

Advisory Report

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1975 LEGISLATION
on New York State's
Coastal and Marine Resources

Russ Thomas

September 1975

NEW YORK SEA GRANT INSTITUTE



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NEW YORK STATE ASSEMBLY
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INTRODUCTION

The New York State legislature's 1975 session considered more coast-related legislation than in any other recent year. Twenty-five proposals were enacted into law, as opposed to seven in the 1974 session. Three other bills relevant to coastal zone/marine resources and passed by both the Senate and Assembly were vetoed by the governor.

What with the serious internal political struggles between the two houses, the economic crises of the state's largest municipalities, and the state's energy problems, the legislators spent a lot of time waging behind-the-scene battles over a relatively small number of issues. The session--the longest in recent times--lasted far into the month of July. Of the 6,967 bills introduced in the Senate, and 8,837 in the Assembly, only 1,059 bills were passed by both houses. Of that number, only 867 were approved by the governor and enacted into law; the other 192 bills he vetoed.

The purpose of this report, sponsored by the New York Sea Grant Institute, is to examine and analyze all this session's successful legislation bearing on the state's marine resources, and to alert New York residents to the impact each new law is likely to have on their various interests.

The largest group of the bills in this report relates to the authority and jurisdiction of the Department of Environmental Conservation (EnCon), the public agency primarily responsible for regulating and protecting all aspects of the state's environment through enforcement of the Environmental Conservation Law (EnCon law). Probably the most significant of these bills is one which will now statutorily permit the commissioner of EnCon to consider the total impact a proposed project might have on any or all of the state's resources, including fish and wildlife, before granting or denying EnCon approval.

Two other bills stand out as the environmental highlights of this year's session. The first will require environmental impact statements (EIS) from all public agencies before taking

any action that might have a significant effect on our environment, including depletion or alteration of the state's marine resources. The second provides for the regulation and protection of the state's freshwater wetlands. Among the three coast-related bills vetoed by the governor, most noteworthy was a proposed program for recycling waste oil.

Overall, the 1975 legislature, although distracted by both internal and external crises, has done creditable work in the area of coastal zone and marine resource management. Someone sitting through the innumerable committee meetings and long floor debates would recognize that most of our legislators have become familiar with the urgent conflicts over the state's coastal resources, and are now committed to conserving New York's coastal zone and to developing its irreplaceable marine resources wisely.

GENERAL ENVIRONMENTAL QUALITY LEGISLATION

The three pieces of enacted legislation covered in this section are only indirectly related to the well-being of New York's marine and coastal resources; they are nevertheless important to citizens. These bills are attempts by this session's legislators to raise the consciousness of the general public, and particularly of public officials, about the environmental consequences of long-established public practices.

EIS Requirements for State Agencies

By far the most significant bill was A-4533, introduced by Assemblyman Herbert Posner. Known as the "little NEPA" bill due to the strong similarities between many of its provisions and those of the National Environmental Policy Act (1969), this legislation requires that all state and local governmental agencies make public environmental impact statements (EIS) before taking any action that might have a "significant" impact on the environment of the state. The bill's preamble states that the purpose of these requirements is to promote "a productive and enjoyable harmony between man and his environment"; with enactment, New York has become the twenty-first state to emphasize these priorities statutorily.

Although the bill mandates that all agencies follow directives and regulations established by EnCon on preparing these impact statements, it does not grant EnCon veto power over newly proposed project of other agencies. What is intended, the sponsors say, is that environmental considerations be incorporated into the development of any proposed project or action at its inception. Public hearings, comments, and reports are expected to arise out of the issuance of a preliminary "draft" statement, also required by the bill. Once an agency has published both a draft and final EIS, and has explicitly determined that the proposed action will have no significantly detrimental effects on the state's environment, it may then make its own decision as to whether or not to pursue the proposed action.

The bill further provides that if the proposed action consists solely of granting or denying an application for a project, the state or local agency may recover from the applicant all costs of EIS preparation.

As the governor states in the memorandum accompanying his approval of this measure, the substantive provisions of this bill do not become effective until 1 June 1976. During the 10 months between enactment and effect, EnCon is required to develop a set of regulations stipulating, among other things, what actions might have a "significant" impact on the environment, what is meant by the term "environment" (for example, are the brownstones of urban historic districts part of "environment" and therefore protected from further interference?), and what specifically must be included in the required impact statements. The governor added that if improvements can be worked out to minimize the bill's inherent inhibitions on the construction industry, appropriate amendments might be enacted next session before this law's effective date.

