

**Virginia Marine Resources Commission**  
**Menhaden Management Advisory Committee (MMAC)**  
380 Fenwick Road, Fort Monroe, VA  
VMRC Commission Room  
Monday, November 28, 2022 – 4:00 P.M.

**ATTENDANCE**

Members Present

Dr. Rob Latour (Chair)  
Shanna Madsen (Vice Chair)  
Monty Deihl  
AJ Erskine  
Daniel Knott  
Mike Leonard  
Chris Moore  
Ken Schultz  
Craig Freeman  
Ken Pinkard

Members Absent

n/a

VMRC Staff Present

Pat Geer  
Somers Smott  
Lewis Gillingham  
Brooke Lowman  
Jill Ramsey

Others Present

Irvin Deihl  
Jack Blake  
Sandy Schultz  
Everett Eaton  
Yusuf Tejada  
Will Bransom  
Jim Rodgers

Minutes were prepared by Somers Smott and Shanna Madsen.

**I. MMAC Welcome and Announcements**

Chair Dr. Rob Latour called the meeting to order at 4:03 PM. Chair Latour asked the committee to introduce themselves since this was the first in-person meeting since two new members were appointed.

**II. Approval of the September 12, 2022 meeting minutes – R. Latour**

Minutes from the September 12, 2022 meeting were approved by consent.

**III. Public Comment on items NOT on the agenda**

No members of the public signed up or volunteered for public comment.

**IV. New Business**

**Response to Menhaden Spills – P. Geer**

Chief of Fisheries Pat Geer began the meeting with a presentation on the response to the 2022 menhaden fish spills. He summarized several petitions from national and local organizations

pertaining to the menhaden fishery, and said this current response addresses fish spills and user conflicts. He emphasized these changes would be applied to both the reduction fishery and the purse seine bait fishery since the Virginia Marine Resources Commission (VMRC) manages by gear type. Chief Geer then outlined the three fish spills that occurred in 2022 during the month of July. He explained that there are several factors that lead to fish spills, including depth of the water and the size of the fish school. Fish then wash ashore due to wind and currents, dependent on the distance from shore. Since 2018, VMRC has kept detailed reports on each spill with information including latitude/longitude, time, estimated number of fish, vessel name, etc.

To help prevent fish spills and user conflicts, VMRC is proposing a shoreline buffer, a Chesapeake Bay Bridge Tunnel (CCBT) cautionary buffer zone, and holiday time of year restrictions in the Chesapeake Bay. The shoreline buffer restricts any purse seine fishing from mean low water out to 1 nautical mile (nm) on both sides of the bay and off Virginia Beach. This buffer includes 368.5 square miles of the bay. From 2018-2022 the combined effort of both purse seine fleets in this buffer was 7.21% of their total effort. The CCBT cautionary zone represents a 1 nm buffer around the CCBT restricted to purse seine fishing (0.5 nm on either side). Chief Geer emphasized that this buffer is already in place on National Oceanic and Atmospheric Administration's (NOAA) nautical charts. There is no purse seine bait fishery effort here, and the buffer represents about 0.4% of the reduction fleet total effort.

Chief Geer then took a moment to outline committee proposals brought forward to MMAC since its inception in 2020. The current proposals address five of the previous concerns MMAC members have brought forward in the past.

Chief Geer then outlined the final proposal – holiday time of year restrictions in the bay. The rationale behind this proposal was to prevent spills from washing ashore during summer holidays, which could close beaches during tourist season. Purse seine fishing would be restricted throughout the bay the Thursday prior to and through Memorial Day (5 days), July 1-7 for Independence Day Week (7 days), and the Thursday prior to and through Labor Day (5 days). This closure represents 8.46% of the entire purse seine season in the bay, and about 6.09% of the total effort for both fisheries.

Finally, Chief Geer outlined the amendments to regulation that will be presented to the Commission for vote on December 6, 2022. In addition to the three proposals, there will also be a new section allowing the Commission to summon the captain of a vessel at fault for a fish spill.

