

**Virginia Marine Resources Commission  
Finfish Management Advisory Committee (FMAC) Meeting**

2600 Washington Avenue, Newport News, VA

VMRC Conference Room, Fourth Floor

Monday, October 27, 2008, 6:00 p.m.

**ATTENDANCE**

Members Present

Hon. Ernest Bowden, Jr.  
Jeff Deem  
Russell Gaskins  
Andy Hall  
Wynston D. Holbrook  
Doug Jenkins  
Dr. Ken Neill  
Pete Nixon  
Tom Powers  
Walter N. Rogers  
Samuel P. Swift  
Chris Vaughan  
Robert Weagley

VMRC Staff

Jack Travelstead  
Robert O'Reilly  
Joseph Grist  
Joe Cimino  
Sonya Davis  
Lewis Gillingham  
Stephanie Iverson  
Mike Johnson  
Laura M. Lee  
Alicia Nelson  
Carter Shackelford  
MPO M. Morris

Others Present

Mark West  
Don Bannister  
Robert Green  
Dave Gilliland  
T.L. Durvin  
H. Lee Blevins  
Jim Dawson  
Bob Reed  
David Agee  
Dusty Crump  
Roger Parks  
Bubbie Crown

**MINUTES**

**I. Introductions; Announcements**

Chairman Bowden called the meeting to order at 6:00 p.m.

## **II. Approval of minutes from the September 15, 2008 meeting**

The minutes from the last meeting listed members Mr. Jeff Deem and Mr. Andy Hall as absent; however, they had been in attendance. Staff was notified. Minutes were approved.

## **III. Old Business**

### **a. Updates on ASMFC Actions on Coastal Sharks, Spiny Dogfish, and Smooth Dogfish**

Mr. Travelstead informed the committee that the erroneous data regarding trip limit calculations for Virginia presented in ASMFC's draft shark management regulations were corrected at an ASMFC meeting in Delaware last week. At that meeting, the ASMFC board agreed to do away with trip limits on smooth dogfish and, instead, will compare landings to the average landings of the previous three years for monitoring purposes.

Mr. Travelstead informed the committee that the ASMFC opted for a regional allocation process instead of state-by-state allocation in Addendum II to the Interstate Fishery Management Plan for Spiny Dogfish. He indicated that the option for state-by-state quota allocation would have left Virginia with a small share. In recent years, Virginia's fishery has grown. The regional approach accommodates North Carolina by granting that state a special quota. North Carolina has been geographically disadvantaged in the past relative to quota allocation as spiny dogfish are generally not available to their fishermen until late in the season when most of the quota has been used. The regional approach allocates 58% to northeastern states (Maine to Connecticut), 26% to mid-Atlantic states (New York to Virginia), and 16% to North Carolina. Virginia should be o.k. in terms of available quota for the time being. There could be concern if New Jersey gets more involved in the fishery. Currently, New Jersey does not have a big trip limit on spiny dogfish. New Jersey could potentially use up a large portion of the quota if the trip limit is increased. Such an action requires approval by New Jersey's legislature, which the state is now working on. Mr. Travelstead also mentioned that North Carolina is ultimately interested in setting up a processing plant in their state or Virginia. The processing plant would need about 2.5 million fish. That amount should be available between Virginia and North Carolina if North Carolina is guaranteed that amount.

The ASMFC Spiny Dogfish and Coastal Shark Management Board set the 2009/2010 fishing year quota at 12 million pounds—a 50% increase from the 2008/2009 fishing year quota of 8 million pounds. It is suspected that the quota will keep going up, but not always by that much (i.e., 50%).

Mr. Travelstead mentioned that some of the ASMFC member states will have difficulty in complying with the implementation date of the coastal shark management plan; implementation is scheduled for January 1, 2009. This coming January, the ASMFC will ask states what steps they have taken up to that point in time. At tomorrow's VMRC meeting, staff will recommend postponing discussion of the plan until January.