Commissioner's Authority to Protect Natural Resources Expanded

The second general environmental quality measure enacted this session (A-7650) confirms the authority of the commissioner of EnCon to take into account the cumulative impact a proposed action might have on the fish, wildlife, water, land, and air resources of the state before issuing or denying the appropriate license, order, permit, or certificate. Although the commissioner's power to regulate and manage the natural resources of the state has long been established, a recent appellate division decision (*Matter of Ton-Da-Lay, Ltd. v. Diamond*, 44 App. Div. 2d 430 [1974]) raised doubt about the commissioner's authority to consider environmental factors other than those directly and statutorily related to the permit applied for. The sole effect of this legislation, also introduced by Assemblyman Posner, is to authorize the commissioner to take into account the total environmental impact of a proposed project.

Public Registry of Environmental Groups

Senator Santucci's bill S-576, enacted this session, requires EnCon to establish and maintain a registry of government agencies,

local officials, and interested private organizations to whom notice must be given of the date and nature of hearings on rules and regulations under consideration by the department. Those in the registry must also be notified of applications for permits to alter air, water, or land resources, and of any other action previously requiring public notice. The intent of the registry is a system whereby the personal input of responsible persons may be taken advantage of before departmental determinations are made.

According to the provisions of this bill, the commissioner will invite interested persons and organizations to register with EnCon, by an annual news release describing the purposes of the registry. Once the registry is established, EnCon will be required to publish and mail a newsletter to registrants at least once every two weeks, on upcoming hearings and permit applications. EnCon may recover a reasonable subscription fee. An important side note: failure to publish proper notice will in no way affect the ordinary proceedings of EnCon, this bill explicitly says.

Recycling Program for Used Oils

The provisions of S-4199, passed by the legislature but vetoed by the governor, would have required all facilities with sales or uses of at least 500 gallons of lubricating oil a year--for example, automobile service stations, boat marinas, airports, and truck terminals--to create used-oil retention tanks. Waste oil from the facility and used oil from customers would be deposited there. Both those storing the waste oil and those collecting and re-refining it would have been required to keep records on used oil quantities, types, and disposition, and to make their records available to EnCon. The bill would also have required all containers of oil sold in the state after 1 September 1976 to have printed on them a notice to consumers, encouraging them to deposit used oil in a retention tank.

Only 20 percent of the collectable waste oil generated in the state now reaches a re-refinery. The remaining 80 percent either goes directly into waterways--a major water pollution

problem--or is burned as fuel or dumped on roadways, both of which are environmentally hazardous practices.

In his veto message Governor Carey agreed that the goals of this legislation are commendable, both from an environmental standpoint and for energy conservation. But the burdens it would impose on state agencies and private oil retailers were too severe, he said, to justify approval. He also suggested that these goals might better be attained through research under the auspices of the newly created state Energy Research and Development Authority (ERDA) (A-8620A), whose expressed purpose is to develop better energy conservation and generation technologies.

Commercial Use of Cleaning Products with Phosphorus Restricted S-1819, introduced by Senator B.C. Smith and approved by the governor, prohibits the commercial use of detergents containing more than a trace of phosphorus after 1 January 1976, except for those used in dishwashers, dairy equipment, and food and beverage processing equipment. The prohibition is necessary, proponents said, to alleviate serious water pollution from phosphate detergents. Until now, commercial establishments, purchasing detergents in large quantities out of state, had been able to circumvent the intent of 1973 legislation totally prohibiting the sale of such detergents in New York State.

Summary

SENATE

S-576 (A-30003), Senator Santucci. Chapter 714, Laws of 1975.
Adds sec. 3-0306 to Environmental Conservation Law.

S-4199, Senator B.C. Smith et al. Veto #187.

Would have amended the Environmental Conservation Law, the Commerce Law, the Executive Law, the General Business Law, the General Municipal Law, the Highway Law, the State Finance Law, and the Tax Law.

S-1819, Senator B.C. Smith. Chapter 341, Laws of 1975.

