

Atlantic States Marine Fisheries Commission

Tautog Law Enforcement Committee

Review of Draft Addendum VI for Public Comment

March 2011

Present: Colonel Mark Chicketano (New Jersey Fish & Wildlife), Deputy Chief Kurt Blanchard (Rhode Island Department of Environmental Management Division of Law Enforcement), Captain Dorothy Thumm (New York State Department of Law Environmental Conservation Division of Law Enforcement).

The Tautog Law Enforcement Committee (LEC) convened via phone conference to review Draft Addendum VI for Public Comment. The LEC only commented on issues that have direct enforcement implications. Discussion of each measure is as follows. One member of the LEC provided a letter that is included in this report after the LEC call summary.

Issue 1: Prohibition of Live Tautog by Non-Commercial Fishermen

The LEC finds that the options under Issue 1 are unenforceable and recommend the Tautog Management Board (Board) select Option A, status quo for a number of reasons. Many fishermen have live wells and coolers on board for other species. Prohibiting live wells is enforceable but may not be reasonable. In addition, determining if all fish have been bled is tedious and prohibitively time consuming. For example, a party/charter boat may have 60 people on it and could have hundreds of tautog on board. It would take 40 minutes to investigate if all fish have been culled properly not including writing any summons if non-culled fish are found. Members agree that the average recreational angler will not know that they have to bleed the fish or put ID marks on it. The learning curve will be slow and recreational fishermen will fight any regulation like this tooth and nail. Finally, judges tend to give fish and wildlife cases a low priority. Wildlife/conservation officers have improved the relationship by bringing judges good solid cases. Judges will not respond favorably to a case that is subjective regarding a fin clip or live fish, etc...

Issue 2: Recommendations to the Secretary of Commerce.

The LEC supports a combination of Option B (state possession restrictions), Option C (federal 14" recreational bag recommendation), and Option D (federal 10 fish bag limit recommendation). Members commented that these would help deter poaching in federal water where poachers are currently unrestricted. They also commented that bag limits and size limits are enforceable management tools.

While the LEC supports a combination of Option B, C, and D, they would prefer regulations that are consistent between state and federal waters. Members commented that a fisherman may become confused and think they can bring 10 fish into a state's waters if the federal limit is 10-fish. They agree

that the best solution would be to have federal regulations that mirror those of adjacent state waters, or to require fishermen to follow the regulations of their home state or the state to which their vessel is registered.

Potential Future Management Measure 1. Permit or Paper Trail for Live Fish:

The LEC agrees that a permit or paper trail could make enforcement easier. Members commented that in addition to aiding enforcement, a permit or paper trail system could give an idea of the number of live fish that are being sold and would help standardize reporting requirements. The LEC also feels that any required records must have requirements which would include dating, quantity in pounds/individuals, and source of fish. Also, any records must contain a control number.

Potential Future Management Measure 2. Tautog Tags:

The LEC agrees that tautog tags would be the most effective tool to help enforce tautog regulations for a number of reasons. First, it is a very simple and clear enforcement tool that is difficult to circumvent. It is a clear violation to sell or offer to sell/expose for sale a fish that does not have a tag. In addition, tags allow officers to enforce regulations at the point of sale. Enforcement on the water is more difficult and time consuming than going to restaurants or dealers where the fish are concentrated. Enforcement at the point of sale is highly efficient. In addition, tags will give an estimate of the number of fish that are being sold in the live market.

Potential Future Management Measure 3. Fines and Loss of License for Poaching Live Tautog:

The LEC recommends that Addendum VI include a *recommendation* that states implement stringent fines for poaching, but is opposed to requiring states to do so. While LEC members support higher fines, requiring states to implement them will put a burden on states that they will not be able to meet. Members commented that states already have regulations and fines in place but need more officers to enforce them.

Potential Future Management Measure 4. Consistent Tautog Regulations

The LEC agrees that consistency in regulations across jurisdictions is most enforceable. Consistent regulations are more difficult to circumvent and easier for anglers to understand and learn which improves compliance rates. Additionally, consistent regulations aid officers in convincing judges of a defendant's culpability.



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March 2, 2011

Dear Chris:

I have had the opportunity to review the ASMFC Draft Addendum VI to the Tautog Management Plan and offer the following suggestions.

On page 8 there are options for recreational fishermen to mark and/or bleed their fish so as to potentially limit the sale of recreationally caught tautog. I cannot, of course, speak for all states, however, in New Jersey I do not see this as a viable option. Quite frankly, it is difficult enough to currently get recreational fishermen to properly measure their fish much less ask them to clip fins, mark fins, or bleed their fish. Additionally, prohibiting possession of "keep alive" gear or requiring them to bleed their fish eliminates the common practice of keeping one fish alive when the limit is one fish in hopes of catching a larger one. I recognize that this practice may not be desirable but it is a common one and attempting to prohibit it will only garner additional recreational resistance to these options. In short, I do not feel that the vast majority of recreational fishermen will tolerate being any further inconvenienced particularly as it relates to preventing what they view as a commercial problem. Additionally, I believe that the judiciary will take a very dim and de minimis view when any of these cases were brought in front of a judge. Here in New Jersey we have, after 25 years of fishery management, only just begun to enjoy a sense of prestige and importance in local courts as it relates to our fishery cases. I would not want cases such as "failing to bleed a fish" or "keeping a fish alive", or "having a cooler filled with water" to taint the quality reputation our officers have strived to achieve in local courts.

On page 18 there are various options for further limiting tautog harvest. In my opinion, should further restrictions on size or limits or seasons be enacted that these options ARE enforceable. I would point out however, that those states without filleting at sea laws essentially have no viable size limit restrictions. Regarding Option B, New Jersey currently has both size and bag limit *possession* regulations thus allowing enforceability. Regarding Option D, what NMFS should do is to limit the possession limit to whatever the possession limit is in the intended State of landing. I would like to make the possession limit in the EEZ the same as the *registered state* of the vessel in question; however this may be too prohibitive. However, it makes little sense for NMFS to allow a 10 fish tautog possession limit in the EEZ when New Jersey's possession limit is one fish at certain times of the year. This would serve to again confuse the public and taint the reasonableness standard in front of a judiciary.

On page 21 there are options for tagging of tautog destined for sale. This, in my opinion, is the only viable option insofar as controlling recreational sales and opportunistic sales. The unresolved dilemma is how would New Jersey's commercial quota of 103,000 pounds be divided? Would the division be split evenly among all licensees (New Jersey currently has and requires a "directed tautog permit" to sell more than a certain poundage of tautog)? Would the quota instead be split based upon historical individual landings? After talking to our Marine Fisheries Administration, the answers are elusive at best. Additionally, our stakeholders would need to be contacted and queried for input as to how our commercial quota could be equitably divided. So, although I believe that tagging is *the* viable option, I cannot at this time suggest how it would best be enacted. Should the ASMFC believe in this option as the only viable one, then I'm sure that meetings would be scheduled with our fishermen regarding the best and most equitable way to enact such a program.

I hope that these suggestions are useful and helpful in ultimately protecting this resource. Should you have any additional questions, I may be contacted at 609-292-9430. Thanks for the opportunity to comment on this Draft Addendum.

Sincerely,

Mark A. Chicketano
Acting Chief
Bureau of Law Enforcement