## **b. Striped Bass: Final rules for 2008 Recreational Season**

Mr. O'Reilly presented management options for the December 2008 recreational fishery for striped bass in the Chesapeake Bay. The 2008 recreational quota was 5.7% higher than the 2007 quota. Also, the 2007 harvest was 13% below the 2008 quota. As such, there is reason to consider liberalizing the 2007 regulation. Mr. O'Reilly evaluated the past performance of the fishery to determine projections for the 2008 harvest. He also considered how the proposed options might affect the projected 2008 harvest and the potential for exceeding the quota. Mr. O'Reilly identified several problems with the data that limited the ability to make inferences for 2008.

Mr. Holbrook asked about the consequences of exceeding the quota. Mr. O'Reilly replied that there would likely not be any consequences if the overage is 5% or less; however, the consequences of a 10% overage were unknown. The data show that the approach is not as predictable as dividing average weight by the quota to get allocation.

Mr. Powers felt that implementing a 1-fish limit for twenty days in the bay would push anglers to go for big fish rather than being satisfied with two smaller-sized fish. Mr. Powers also asked how the sales of recreational licenses this year compared with previous years.

Mr. Travelstead responded that there was a confounding issue in considering recreational licenses. The licenses are now 12-month licenses rather than calendar year licenses. When calendar year licenses were being used, anglers purchased their licenses early in the year. Now, anglers purchase their license when the expiration of their 12-month license nears. License sales are probably down, but not as much as indicated by the current sales data. Staff expects that some of the drop in license sales will be made up in October and November.

Mr. Bowden pointed out that we have consistently gone over quota in the past. In some years the overage was major, and in other years the overage was minor. We don't want to risk exceeding the quota.

Mr. Dave Gilliland asked whether data were based on a three-month period or November and December only. Mr. O'Reilly replied that the data were based on November and December combined because the MRFSS program is based on two-month sampling periods.

Mr. Don Bannister noted that he has seen half the number of boats fishing this year compared to last year and feels effort is going to continue to decrease through the end of the year.

Mr. Bob Reed felt we needed to focus on human and economic factors in predicting effort. He suggested looking at the stock biomass and what is available. He felt there are more fish, and effort is going down.

Mr. Bubbie Crown asked whether the data suggest improved fishing techniques/equipment that would relate to the correlation of fish caught. Mr. O'Reilly said this was not taken into consideration. He referred to several members of an ad hoc committee that supported an option that included use of an offset circle hook.

Mr. Bannister said that everyone from Maryland and about 75% of boats from his area (Deltaville) take off from the Virginia Beach area. He would like to tell his customers that they can catch two fish. Last year, they could only fish from middle of November through early December. This year, he knows he will have to pack up and move south to catch fish.

Mr. Dave Agee stated that in Maryland, the number of months during which anglers can keep two fish far exceeds the number of months Virginia anglers can keep two fish. He questioned why Virginia anglers were taking the brunt of the cuts. Mr. Bowden explained that Virginia is not being singled out. He added that producer areas, including the Chesapeake Bay, are facing restrictions. Coastal areas that are not producer areas are managed differently.

Mr. Bowden asked for a discussion by the committee members.

Mr. Nixon asked if any member of the audience knew whether activity in Lynnhaven and Rudee Inlet was expected to be down.

Mr. O'Reilly added that this was an important question to ask. If gas prices remain high, the private boat fishery may be less active in December. Year after year, a lot of the harvest is attributed to private boats.

Mr. Holbrook inquired whether the decrease in the sales of recreational licenses was an indication that effort will be lower in December.

Mr. Bowden felt that license sales were down due to the flounder fishery and gas prices.

Mr. Powers asked how much below the commercial quota the commercial fishery was last year. Mr. O'Reilly responded the commercial fishery was roughly 200,000 pounds under the quota. Mr. Powers continued that not everyone catches their quota. He asked how risk averse would it be to open all of December. Mr. Nixon offered that this year we have to consider the closure of the crab dredge fishery. Those [crab dredge] fishermen could be looking for something to get them through December [could participate in commercial striped bass fishery and so contribute to quota] .