Amends sec. 35-0103 and 0105 of the Environmental Conservation Law.

ASSEMBLY

A-4533A, Assemblyman Herbert Posner et al. Chapter 612, Laws of 1975.
Adds article 8 to Environmental Conservation Law.

A-7650, Assemblyman Herbert Posner et al. Chapter 532, Laws of 1975.
Amends sec. 3-0301, Para. B of Subdiv. One, of Environmental Conservation Law.

WETLANDS LEGISLATION

Protection for Freshwater Wetlands

The Tidal Wetlands Act of 1973 was a long step toward alleviating serious problems over tidal wetlands and marshes in New York's downstate coastal region. But the many freshwater wetlands within the state were not included. Large parts of these tremendously valuable but ecologically vulnerable areas have been lost and despoiled over the years, due to unregulated practices of land developers and a conspicuous lack of appreciation for these areas by the public. With the passage of Senator Eckert's bill (S-6450), efficient regulation and preservation of freshwater wetlands larger than 12.4 acres will soon become a reality under the control of EnCon. Although several other bills shared a similar intent, including one central of the governor's own environmental package, both houses this session recognized this particular bill as the most realistic approach.

The immediate effect of this legislation will be to establish a strict interim permit program whereby any proposed alteration of the natural systems of these vital areas must first be approved by EnCon. Upon completion of a statewide inventory of freshwater wetlands mandated by this bill, EnCon will invite localities, private landowners, and interested citizens to participate in public hearings on whether particular areas have been correctly categorized. Once this adjusted map of freshwater wetlands has been adopted by the commissioner, the bill further provides that all local officials and adjacent landholders will be notified immediately as to each area's newly defined status.

A local government with identified freshwater wetlands within its boundaries may before 1 September 1976 implement its own set of wetlands regulations--provided that they are consistent with and no less protective of wetlands than regulations stipulated by this legislation. Pursuant to a unique provision of this same bill, if the locality fails or is unable to adopt acceptable wetlands regulations before 1 September 1976, this function is presumed transferred to the county, which may adopt its own county-level wetlands regulations within 90 days. However,

if both local and county governments fail to implement satisfactory regulations, or if the particular area lends itself only to departmental control, EnCon will assume all further responsibility for implementing a regulatory scheme for the freshwater wetlands of those areas.

Any regulatory scheme adopted at any level must effectively regulate activities involving draining, dredging, excavating, dumping, or filling in freshwater wetlands--usually by permits. This bill contains one significant exemption from permit requirements: a landowner making reasonable uses of the resources of his land in the course of agricultural production. This exemption also includes removing the natural products of a wetland, such as wildlife and shellfish, and selective timber cutting. Provision is also made in the bill for transferring the permit granting function to the Adirondack Park Agency for wetlands lying within the Park.

When granting or denying a permit for regulated activities, the locality, county, or state agency must consider the overall effect such activities would have upon the various benefits conferred upon the public by these wetland areas. The bill lists some of these benefits: wetlands offer control against floods, storms, and erosion, particularly in the Great Lakes region; sanctuary and nursery for wildlife and fish; and recreation for hunters and fishers.

Any person aggrieved by approval or denial of a permit application may seek relief through an Article 78 proceeding of the NYS Civil Practice Laws and Rules, a standard way to appeal in court an administrative decision. A person may also appeal to the freshwater wetlands board created by this bill. The board will consist of five members, two named by the commissioner of Agriculture and Markets, two named by the commissioner of EnCon, and one appointed by the governor with Senate approval.

Amendments to Tidal Wetlands Act of 1973

Two important amendments to the 1973 act--which is an article of the New York EnCon law--obtained legislative and executive approval this session. The first of this year's amendments (S-2257), introduced by Senator B.C. Smith, deals with the

various types of penalties for violations of this law. Up to now, violators could be penalized only after they had been afforded a criminal proceeding; the law mandated that any violation was to be considered a criminal misdemeanor punishable only by fine, without any provision for jail sentence. In the recent restructuring of New York's penal law, this type of penalty became merely a violation, and, under this amendment, remains one of the available penalties for first offenders. In addition, however, the criminal penalty for repeated violations, now considered a true misdemeanor, carries with it a possible fine of up to \$2,000 and a possible jail sentence of 15 days to 6 months. The amendment does not change the availability of injunctive relief through the court system to terminate a continuing violation.