Before opening the floor for questions, Chair Latour explained to the committee that no votes would be taken today; instead, the discussion and comments from the committee would be outlined in the minutes and submitted to the Commission as supplemental material for the upcoming public hearing. He said the issues would be taken one at a time, starting with the shoreline buffer.

Mr. Craig Freeman asked for clarification on the shoreline buffer, saying that he had heard of a different proposal from the Governor's office of a 2 nm buffer instead of the 1 nm buffer. Chief Geer said that staff had several proposals submitted to the Governor's office, and after several meetings it was determined that a 1 nm buffer would be the final proposal. Mr. Freeman asked if this number could be modified in the future if there were more fish spills, and Chief Geer responded that VMRC has the authority to adjust if needed.

Mr. AJ Erskine asked about the effort percentages that Chief Geer presented. He wanted clarification on if the effort was in number of sets or pounds of fish. Chief Geer explained that he can only present information in number of sets since the pounds of fish would be confidential. Mr. Erskine cautioned the committee that even if the effort percentage was low, it could represent significant pounds of fish. He also expressed concern about the two purse seine fisheries being treated as one. He explained that the purse seine bait sector uses the same gear as the reduction fishery but does not target the same size of menhaden.

Mr. Chris Moore asked why Tangier was not included in the shoreline buffer map. Chief Geer said there was no specific reason – just that the map was emphasizing the east and west side of the Chesapeake Bay. Tangier is included in the shoreline buffer according to the proposed regulation. He also asked about the enforceability of the shoreline buffer. Chief Geer explained that the regulation will state that purse seine fisheries cannot fish, haul, or retrieve gear within the buffer, so drifting into the buffer after setting the net would be unlawful.

Mr. Ken Schultz asked what the penalties would be for fishing within the shoreline buffer. Chief Geer said the regulation penalty is a Class 3 Misdemeanor and that Law Enforcement foresees no issue in enforcement. He explained that they could track the vessel using the Automatic Identification System (AIS) transponders to see if they are operating within the buffer. Mr. Schultz then asked how there could possibly be any unknown fish spills if the vessels could be tracked. Chief Geer explained that the report of the fish spill does not always come in immediately, and it's possible that there could be several boats surrounding the area. Mr. Schultz asked if it can be assumed that the shoreline buffer will prevent spills based on issues with shallow water sets. Chief Geer said that two of the three fish spills that occurred in 2022 occurred within the buffer. Mr. Schultz repeated the comments of Mr. Freeman, saying that the buffer may have to be adjusted in the future, and Chief Geer said it was possible to do so under the authority of VMRC.

Mr. Ken Pinkard emphasized to the committee that a fish spill is an accident. He also wanted to state that even if the effort percentages seemed low, they directly impact paychecks of watermen and should not be taken lightly. Chief Geer agreed and added that most likely the effort would be displaced – that the watermen would fish elsewhere in order to complete their catch.

Mr. Monty Deihl asked how Chief Geer calculated the percent effort within the shoreline buffer. Chief Geer explained that he looked at total effort in the bay and effort within the buffer

to calculate effort. Mr. Deihl expressed concern with the reduction fishery effort calculation of 6.6% within the buffer, because he asked NOAA to run the same analysis and their effort percentage result was 14.4%. It was determined the difference may be from using different years of data (Chief Geer used 2016-2020 and NOAA used 2017-2021). Mr. Deihl also expressed concern about how the buffer is extended throughout the entire Bay, even in areas where historically there has never been a fish spill. He explained that if a fish spill reached a vacant beach or marsh there would be no impact on Virginia's tourism industry. Chief Geer said that the focus was the Eastern Shore, but that there have been some spills on the western side of the bay, historically. He also noted that staff submitted several proposals to the Governor's office and this buffer area was the finalized choice. Mr. Deihl expressed further concern that this was a "one size fits all solution", impacting areas that do not pose any risk. Chief Geer explained the justification for this buffer is because of effort on both sides of the Bay, and with effort there is risk.

