

Virginia Marine Resources Commission
Finfish Management Advisory Committee Meeting
2600 Washington Avenue, Newport News, VA
VMRC Commission Room, Fourth Floor
Tuesday, February 17, 2009, 6:00 p.m.

ATTENDANCE

Members Present

Hon. Ernest Bowden, Jr.
Jeff Deem
Russell Gaskins
Wynston D. Holbrook
Douglas F. Jenkins, Sr.
Dr. Ken Neill, III
Scott MacDonald for Pete Nixon
Tom Powers
Walter N. Rogers
Samuel P. Swift
Chris Vaughan
Robert Weagley

Members Absent

Andy Hall
Hon. William E. Laine, Jr.

VMRC Staff

Jack Travelstead
Robert O'Reilly
Joe Cimino
Stephanie Iverson
Mike Johnson
Laura M. Lee
Carter Shackelford
Sonya Davis

Others Present

Frank Kearney
David Agee
G. G. Crump
John C. "Chris" Ludford
Ken Smith
James Edwards
Bob Allen
Nelson Ortiz

SUMMARY

I. Introductions; Announcements

Chairman Bowden called the meeting to order at 6:03 p.m.

II. Approval of minutes from January 20, 2009 meeting

The minutes of the January meeting were approved by unanimous consent. Note: Following the meeting, Mr. Walter Rogers approached staff and indicated that he was present at the January meeting, though the meeting minutes listed him as absent.

III. Old Business

a. Continued discussion of gill net limited entry

Chairman Bowden informed the committee that the bill to increase out-of-state license fees was pulled. The bill was deemed a problem because it could hurt Virginia watermen that work out of state. In order to get regulations on the books by next year, the committee will have to work quickly to develop a new bill (that doesn't negatively impact Virginia watermen). In order to move forward, Chairman Bowden suggested the formation of a committee of working watermen that would work out the details and bring something to the FMAC for consideration.

Mr. Powers asked if there was any intention of moving to a limited entry system in the recreational gill net fishery. If so, he said a member of the recreational fishing community should be included in the proposed committee. Chairman Bowden replied that the issue is something the committee will have to look at. He added that the committee would not make decisions affecting the recreational fishery without the involvement of recreational anglers.

Chairman Bowden concluded that there is nothing to discuss further on the issue until the committee can get more details.

b. Summer flounder for final preferred option

Mr. O'Reilly discussed Virginia's proposed options for the 2009 summer flounder recreational fishery (supplemental hand-out was provided to committee). All options included a 5-fish possession limit. Mr. O'Reilly pointed out that two of the options that will be presented to the Commission for public hearing consideration involve a minimum size of 18.5 inches with a 5-fish possession limit—one with a closed season, the other with no closed season. He indicated that, in 2007, an 18.5-inch minimum size, 5-fish possession limit, and closed season resulted in a harvest of just over 479 thousand summer flounder, which was 17.6% higher than the 2007 target. Of the two options mentioned, the one with no closed season has more risk than the one that includes a 14-day closure.

Mr. Bowden mentioned that Virginia was the only, or one of the only, states that included stock growth in the management options submitted to the ASMFC.

Mr. O'Reilly continued and reviewed how the 2009 options were developed. He also reviewed the ad hoc committee's comments on the proposed options. Mr. O'Reilly pointed out that the number of positive summer flounder intercepts was higher in 2007 than in 2006. He suggested that one would have expected more positive intercepts in 2006 because the minimum size limit in 2006 was smaller than it was in 2007. He added that the data on the number of positive summer flounder intercepts in 2008 are not yet available. Mr. O'Reilly commented that looking at the percent of positive summer flounder intercepts provided an alternative way of looking at the effect of the MRFSS survey on Virginia's recreational estimates.

Mr. O'Reilly summarized public comments on the proposed options—some of these comments were specific to certain options, others were comments on the process in general.

Dr. Neill inquired if staff had a preferred option. Mr. O'Reilly replied that it was hard to say at this point, because the evaluation is not finished yet. The option that includes an 18.5-inch minimum size limit with no closed season looks like it is going to be a problem. In 2007, Virginia had an 18.5-inch minimum size limit and two closed periods and the 2007 harvest was approximately 479 thousand summer flounder. The target for 2009 is 345,000 fish. Given this, including a closed season is likely more risk averse. It is tough to ignore the 2007 estimate of 479 thousand fish, though keep in mind, it is only an estimate.