The amendment's most significant aspect is the creation of a new civil administrative remedy for violations of the Tidal Wetlands Act. After a suitable hearing, EnCon may now impose a civil penalty of up to \$3,000 for each violation of the law. This new section also gives the department power to order cessation of the violating activities and restoration of the affected wetlands. This new civil remedy now appears in the enforcement article of the EnCon law, along with the new criminal penalties, to bring the wetlands act into conformity with the general structure of that law. Although the new criminal penalties will toughen up enforcement, few prosecutions can actually be brought because the courts are presently so congested. These new civil remedies are expected to provide the most reliable and expeditious means for enforcing the tidal wetlands law.

The second amendment (A-2871) enacted this session repeals an exception to the Tidal Wetlands Act covering all lands taken or held by the state through its powers of condemnation and eminent domain. The original legislation exempted such lands from wetland regulation. With this amendment, together with the protective measures of the new Freshwater Wetlands Act, practically all the wetlands of the state are protected under the law.

Protection for Jamaica Bay

A third piece of closely related legislation (S-3917), also

enacted this session, will prohibit the Port Authority of New York and New Jersey from acquiring, by grant or condemnation, lands under Jamaica Bay for expanding the major municipal airports. Long recognized by conservationists as an important refuge for wildlife and for a tremendous variety of fish and shellfish, Jamaica Bay waters and marshes are now mostly part of the Gateway National Recreation Area established in 1972. This legislation ensures that eastern portions of Jamaica Bay not controlled by the National Parks Service will remain unaffected by the growth of New York City's municipal airports.

Summary

SENATE

S-2257, Senator B.C. Smith et al. Chapter 182, Laws of 1975.
Repeals Title 5 of Article 25 of the Environmental Conservation Law; amends sec. 71-1709, subdiv. 1 of Environmental Conservation Law.

S-6450A, Senator Eckert et al. Chapter 614, Laws of 1975.
Adds Article 24 to Environmental Conservation Law.

ASSEMBLY

A-2871, Assemblyman Herbert Posner et al. Chapter 136, Laws of 1975.
Repeals sec. 25-0602 of the Environmental Conservation Law.

A-3917, Assemblyman Herbert Posner. Chapter 299, Laws of 1975.
Amends Chapter 802 of the Laws of 1947.

MANAGEMENT OF NAVIGABLE WATERS AND COASTAL AREAS

EnCon Authority over Dredging and Filling

Since the EnCon law was first recodified and consolidated in 1970, EnCon has maintained its authority to regulate, by permit requirements, any excavation or placing of fill in the state's navigable waters, as well as all adjacent marshes, estuaries, and tidal wetlands. However, until this session when the legislature passed and the governor signed Assemblyman Hoeckenbroeker's bill (A-2689), the definition of these regulable areas, derived from the Navigation Law, specifically excluded Suffolk and Nassau counties. Control and regulation of navigable waters and wetlands in the two counties was left to local governments, who themselves issued permits for dredging and filling. The authority to regulate dredging and filling in all the state's waters, estuaries, tidal wetlands, and marshes will now lie with EnCon, consistent with other recent legislative moves to protect these critical areas. Another significant aspect of this bill is the addition of "interstate authority" to the list of those who are required to obtain a permit, ensuring that these provisions of the law are applicable to agencies such as the Port Authority of New York and New Jersey and removing any question that such bodies are subject to regulation by the department.

Another bill (A-7059) concerning the same section of the EnCon law was introduced by Assemblyman Kidder and signed by the governor. This new law exempts from permit requirements emergency dredging and filling in navigable waters that is immediately necessary to protect the safety and well-being of any person, or to prevent damage to personal or real property. Although the law will still require that notice of this work be made to EnCon and that disturbances of the environment be minimized, it will allow a threatened property owner to deal with an emergency condition as it appears and give notice of his actions when practical. According to the department and sponsors, this bill answers urgent needs of property owners and farmers along the shores of the Great Lakes, who have for years been threatened by extreme high-water levels. A similar

exemption, now several years old, has worked well: it allows emergency work on the banks of streams and other natural water courses not qualifying as navigable waters.