Mr. Dan Knott asked if the buffer was looked at with a depth perspective, since depth seems to be a key factor in fish spills. Chief Geer said that would have been a great idea, but it's very difficult to enforce along a depth contour versus the proposed 1 nm buffer.

Mr. Mike Leonard asked what the breakdown was of the 17 spills between the purse seine bait sector and the reduction sector. Chief Geer said the reduction sector had 15 spills, and the purse seine bait sector had 2 spills.

Mr. Erskine repeated Mr. Deihl's concern with the "blanket solution" approach. He asked if one of the proposals was a "spill response" document. Chief Geer said yes, that was an option, but he was not sure how far the conversations went in the Governor's office for that proposal.

The next discussion was on the CBBT cautionary buffer zone. Mr. Freeman asked about the demarcation line between the bay and the ocean, and Chief Geer said that was discussed at previous MMAC meetings. The line is the CBBT bridge, and the only way to change that is through NOAA.

Mr. Deihl asked if the CBBT cautionary buffer zone is in response to user conflicts or safety concerns. Chief Geer said both issues were considered. Mr. Deihl expressed concern that never in the history of the reduction fishery has a vessel struck the bridge, while other user groups have struck the bridge and have never been removed from this area. Chief Geer explained that there are some regulations banning commercial fishery gear around the CBBT, but that it's all stationary gear as opposed to purse seines. Mr. Deihl asked about the precedent this change would be setting. He explained that the reduction fishery has been fishing in this area for at least 150 years, and the recreational fishery in this area is relatively new – but the reduction fishery is the group that is being removed. Mr. Deihl said that the reduction fishery understands not to set too close to one side of the bridge and they have a long history of fishing near the bridge safely. This change is now setting a precedent of winners and losers of shared resources. Chair Latour added that the change may extend beyond fishery versus fishery since the public

could be a safety concern here. Mr. Knott agreed with Mr. Deihl about the precedent this is setting. He worries about the ability of the recreational sector to push a commercial sector out of an area if there are user conflicts. He also mentioned that most of the user conflicts in this area are recreational fisherman harassing the commercial fisherman, not the other way around. He is concerned that in the future this could pave the way to other rules and gave the example of potentially restricting oyster harvest areas because people do not want to see them off their shoreline or no crab pots near a particular lighthouse on the 4<sup>th</sup> of July.

Mr. Moore asked if the CBBT cautionary buffer already existed in regulation. Chief Geer explained that it is not in regulation but exists through NOAA as non-enforced cautionary buffer.

The final discussion was on the holiday time of year restrictions in the bay. Mr. Erskine said he appreciated the intent but that these restrictions would not prevent fish spills or user conflicts. He explained that recreational fishermen could be out fishing at any time. He also expressed concern that the closure does not account for the weather days or weekend days which could significantly truncate the purse seine bait sector's season.

Mr. Deihl reminded the committee that Atlantic menhaden are a migratory species – and the reduction sector fishes throughout the bay to follow them. The summer is when the fish are moving south out of the bay, and these restrictions would impact the sector's ability to fish for them. He also expressed concern that the displaced effort would likely mean more fishing on weekends, which could cause more user conflicts. He reiterated that the “one size fit all” approach is not appropriate for these proposals.

Mr. Pinkard said he was most concerned about the July Independence Week closure since that covers seven days of work in the bay.

Mr. Schultz asked a clarification question on the Commission process. He wondered if the Commission could accept or reject parts of the proposals at the meeting in December. Chief Geer explained that the Commission could in fact break the proposals apart and that they could not be more restrictive than the public notice.

Mr. Moore commended staff on the time taken to create these proposals and expressed that even though they aren't perfect, he is glad that there is a path moving forward. He also asked for clarification on the public comment submission process. Chief Geer said comments must be in by Wednesday night to make it into the Commissioner's packets. Late comments may be passed out to Commission members the day of the meeting, but staff cannot guarantee there will be multiple copies available.