Mr. Powers asked whether there was any understanding of the migration patterns of 18–28 inch fish and fish over 28 inches. He also questioned whether there was a reasonable probability that a fish thrown back last year will be available this year.

Mr. O'Reilly responded that there probably was some fidelity based on temperature regime. He said that most of the larger fish are able to migrate a little earlier and a little bit farther, though he was not sure about 18–28 inch fish specifically.

Mr. Powers stated he felt there was a problem with the geographical stratification of the MRFSS sampling design (dockside intercepts). He believes the sampling is centered in the southern part of the bay where the fishery is bigger.

Mr. Powers commented that the analysis of the proposed options does not take into account the 25% reduction in boat licenses that occurred in 2008. He also suggested that gas prices and the economy could provide an impact. Mr. Powers added that his preference among the options is one that includes an 18.5-inch minimum size limit with a 5-fish possession limit, regardless of whether or not a season is included. Though, he supposed inclusion of a season closure would be better.

Mr. Vaughan said the option of no closure should be considered. He felt fewer anglers would be fishing this year due to the economy and other hardships. He predicted the number of fishing trips will be down.

Mr. Deem agreed with Mr. Vaughan and commented that the government has also said the economy is not expected to improve this year.

Mr. Jenkins said there was an increased presence of small flounder in certain parts of the bay last year.

Mr. Robert Allen (audience) said that it was a shame to spend a lot of time discussing the options. He thinks the committee should pick an option and go with it. Mr. Allen added that he doesn't think there is one angler he knows that believes the MRFSS numbers.

Motion

A motion was made by Mr. Deem to recommend an 18.5-inch minimum size limit, 5-fish possession limit, and no closed season as the preferred option (Option C in hand-out). The motion was seconded by Mr. Holbrook.

Discussion on Motion

Dr. Neill opposed the motion and said he wanted to support whatever staff recommends.

Mr. O'Reilly stated that staff is going to advise the Commission that Option A (19.0-inch minimum size, no closed season) is associated with the least risk, Option C (18.5-inch minimum size, no closed season) is associated with too much risk, and Option B (18.5-inch minimum size, 14-day closed season) is a close call, but is associated with a lot less risk than having no closed season whatsoever.

Mr. Chris Ludford (audience) said that when you look at New York, Rhode Island, and Connecticut's performance in the fishery, they continue to exceed their quota, and we(?) continue to give them more fish. Mr. Ludford expressed his support for an 18.5-inch minimum size limit and no closed season. He said he felt Virginia has been getting the short end of the deal from northern states.

Motion Vote

The motion carried with 10 votes for, 1 against, and 1 abstention.

IV. New Business

a. Pound net waiver discussion

Mr. Travelstead reminded the committee that there has been a regulation on the books for many decades that gives pound net fisherman priority right to property that is inherited. In order to maintain priority right to a location, a licensee must set a net and fish their gear within a year to maintain the right in the following year. The Commission has granted waivers to this requirement in hardship cases (e.g., hurricane, tropical storm). The Commission has acknowledged such waivers are granted for a period of one year at a time. Mr. Travelstead inquired if a longer term solution could be devised. He asked the committee for advice on developing some set of conditions that a pound net licensee would have to meet without allowing that person not to fish for an extended period, thereby locking up the location and preventing others from getting into the fishery. He offered as an example that the licensee only be required to fish their gear once every three or five years.

Mr. Jenkins expressed his opinion that it should be the licensee's option whether or not to fish their gear as long as the licensee has a licensed location and pays for the renewal from year to year.

Mr. Travelstead reminded the committee that the requirement to fish the gear in order to renew and maintain priority right to a location has been on the books for many years, perhaps fifty years or more. He reasoned that when the requirement was first established, interest in joining the pound net fishery was very high.

Mr. Deem expressed his concern that, in some other fisheries, extremist environmental groups were interested in buying licenses and then not fishing. He questioned whether there were any indications of that becoming an issue for the pound net fishery. Mr. Deem felt allowing this practice would put commercial fishermen at a disadvantage. Mr. Travelstead responded that there were no indications that this was going to be an issue.