Temporary Docks

Another piece of legislation, written by EnCon, introduced this session by Senator B.C. Smith, and signed by the governor, recognizes that temporary piers, wharfs, and other protruding structures used as landing places have little environmental impact on the waters and shorelines. This bill excepts such structures from the permit requirements, which now will be required only for permanent structures. Although some question may arise as to what constitutes a temporary structure, those present in the water merely seasonally or for less than one year will probably be considered temporary. The same bill also rephrases the exception previously granted to structures less than 40 feet long: the size limit is now a surface area of 200 square feet. The department and sponsors considered total surface area a far better indicator of possible environmental impact than simple length limit.

Mandatory Soil and Water Conservation Plans

A bill encouraging soil and water conservation practices to minimize the environmental impact and expense of agricultural operations has passed the legislature and been signed by the governor. This legislation (A-4384) will require all owners or occupiers of landholdings exceeding 25 acres and used for agricultural purposes, or of smaller parcels if the site supports concentrated agricultural operations (e.g., poultry farming), to apply to their local Soil and Water Conservation District for a soil and water conservation plan by 1 January 1978. The local board must provide such a plan by 1 January 1980. This is the first statewide effort to foster environmentally sound agricultural practices by individual private landholders; under this bill, local Soil and Water Conservation Districts can develop and implement programs and priorities for their particular areas of control. Proponents of the bill and the state

Soil and Water Conservation Committee foresee generous application of this legislation to coastal area management as well as to inland agricultural operations. For example, erosion reduction projects of planting tide-resistant vegetation and using ceramic tile to divert seep-waters may now be conducted and expanded on an organizational base far more productive than the present unsuccessful voluntary program, under which only 10 percent of eligible landowners requested assistance. The sponsors expect this program to be important and beneficial to riparian owners of the Great Lakes and Long Island alike. Two notable weaknesses in this innovative legislation are the lack of funding to assist local districts in developing their plans (the individual landowner will continue to bear most of the expense), and the absence of any enforcement provisions which might be needed once the landowner has applied for and received his soil and water conservation plan.

Land-Use Legislation for Rockland County

The legislature has also passed two pieces of legislation on some of these same land-use problems on a local level. The first is Assemblyman Connor's bill (A-7200), now signed by the governor, to create a Rockland County Stream Control Agency. Twice vetoed by previous governors, this legislation grants jurisdiction to the county to develop its own countywide comprehensive flood control plan. Supporters claim that power at the county level is essential to confront the special flood control problems of that area, while opponents claim that the authority to oversee such programs should remain with the locality, under the state Flood Insurance Program Act of 1974. The 1974 Flood Insurance Program Act specifies that EnCon is to assume responsibility where the locality has not or is unable to take effective steps to implement flood control programs. Considering the traditional emphasis that the government of New York has placed on land-use planning at the local rather than county level, this bill's enactment, granting this power to Rockland County government, may indicate a future expansion of county authority in the area of land-use planning.

Relating again to Rockland County, a bill introduced by Senator Winikow (S-4666) and passed by both houses would have authorized the town of Haverstraw to enter into a lease, concession, or other agreement with private developers for the construction and maintenance of marina and recreational facilities on the Hudson River. Although the bill provides for public hearings before any contract is entered into, the governor vetoed the measure and noted that private development of public lands acquired with public funds--such as these--is generally contrary to the public interest, and might well jeopardize federal funding for future park development in the area.

Summary

SENATE

S-4666, Senator Winikow. Veto #138.

S-5503, Senator B.C. Smith, Chapter 184, Laws of 1975.

Amends sec. 15-0503, subdiv. 1 of the Environmental Conservation Law.

ASSEMBLY

A-2689, Assemblyman Hochbrueckner et al. Chapter 349, Laws of 1975.

Amends sec. 15-0505, subdiv. 1 of the Environmental Conservation Law.

A-4384, Assemblyman Walsh. Chapter 441, Laws of 1975.

Adds subdiv. 10, 11, and 12 to sec. 3 of the Soil and Water Conservation Districts Law.

A-7059, Assemblyman Kidder. Chapter 271, Laws of 1975.

Adds subdiv. 6 to sec. 15-0505 of the Environmental Conservation Law.