Motion made by Mr. Holbrook to recommend establishment of a 2-fish limit for the entire month of December. Motion seconded by Mr. Jenkins.

There was further discussion before the committee voted on the motion. Mr. Deem asked how likely it would be that Maryland boats will not be coming in November and December. Mr. Travelstead responded that proposed fishing guide license regulations would not go into effect until January 1, 2009. The understanding is that Maryland boats tend to come down during the end of December. Mr. Deem added that most of those boats are interested in ocean fishing.

The motion to recommend establishment of a 2-fish limit for the entire month of December passed unanimously with one abstention.

### **c. American Shad: Update on Bycatch Fishery, ASMFC Approval**

Mr. Travelstead informed the committee that the ASMFC Shad and River Herring Management Board approved a bycatch allowance proposal for Virginia. There were no changes to the proposal compared to what was in place this past spring. Last year, bycatch was not allowed on spawning grounds and the same will hold true for next year. Mr. Travelstead added that we will not be funding shad restoration next year due to budget cuts.

Mr. Rogers asked if there has been any effort to give Virginia a bycatch. Mr. Travelstead responded that we would have to convince ASMFC, but have not been able to. So far, we have only been able to get proposal we have. Our data show very small bycatch (200–300 fish). The VIMS partly relies on the bycatch fishery to get fish for scientific research.

#### **IV. New Business**

##### **a. Black Sea Bass: Industry request to modify directed and bycatch fishery**

Ms. Nelson reviewed the management program for Virginia's commercial black sea bass fishery. This fishery is a limited entry fishery and requires individuals to possess either a directed or bycatch permit to participate. The coast-wide total allowable landings (TAL) for 2009 will be 45% less than the 2008 TAL. In 2008, the quota for Virginia's commercial black sea bass fishery was 405,153 pounds. The 2009 quota for the commercial sector will approximately 226,000 pounds.

Ms. Nelson continued that the commercial quota is divided between the directed and bycatch portions. Staff met with black sea bass commercial fishermen to discuss allocation options given the reduction in quota. The fishermen present suggested reducing the bycatch quota from 40,000 pounds to 10,000 pounds and allocating the remaining 30,000 pounds to the directed fishery. At the meeting, the fishermen debated how to distribute the "extra" 30,000 pounds among the directed permit holders. Those present unanimously agreed to develop criteria based on activity from 2005 through 2007 and their percentage share of the fishery. They also agreed that fishermen must have landed a minimum of 500 pounds in two of the three years from 2005 to 2007 to be eligible. Staff has received one comment that indicates some opposition to the allocation method based on activity.

Staff recommends the allocation scheme as suggested by the black sea bass commercial fishermen: distribution of "extra" 30,000 pounds to directed permit holders that landed a minimum of 500 pounds of black sea bass in two of the three years from 2005 to 2007 based on their percentage share of the fishery.

Mr. Nixon asked how many stakeholders attended the meeting held for the black sea bass commercial fishermen. Ms. Nelson responded that all members of the black sea bass commercial fishery were invited. Seven fishermen attended the meeting. Five of the directed permit holders are hardship cases and would not be affected. She added that 22 of the directed permit holders met the criteria.

Ms. Nelson said that based on the suggested scheme, 22 of 40 directed permit holders would receive additional quota. All directed permit holders will get their baseline quota; those that have been most active will get more.

Mr. Deem asked how much those not meeting the 500 pound minimum criteria bring in. Ms. Nelson responded that it depended on each individual's share. There were very few fishermen with 500 pounds or more in any years that didn't make it.

Mr. Jim Dawson said that the fishermen are asking that the quota not be given to those who aren't using it. He wants to get the working guys out there, not fishermen who are sitting on their quota. Mr. Dawson added that he is frustrated with unused quota.

