two opportunities to implement these regulations per their process in Delaware and have failed to do so. I think this is a critical finding that we need to move forward with.

EXECUTIVE DIRECTOR BEAL: Doug, do you have any comment as seconder? Other comments around the table? Yes, John Clark.

MR. CLARK: I might just take a second, Bob, to say what we've been trying to do in the fabulous first state on the American Eel Issue. We did bring this up to the legislature in 2014, as Louis alluded to. We have a quirk in our law that eels are a separate chapter in our code and everything applying to eels is prescriptive in the code itself.

Last year we asked the legislature to consider making eels like the rest of our finfish and allow us to manage them through regulation. We had some snags in going that route. This year we tried that again, and there was still some concern in the legislature about that. Also in timing in getting the change for the prescriptive regulation to the – or change in law to the legislature this year, there was concern in the legislature they didn't have enough time to consider this; and they tabled it until January. We do know that our legislature will be re-examining this in January when the next session starts and hopefully will correct this at that time. Thank you.

EXECUTIVE DIRECTOR BEAL: Any questions for Delaware or comments on the motion that's on the board? Not seeing any; is the board ready to vote? I'll give a 30-second caucus and then we'll take a vote on this issue.

EXECUTIVE DIRECTOR BEAL: Yes, Mr. Adler.

MR. WILLIAM A. ADLER: If this passes, what is the timeline on moving forward with this versus when Delaware's legislature will have a chance to reconsider; how does that work?

EXECUTIVE DIRECTOR BEAL: John, can you answer that?

MR. CLARK: Well, I don't know the timeframe of how quickly this out-of-compliance finding will make its way through the bureaucratic process here; but I know in Delaware our legislature reconvenes in January, but I would not guess this

would be like something that would happen right away. I'm guessing before the end of the session – our session ends June 30th of next year, so I'd go as far as to say something will be done before June 30, 2016, to rectify the situation.

EXECUTIVE DIRECTOR BEAL: And just to remind everyone of the ASMFC process; it has been a couple of years since we've had a non-compliance issue come before the board. If this motion were to pass, it would be forwarded to the ISFMP Policy Board; and if a similar motion passes at the Policy Board, that gets forwarded to the full commission.

If a motion passes at the commission, the timeline is that I have ten working days to send a letter to the Secretaries of Commerce and Interior notifying them of the non-compliance finding. The Departments of Interior and Commerce then have 30 days to make the determination whether the state is out of compliance.

They look at two questions. One is has the state implemented consistent regulations with the FMP; and if not, does the lack of those regulations impact the conservation of the species? If both those questions are answered yes, then the secretaries can implement a moratorium on fishing in that state.

The secretaries do have a six-month discretionary window on the implementation date of that moratorium. I can't comment on how long the decision would take in that 30-day period or if the six-month discretionary window would be used. That is the overall timeline since it has been a little while since the commission has dealt with a non-compliance issue. Any other questions before the states caucus? All right, seeing none, 30-second caucus, please. And just as a reminder, this is a final action of the commission so I will ask Mike to have a roll call vote.

(Whereupon, a caucus was held.)

EXECUTIVE DIRECTOR BEAL: Does anyone need more time to caucus? Seeing hands up; Mike, will you take the roll call vote, please.

MR. WAINE: Maine.

MAINE: Yes.

MR. WAINE: New Hampshire.

NEW HAMPSHIRE: Yes.

MR. WAINE: Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MR. WAINE: Rhode Island.

RHODE ISLAND: Yes.

MR. WAINE: Connecticut.

CONNECTICUT: Yes.

MR. WAINE: New York.

NEW YORK: Yes.

MR. WAINE: New Jersey.

NEW JERSEY: Yes.

MR. WAINE: Pennsylvania.

PENNSYLVANIA: Yes.

MR. WAINE: Delaware.

DELAWARE: Yes.

MR. WAINE: Maryland.

MARYLAND: Yes.

MR. WAINE: District of Columbia. (No response)
Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MR. WAINE: Commonwealth of Virginia.

VIRGINIA: Yes.

MR. WAINE: North Carolina.

NORTH CAROLINA: Yes.

MR. WAINE: South Carolina.

SOUTH CAROLINA: Yes.

MR. WAINE: Georgia.

GEORGIA: Yes.

MR. WAINE: Florida.

FLORIDA: Yes.

MR. WAINE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

MR. WAINE: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

EXECUTIVE DIRECTOR BEAL: **The motion carries unanimously with two abstentions from the federal services.** I think that takes care of this. As I mentioned before, this motion will be brought forward to the Policy Board for their deliberations tomorrow morning.

ELECTION OF VICE-CHAIR

EXECUTIVE DIRECTOR BEAL: The only other agenda item to come before the Eel Board is the nomination of a vice-chair for the board. Do we have any nominations? Lynn Fegley.

MS. LYNN FEGLEY: I would like to nominate Mr. Marty Gary from PRFC for the position of vice-chair.

EXECUTIVE DIRECTOR BEAL: Is there a second to that nomination? Russ Allen, thank you. Any objection to electing Marty Gary as the vice-chair of this board? Seeing none; congratulations,

Marty. I think you have about two years to get up to speed on all the eel issues.

MR. MARTIN GARY: Thank you, Mr. Chairman. If the board can tolerate back-to-back Aggies chairing the committee, I'd be honored to do so.

EXECUTIVE DIRECTOR BEAL: They'll tough it out, I'm sure. Any other business before the Eel Management Board? Seeing none; I introduced a couple of people at the beginning and I want to introduce a couple more now that we're wrapping up the Eel Board. We have Bob Steinburg from North Carolina sitting next to Louis, who is the new legislative representative from North Carolina. Louis is no longer sitting alone in the back of the room.

ADJOURNMENT

EXECUTIVE DIRECTOR BEAL: We have two new staff members that I think were introduced yesterday; but this is the first coast-wide board so I want to reintroduce those folks. Ashton Harp is the new FMP coordinator at the commission. She has been on board for two or three weeks now. We also have Kristen Anstead. Kristen is the new stock assessment person at commission, filling the vacancy that we've had for a little while. Kristen has been here three days.

Any other issues before the Eel Board? Not seeing any; the Eel Board is adjourned.

(Whereupon, the meeting was adjourned at 8:25 o'clock a.m., August 5, 2013.)

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