A-7200, Assemblyman Connor et al. Chapter 846, Laws of 1975.

Unconsolidated Laws of New York.

PORTS AND CARGOES

Problems tied to the energy crisis and the economic crunch/unemployment situation have climaxed during this year's legislative session, alerting state government and localities alike to the essential role the ports of New York State have in its economic balance. Legislators this session have recognized that improving port facilities to stimulate more commercial activity might help some of our economic ills, although environmental quandaries might also arise.

Limits on LNG Import and Storage

The Port of New York will very likely become a major site for import and storage of liquefied natural gas (LNG); the state has no natural gas resources itself and domestic production has dropped off nationwide. Several pieces of legislation introduced this session were attempts to grapple with dangers to the New York City community from any sizable development of a fuel industry in an urban area. Although some legislators supported strict prohibition of LNG importation, the only bill to pass both houses was A-2951, introduced by Assemblyman Lentol. The governor vetoed it. This legislation would have required an importer to obtain a certificate of safety from EnCon before unloading LNG within the boundaries of state waters, and to give 48 hours' notice of his intentions to the Environmental Protection Agency (EPA) local office. The governor's veto message pointed to the innate ambiguities of "certification" of safety; meanwhile, EnCon's commissioner had promised to develop a working set of safety regulations.

Although it is widely accepted that LNG is essential to the well-being of the people and industry of New York State, the proponents of this legislation considered precautions necessary to minimize the twin threats of gaseous explosions and water pollution. However, since the Everett LNG station in Boston, serving an urban Massachusetts area under the supervision of the US Coast Guard, is said to operate safely and efficiently,

the problem doesn't seem insurmountable. The governor has now committed a special task force to develop proper precautions and safety measures.

Port of Albany

The Port of Albany rehabilitation legislation proposed by Senator Hudson on the eve of this session's adjournment may seem at first a boost to the economy of a restricted area, one county. But the legislature's action underlines the principal that the well-being of facilities such as the Port of Albany is essential to a healthy statewide economy. Despite its deteriorating and delapidated condition, the Albany port on the Hudson River has maintained its status as the state's third largest port, open to river traffic and ocean-going vessels alike. The \$4 million appropriated by this bill, plus whatever funds reach the port through Albany County Industrial Development Agency, a product of 1974's legislative session, will go to revitalize this upstate crossroads.

Port of Oswego

Similarly, the legislature focused on the Port of Oswego and its future in two bills introduced by Assemblyman Zagame and Senator Barclay, both signed by the governor. The first bill (A-5482A) requires the Port of Oswego Authority to develop and public before 1 February 1977 a comprehensive land-use plan for the district, incorporating the necessary ecological, historical, and recreation considerations as well as prospects for future commercial development. Although the state of New York has traditionally left the duty of land-use planning exclusively to the locality, the bill's sponsors say that uncontrolled commercial development threatens to be detrimental to the district and to the state. To help meet the cost of developing a plan, this legislation also contains a \$100,000 appropriation for the Port of Oswego Authority.

The second piece of legislation (S-5006B) expands the membership of the board of the Port of Oswego Authority from seven to nine members, upon expiration of the current term. The bill also requires the inclusion of at least one member from or recommended by the county planning board. The sponsors intend

that someone with land-use planning experience be on hand to help work on the comprehensive land-use plan.

Summary

SENATE

S-5006B, Senator Barclay. Chapter 681, Laws of 1975.

Amends sec. 1353 of the Public Authorities Law.

S-6956, Senator Hudson et al. Chapter 796, Laws of 1975.

Adds to Unconsolidated Laws of New York.

ASSEMBLY

A-2951, Assemblyman Lentol et al. Veto #76.

Would have added subdiv. 4a to sec. 23-1501 of the Environmental Conservation Law.

A-5482A, Assemblyman Zagame. Chapter 688, Laws of 1975.

Amends sec. 1354 of the Public Authorities Law.

FISH AND WILDLIFE

The 1975 legislature took a bit of time out this session to recognize the special fondness for the beaver and speckled, or brook, trout long held by New York State conservationists and sportsmen. These two creatures have been named the official state animal (S-194) and state fish (S-5489), respectively. Oregonians have been officially fond of the beaver, too. Perhaps recognizing these two animals' prominent role in New York fish and wildlife panorama will help preserve their value as resources.