Mr. Powers commented that an individual could get a watermen's card and apply for a pound net license and lock up one or more licenses.

Mr. MacDonald offered his support to Mr. Travelstead's suggestion for a requirement that licensees fish their gear every three years or so.

Mr. Bowden asked if there were those interested in obtaining a pound net license. Mr. Travelstead replied that there were ten openings this year. Interested applicants were entered into a lottery to determine who would be offered a license.

Mr. O'Reilly added that issues related to transfers and new licenses should be considered.

Mr. Gaskins inquired about the qualifications for obtaining a pound net license. Mr. Travelstead replied that this year, several people submitted applications for licenses and there were several vacancies. Those interested in acquiring a pound net license need to submit an application. He added that there are always more applications than vacancies. A lottery is run when there are more applications than nets available.

Mr. Rogers commented that there were some concerns regarding the application process.

Mr. Travelstead offered that a pound net licensee can submit a request to license their pound net at a new location, which will be subject to a 30-day review period.

Mr. Holbrook asked whether a situation ever occurred in which an applicant says he's been waiting for ten years, knows a licensed individual that hasn't fished for five years, and asks for that individual's license.

Mr. Powers asked about forfeiting licenses for commercial grey trout fishing. Mr. Bowden replied that pound net license regulations specific to the grey trout commercial fishery were not part of this issue.

Mr. Powers inquired if there was a problem with individuals obtaining permits in order to sell. If so, he asked if the regulation should include a use it or lose it policy.

Mr. Rogers stated that he doesn't know that there's a big market for resale now given the high cost of set-up and operation.

Mr. Bowden said he felt the committee should be leery of environmental groups—requiring that licensees fish their gear once every ten years or some other extended time period could

be a problem. He proposed that a time frame of five years or less may result in fewer problems.

b. Harbor Porpoise Take Reduction Plan (HPTRP)

Mr. Bowden brought up the Harbor Porpoise Take Reduction Plan (HPTRP) regulations for gill nets with mesh size larger than 7 inches operating in waters south of the Chesapeake Bay Bridge Tunnel. He commented that many fishermen were not aware that southern mid-Atlantic waters are closed to large mesh (mesh size 7–18 inches) gill net fishing from February 15 to March 15. Mr. Bowden told the committee that yesterday the NMFS decided it was going to enforce the ocean closure to large mesh gill nets. He added that this regulation has not been enforced in a number of years. There was one take in 2007—the first since 1993. Mr. Bowden mentioned that states routinely have dozens of takes. He and other members of the committee expressed concerns that there was not enough outreach on the NMFS part. Mr. Bowden said outreach should not take place through summonses.

Mr. Travelstead stated that the HPTRP regulations have been on the books since 1998. He added that the southern mid-Atlantic management area for large mesh gill nets is the mouth of the Delaware Bay and south.

Mr. Bowden reviewed the discussions that took place on the issue last year. Information from Virginia was submitted to NMFS, but not adopted.

Mr. O'Reilly indicated that all documentation submitted was for dolphin take-reduction and was more or less ignored and the front end of that were the turtle regulations. Mr. O'Reilly recalled there was confusion from NMFS back then.

Mr. Bowden said, to his knowledge, there wasn't wide-spread support. The NMFS wanted more information, which was provided.

Comment [LML1]: Alicia, can you provide any more info on this?

Mr. MacDonald commented that this past weekend he received conflicting information from various VMRC officers regarding removal of large mesh nets that were set in the ocean and issuing of summonses.

Mr. Bowden suggested we need to do some outreach and felt that the NMFS should have been doing outreach.

Mr. Ludford (audience) wanted to remind everyone about the COLREGS line. He said there were consistent NMFS meetings where commercial watermen were asked for help, the watermen made a recommendation, the group agreed to the recommendation, but the plan went another way.

Mr. MacDonald said the regulation shuts down the spring striped bass fishery in the ocean.

Mr. Bowden said when the large mesh closure period ends (March 15), the fish are gone or few.

Mr. Bowden asked if we could consider opening January for the ocean fishery. There would be about 30 participants and they would have to pay back overages.