Mr. Nixon asked if quota was tradable. Mr. Travelstead replied yes. Mr. Nixon then asked if the permit holders contact each other to try to transfer. Ms. Nelson replied that every few months one of the directed permit holders asks her if she knows of anyone willing to sell quota. She will send out a list of the names and addresses of all directed permit holders so they may contact one another. She also knows that fishermen have sent out general letters inquiring about quota. Leasing (alternate vessel transfers) is used frequently. Ms. Nelson noted that there are some permit holders with quota that are not active.

Mr. Nixon asked how much quota was left over on average. Ms. Nelson replied that as of August this year, the commercial sector has already caught 50% of the quota. It is variable and depends on availability of fish.

Mr. Bowden expressed his concern that if the fishery stays under quota year after year, they [the ASMFC] may want to reduce the state's allocation.

Motion made by Mr. Nixon to support staff recommendation. Motion seconded by Mr. Deem.

The motion passed with 11 yes votes and 2 abstentions.

#### **b. Fishing Guide License: Limited Entry for the Virginia Charter Boat Fishery**

Mr. Travelstead discussed concerns that Virginia's charter boat fishermen have had with regard to lack of access to Maryland fishing grounds, lack of equity/fairness in reciprocal license agreements, increased pressures on Virginia's fishery resources (particularly striped bass), and the need for improved compliance with the striped bass sanctuary in federal waters. Mr. Travelstead then presented and discussed a proposal to establish a Virginia fishing guide license. The license would only be sold to individuals meeting established criteria. Also, non-residents would be charged a higher license fee than residents.

Mr. Powers asked if there would be potential for some to come down that don't have a permit. Mr. Travelstead replied yes.

The proposed criteria for eligibility include ability to document operation of a licensed Virginia charter/head boat vessel in Virginia waters from January 1, 2006 through June 24, 2008. Mr. Travelstead said that based on the proposed documentation criteria, it is easy to figure out the numbers that qualify based on the first (logbooks) and second (insurance certificates) methods of acceptable documentation. The number qualifying based on the third (W-2 or 1099 income forms) method of documentation is not known. Mr. Travelstead added

that the number of individuals meeting the criteria would set a cap. The proposal allows transfers with agency approval (residents to residents and non-residents to non-residents). There would be separate licenses issued for residents and non-residents. The fee for residents and non-residents would be the same for now. In order to raise the fee for non-residents, the General Assembly must approve legislation to allow the Commission to make changes. This is planned for consideration in the 2009 session. Mr. Travelstead indicated that some have requested delaying the public hearing until December. If this delay occurred, we would have to halt 2009 license sales for charter boats until the decision made in next year's session of the General Assembly.

Mr. Weagley commented that the proposed criteria would cut some people out.

Mr. Hall asked if there have been any comments from Maryland.

Mr. Travelstead replied that he and some members of the charter boat association met with Maryland DNR and some members of Maryland's charter boat association. The bottom line is we'll never have open access again the way we used to.

Mr. Travelstead stated that there is some opposition. There are some that will be immediately put out of fishery.

Mr. Powers inquired how the proposal will impact someone who wants to get into the business in the future. Will some type of transfer or temporary transfer be allowed? Mr. Travelstead responded that some types of transfers will be allowed. He added that no agents will be permitted.

Mr. Powers asked whether one had to be a resident to keep a license. Mr. Travelstead said an individual must be a resident in the year that a resident license is purchased.

Mr. Powers asked if there would be consideration for classification by boat size. Otherwise, he felt it would make it a rich man's license. Mr. Travelstead stated there was no consideration for boat size class in the current proposal.

Mr. Travelstead noted that the license will be required in areas where a saltwater license is required.

Mr. Bubbie Crown, a resident of Deltaville, VA, told the committee that he wants to run a head boat and relies on the charter boat industry. He has just purchased a vessel and has been working with the Coast Guard to recertify the vessel for the local area. Mr. Crown indicated that he can't support any action that creates limited access in the recreational fishery. He feels the proposal stems from the striped bass fishery and asked whether this was the best way to manage stripers. He suggested those not targeting stripers should not be held to the same regulations as those targeting stripers.