Salmonid Fishery Development

Three pieces of legislation on the salmonid fishery in the Great Lakes have been enacted into law with energetic support from EnCon and local officials. Under its Great Lakes Fisheries Management Policy and Program Objectives, EnCon has spent considerable money and work on restocking and conservation activities to revitalize the large salmonid population that once existed in Lakes Erie and Ontario--salmon and all its hybrids, brook trout, brown trout, rainbow trout, splake, lake trout, steelhead, and char. A foremost objective is to develop and sustain an industry compatible to both commercial and sports fishing.

The first of these bills (A-6620) extends the duration of EnCon's present regulatory authority over seasonal, size, and catch limits for taking coho, chinook, and sockeye salmon, to 31 December 1978,

A second bill (A-7067), introduced by Assemblyman Herbert Posner, prohibits commercial netting of any species of the salmonid family without a permit from EnCon. Up to now, fishermen could keep, without permit, "dead" salmonids inadvertently caught along with other net catches. The new law requiring a permit to take salmonids also mandates that those inadvertently taken must be returned unharmed to the water. This last provision may be difficult to obey, since

fishermen cannot guarantee salmon won't be harmed when they have become entrained in the net. A fisherman refused a permit might face a dilemma.

From a thorough investigation of the nearshore (half-mile) commercial fishing presently conducted between the Oswego River and the Henderson Town line along the eastern tip of Lake Ontario, under a special exception to the EnCon law, EnCon decided that it seriously threatened the developing salmonid fishery in that area. The last of the three new laws (A-7068) repeals this exception. Although the law as it stood did not specifically allow the taking of salmonids in this area, the existence of commercial netting activities--according to EnCon officials--was sufficient to disrupt the growth of the recreational sports fishery and its associated economic boost to the region. The repealed section had allowed commercial fishing within a half mile of the shore between 1 May and 1 December for five fishes (cisco, whitefish, bullhead, yellow perch, and lake sturgeon) along that particular stretch of coast.

Lake Sturgeon

Assemblyman Kidder introduced successful legislation (A-7631) now signed by the governor giving EnCon regulatory authority over the taking of lake sturgeon (*Acipenser fulvescens*) in both Lakes Erie and Ontario and the St. Lawrence and Niagara rivers. Although this species once existed in great numbers in these waters, commercial exploitation and deteriorating environmental conditions have brought it near extinction. The department hopes by this additional authority over season, limits, and manner of taking, granted until 1 September 1978, to help increase the repopulation of lake sturgeon in these waters.

Marine Fishery

In the area of marine fisheries management, it is important to note that over two dozen bills--a substantial bunch--were introduced even though relatively few--four--became law. The two most notable unpassed bills were the striped bass legislation of Assemblyman Bianci (A-5502D) and the proposed marine

sanctuary act of Senator Marino and Assemblyman Connor (S-2833, A-2685).

Of the few successful bills, two dealt with the commercial taking of lobster in New York waters. The first (S-5463), by Senator Trunzo, simply extends to 1 January 1979 the time in which nonresidents of this state who live in states offering reciprocal arrangements--primarily Connecticut--may continue to receive permits from EnCon for taking lobsters from state waters. These reciprocal licensing and law enforcement provisions have held for many years.

The other lobster bill (S-5543), by Senator B.C. Smith, formulates a method for efficiently enforcing minimum size limits for lobster taking. Under this new legislation, lobsters so damaged or mutilated that measurement for the legal minimum cannot be made may not be possessed, except that detached lobster tails, wholly intact, may be possessed provided the sixth abdominal segment measures at least 1 1/16 inches along the dorsal center line. In addition, the new law provides that detached lobster claws may be possessed only in conjunction with legally possessed lobster tails, the acceptable number of claws not to exceed twice the number of tails. Landing lobsters not in the shell is also expressly prohibited by this bill.