Mr. Travelstead replied that it would be worth looking into. The ASMFC would have to be notified. Mr. Travelstead added that a possible administrative problem would be getting the tags out to fishermen.

Mr. Johnson indicated that once the system [for distributing tags] is set up, preparing for a January opening would be doable.

Mr. Powers expressed concern over gear conflict between commercial nets and recreational anglers. Mr. Bowden responded and suggested it wouldn't be a problem. If it works well, we can look at opening the season up in the bay. Mr. Bowden commented that there is a need to open up the season in January because the more open it is the less competition there will be.

Mr. Deem inquired if there were limits of take associated with certain levels of risk. Mr. Travelstead replied that PBR, or Potential Biological Removal, defines the take limits for a species. He added that the NMFS is trying to lower the PBR for harbor porpoise.

Mr. Bowden mentioned that takes occur mostly in the monkfish fishery and from New Jersey north.

c. Shad Bycatch

Mr. Jenkins stated that the Potomac River Fisheries Commission allows a tolerance of one bushel of bycatch in the Potomac River. Specifically, commercial pound nets and gill nets are allowed a tolerance of up to one standard bushel of American or hickory shad per licensee. Mr. Jenkins commented that the Potomac River has an abundance of shad each year. He indicated that he would like to see the Potomac River managed like the main stem of the bay or the main stem of the bay managed like Potomac River.

Mr. Travelstead said no one has asked for that before. He added that every year the VMRC takes a bycatch request to the ASMFC on behalf of the up-river fisherman.

Mr. Weagley asked if it was possible to provide for automatic approval by the Commission if the ASMFC approves the bycatch proposal. That way, the Commission would not have to amend the American shad regulations on a year to year basis. Mr. Travelstead replied that the Commission can't abdicate its regulatory authority to another agency.

Mr. Powers suggested that the Commission could put a regulation in place that doesn't sunset—it would stay on the books unless the ASMFC denied approval. Mr. Travelstead agreed that would be a better way to do it.

d. Blue Catfish

Mr. Jenkins expressed concerns about the abundance of blue catfish and the negative impact of the blue catfish on other species. He said he felt the current regulations were too liberal.

Mr. Bowden reminded the committee that the ASMFC doesn't have any jurisdiction.

Mr. Travelstead informed the committee that the Department of Game and Inland Fisheries (DGIF) regulation on blue catfish allows 1 blue catfish per day that is longer than 32 inches. He has been given no indication that the DGIF has plans to change the regulation. He added that there is no limit on the catch of blue catfish smaller than 32 inches. Mr. Travelstead questioned if this was because there was no market for the smaller fish.

Mr. Jenkins said there was some live market for small ones in South Carolina and Georgia. Mr. Jenkins added that the blue catfish are taking spot, croaker, and other important fishery species beyond the DGIF's jurisdiction.

Mr. Ken Smith (audience) commented that, above the bridge in Rappahannock, blue catfish account for 70% of the biomass. He felt the DGIF wants people to catch smaller fish so they can grow larger fish. Mr. Smith also said he thinks some sort of legislation could help out.

Mr. Bowden said the blue catfish problem puts many people's livelihood and fish recovery in jeopardy.

Mr. Travelstead inquired why someone hasn't gone to the general assembly to convince them to give the VMRC authority on blue catfish below the fall line. Mr. Bowden responded that Kelly Place had approached the ASMFC, but they wouldn't take it because it is a freshwater species.

Mr. Deem informed the committee that while at a CCA meeting, he was told that the introduction of the blue catfish was a sort of behind-the-curtains operation carried out by a couple of DGIF biologists. Mr. Deem then asked whether the illegal introduction of the catfish could be used to demonstrate that the whole thing was done illegally. Mr. Travelstead replied that the introduction happened so long ago, it was doubtful. Mr. Jenkins offered that the blue catfish were introduced in 1987.

Mr. Powers suggested looking to the code for the definitions of which fish are covered by the DGIF and which fish are covered by the VMRC. He indicated that inland fish were covered by the DGIF and fish that live in estuaries were covered by the VMRC. Mr. Powers thought the committee should determine how the code defines fish covered by the VMRC and apply that definition to blue catfish.

V. Next Meeting

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

VI. Adjournment

The meeting was adjourned at 7:56 p.m.