As the discussion ended, Chair Latour again reminded the committee that no votes were taking place and that the minutes would be submitted to the Commission as supplemental material intended to capture the discussion today. He also expressed Committee-wide concern about

the proposals and the lack of accommodation with all sectors and that the Committee would like to see more collaboration on changes in the future.

### **Outcome of Addendum I to Amendment 3 – S. Madsen**

Deputy Chief of Fisheries and Vice-Chair of MMAC Shanna Madsen updated the Committee on Addendum I to Amendment 3. The Board initiated the development of Draft Addendum I in August 2021 and the document went through several iterations before it was approved for public comment in August of this year. Public comments were accepted for the month of September and summarized for the Board to consider during final approval and selection of options earlier in November at the ASMFC annual meeting. The document spanned several management issues including minimum state-by-state base allocation, state-by-state allocation timeframe, episodic-events set aside program (EESA), and the incidental catch and small-scale fisheries provision (IC/SSP). The Committee reviewed the management options that the ASMFC Atlantic Menhaden Management Board selected and were briefed on the changes that will be implemented through Addendum I. The Committee was also briefed on the outcome of the ASMFC specification setting process. The Board set the 2023-2025 total allowable catch (TAC) at 233,550 mt, which is an approximate 20% increase from the 2021-2022 TAC based on the positive stock status of the resource under ecological reference point-based management. According to Technical Committee analysis, this increase has a less than 40% probability of exceeding the target set by the ecological reference points (ERPs) adopted in 2020. Given the positive results of the 2022 Stock Assessment Update, the Board approved this modest increase to provide additional fishing opportunities, while maintaining a conservative risk level of exceeding the ERP target. The combination of Addendum I and the TAC led to an overall increase for Virginia allocation beyond a high point in 2017. Mr. Moore asked what Maine's quota was in pounds prior to this management action. Deputy Chief Madsen responded that she was not sure what Maine's poundage was, and that they received about 0.5% of the quota previously but supplemented their landings with transfers, EESA, and the IC/SSP. They have previously landed approximately 21 million pounds using those provisions to Amendment 3. Deputy Chief Madsen noted that she would be amending the regulation to remain in compliance with the new Addendum early next year. She also noted that per the Committee's recommendation that at the December Commission meeting staff would be requesting to codify the internal transfer language between purse seine sectors by removing the clause "In 2022". She also updated the Committee that a direct external transfer from another state to a specific sector was not legal per § 28.2-203. Essentially, this section of Code delegates the responsibility to the Agency to assign fishing privileges under certain criteria. External transfers to a specific sector would be letting another state with no context or information about our fishery to make decisions about our allocations with no transparency or justification with their decision-making. Per this statute, assigning fishing privileges and making allocation decisions must be justified by our Agency knowledge of our fisheries and science. Allowing another state to make that decision for us is thereby violating this statute of Code. Mr. Moore commented that he would like to potentially explore the allocation percentages between sectors in the future given the increase in the TAC. Deputy Chief Madsen

said that with the increase in the TAC all sectors are receiving more quota than they have historically, and she would like to see how the fishery performs before discussing changes to the percent allocations. She noted that some quota remained from bait transfers this year currently and said that the sectors will likely continue to update this committee with any issues in overutilizing the quota. Mr. Schultz asked if the increase to Virginia's allocation affected the Chesapeake Bay Cap. Deputy Chief Madsen replied that the Chesapeake Bay Cap remained at 51,000 mt and the increase to the reduction fishery quota would need to be fished offshore.

#### **IV. Other Business**

Chief Geer apologized for the lack of YouTube streaming due to technical difficulties, but assured the committee that the recording would be posted on our website ASAP.

#### **VII. Adjournment**

The meeting was adjourned at 5:45 P.M. by Chair Latour.