Mr. Bowden offered that if the Commission agrees to hold a public hearing, a notice of the hearing will be advertised in newspapers.

Mr. Crown said he felt the control date was overly restrictive and suggested there should be provisions to take individual boat owners into account. For example, he suggested putting charter boats in the commercial fishery. He questioned the costs to issuing and monitoring cards. Mr. Crown also suggested penalties for multiple violations of fishing past the three-mile limit.

Mr. Bowden reminded the committee that, right now, Maryland's charter boat fishery is limited to 47 Virginia boats. That's all there's going to be. Currently, Virginia's charter boat fishery is open access and so there is no limit.

Mr. Bowden said he doesn't think the Virginia Charter Boat Association really wants to limit Virginia access. The issue has been a big influx of outsiders. He mentioned that Maryland has done things a judge has ruled Virginia couldn't.

Mr. Vaughn inquired about the number of boats we were talking about coming down here. Mr. Travelstead replied that he has heard estimates of 70, 80, and 90 coming down, but no limit.

Mr. Bob Reed commented that it's not just Maryland boats fishing in the ocean, but also fishing in the bay.

Mr. Nixon wondered what consideration there would be for head boat owners. Mr. Travelstead said that is where the third criterion (documentation of operation) came from. For the most part, most will meet that 30-day activity requirement for guide license.

Mr. Powers inquired how do you transfer more in. Mr. Travelstead indicated that some individuals who meet the criteria will immediately put their license up for sale.

Mr. Bowden asked about boats that are corporations. Mr. Travelstead replied that the individual in the corporation who has been purchasing licenses can provide documentation.

Mr. Weagley asked why we were restricting Virginia residents when this is an out-of-state problem.

Mr. Weagley then asked about some type of criterion that allowed Virginia residents to get into the fishery in the future. Mr. Travelstead responded that such a criterion can not be limited to Virginia residents only; it must apply to everyone.

Mr. Powers inquired about licenses that are abandoned. Mr. Travelstead said that the number of people that meet the criteria becomes the cap. We're not proposing anything right now to deal with abandoned or other licenses. That is for future consideration.

Mr. Powers asked whether the charter boat association thought about a requirement to purchase every year in order to qualify. Mr. Travelstead responded no. Mr. Powers then asked how would you know who left the fishery.



Mr. Nixon felt there needed to be a way to accommodate those with boats under construction that are Virginia residents. Mr. Powers commented that was probably only a limited number of people.

Mr. Deem suggested that criteria could be added to for those that made a substantial investment prior to a later control date. This could accommodate those that might have invested prior to announcement.

Mr. Powers suggested a cap on “hardships” or exceptions to control date for residents and non-residents so as to avoid Marylanders from flooding in.

There was committee consensus to move forward and get more detail from staff as they continue to develop the proposal and potential criteria.

### **c. Discussion of requirements necessary to maintain priority and licensing status for pound nets**

Mr. O’Reilly reviewed the requirements to renew a pound net license and maintain priority rights of locations. The current regulation requires that individuals set and fish a pound net or establish a complete system of nets and poles in a given year in order to be eligible for renewal of license and location in the subsequent year. There is a cap on the number of licenses and a growing number of exemptions to the renewal requirements. These factors limit opportunities for new entrants to join the fishery. The VMRC staff does not want the “grandfathering” of licenses to prevent new entrants into the fishery. There is a need for a better system that can identify valid hardships in need of exemption.

Mr. O’Reilly said that further discussions with the FMAC and pound net fishermen will be needed to develop a solution.

There was committee consensus to support staff’s recommendation to discuss further and get more input from those in the fishery.

## **V. Next Meeting**

The date and time of the next meeting was not determined.

## **VI. Adjournment**

The meeting was adjourned at 8:51 p.m.