The last two bills in this inventory of marine fishery legislation passed and signed are closely related; both were introduced by Senator B.C. Smith. These two bills, taken together, first prohibit (S-6210) altering, damaging, or mutilating any EnCon buoy or marker defining uncertified shellfish waters, from which taking of shellfish is already strictly prohibited. Second, they provide (S-6212) that altering a buoy as above constitutes a misdemeanor punishable to the same degree as taking shellfish from uncertified areas. The bill reworks possible penalties for violating this law by deleting the minimum penalty of \$250 and the first-offender provisions from the ECL, and providing for a possible fine, ranging from nothing to \$1,000, and/or imprisonment for one year, for a violator holding a valid digger's permit. For nonlicensed violators, the sanctions remain the same as they were originally. In addition, the bill increases the maximum penalty for taking

undersized clams, in excess of the 3 percent tolerated, to \$250 and/or 15 days' imprisonment; each container constitutes a separate violation.

Summary

SENATE

S-194, Senator B.C. Smith et al. Chapter 797, Laws of 1975.
Adds sec. 79 to the State Law.

S-5463, Senator Trunzo. Chapter 240, Laws of 1975.
Amends sec. 13-0329, subdiv. 2 of the Environmental Conservation Law.

S-5489, Senator B.C. Smith. Chapter 349, Laws of 1975.
Adds sec. 80 to the State Law.

S-5543, Senator B.C. Smith et al. Chapter 241, Laws of 1975.
Amends sec. 13-0329, subdiv. 5 of the Environmental Conservation Law.

S-6210, Senator B.C. Smith. Chapter 551, Laws of 1975.
Adds subdiv. 9 to sec. 13-1309 of the Environmental Conservation Law.

S-6212, Senator B.C. Smith. Chapter 552, Laws of 1975.
Amends sec. 71-0921, subdiv. 5 of the Environmental Conservation Law.

ASSEMBLY

A-6620, Assemblyman M.J. Murphy et al. Chapter 268, Laws of 1975.
Amends sec. 11-0305, subdiv. 13 of the Environmental Conservation Law.

A-7067, Assemblyman Herbert Posner. Chapter 272, Laws of 1975.
Amends sec. 11-1507, subdiv. 3 of the Environmental Conservation Law.

A-7068, Assemblyman Herbert Posner. Chapter 271, Laws of 1975.
Repeals para. b, subdiv. 6 of sec. 11-1507 of the Environmental Conservation Law.

A-7631, Assemblyman Kidder. Chapter 391, Laws of 1975.
Adds subdiv. 6 to sec. 11-1303 of the Environmental Conservation Law.

AFTERWORD

A significant accomplishment of the 1974 legislature in coastal zone management was inadvertently omitted from last year's edition of this same report (*1974 Legislation Relating to New York State's Coastal and Marine Resources*, Marsha Bird). That legislation, introduced by Senator Barclay of Pulaski and approved by former Governor Wilson (c. 701, Laws of 1974), re-established the St. Lawrence/Eastern Ontario Commission as an independent agency within the Executive Department. The commission, first established as an independent agency in 1969, was amalgamated into the Office of Planning Services in 1970 and retained its dependent status until this law took effect 1 July 1974.

Although the SL/EO Commission continues to pursue most of its original goals, particularly researching and developing better conservation practices to protect the area's unique scenic beauty and irreplaceable resources, the specific purpose of this legislation was to create an independent agency whose primary responsibility would be to formulate a comprehensive and balanced development plan for the entire region before 1 January 1977. Hence, the bill enlarged the commission's jurisdiction to include Oswego and Cayuga counties, and increased the membership of the commission from 8 to 14 members to include additional representatives from the two new counties.

Since July 1974 the commission has completed several research projects on unique environmental problems of the region, including studies of high water levels and shoreline erosion along Lake Ontario. A preliminary program design has also been prepared, outlining a general approach to the mandated objectives, expected to be attained in early 1977. Thereafter, environmentally sound and intelligent coastal zone management should become a reality along the St. Lawrence and in the eastern part of Lake Ontario.

Related New York Sea Grant publications:

Coastal Zone Legal References (Selected), ed. Robert I. Reis,
SUNY Buffalo Faculty of Law and Jurisprudence. Sea Grant Law Center.
169 pp. June 1975. \$3.00

*1974 Legislation Relating to New York State's Coastal and Marine
Resources*, by Marsha Bird. 12 pp. July 1974. 50¢

New York Sea Grant Institute Annual Report 1973-1974, by Frances
Richardson and Orville Terry. 48 pp. August 1975. No charge

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