

Virginia Marine Resources Commission
Blue Crab Management Advisory Committee Meeting
VMRC Conference Room

February 11, 2013

Members Present

Hon. Rick Robins
Hon. Joe Palmer
David Bell
Ken Diggs Jr.
Dan Dise
John Graham
Ty Farrington
Wayne France
Chris Moore
Pete Nixon
Tom Powers

VMRC Staff

Rob O'Reilly
Joe Grist
Joe Cimino
Reneé Hoover
Sally Roman
Adam Kenyon
Allison Watts
Laurie Beth Williams
MPO Richardson

Members Absent

Marshall Cox
Paige Hogge
Ronnie Jett
John Masiak
Ken Smith
Kevin Wade

Others Present

Bryan Dalheim
Jay Diggs
Charles Gregory
Robert Hollowell
Douglas Jenkins
Dr. Rom Lipcius
Danielle McCullough
Mark Sanford
Mike Seebo
Tim Wivell

The minutes were recorded by Allison Watts.

I. Introductions/Announcements

The Hon. Rick Robins called the meeting to order at 6:03 pm. It was noted that the Hon. Joe Palmer and Mr. Dan Dise were present for the meeting via conference call. Mr. Rob O'Reilly announced that Agenda Item VII (UPDATE: Crab Dredge Gear Study) would be moved up to the first item for discussion.

II. Approval of Minutes

The minutes from the November 16, 2012 meeting was approved by unanimous consent.

III. UPDATE: Crab Dredge Gear Study

Dr. Rom Lipcius of the Virginia Institute of Marine Science (VIMS) explained that 21 trials have been completed across two sediment bottom types (hard and soft), with and without divers. At a minimum, VIMS researchers hope to complete 48 total trials. The Hon. Robins asked about the timeline for the study, and Dr. Lipcius stated that the field portion of the study should be completed by the first or second week of March. Results from the 2012-2013 Bay-wide Winter Dredge Survey results are typically available by late April to early May, and results for the crab gear study should be available in draft form around that same time, pending sediment sample analysis. Mr. Tom Powers asked if there will be sufficient data to determine crab mortality differences between bottom types, and Dr. Lipcius responded that there will be 24 to 30 trials per bottom type, which will be sufficient. Mr. Chris Moore asked about sediment analysis in the study. Dr. Lipcius responded that the sediment is currently classified as sand, mud or mixed, and the analysis in the laboratory will produce numbers instead of categories, which will be more statistically rigorous. A map of the study locations will also be provided with the study results.

IV. Establishment of barrel limits in addition to bushel limits

Mr. Joe Grist presented the issue to CMAC, and began by reminding the group that bushel limits (by crab pot category) were passed for all of 2013 as a conservation equivalency measure for extending the fall 2012 crab pot season. Recently, it was brought to staff's attention that in the James River, crab harvesters measure crabs by barrels and not bushels. Staff is looking to enhance the regulation to account for the usage of barrels. Mr. Grist showed a slide with each pot license category and the allowable bushel limits and proposed barrel limits. A straight conversion of 120 pounds to barrel (or 128 pounds if the barrel weight is included) was used, based on the assumption that three bushels weigh 40 pounds. For several categories, the conversion from bushels to baskets doesn't produce even barrel amounts. For example, the 127-pot license category bushel limit of 32 bushels is converted to 10.67 barrels, and so staff has further converted this into barrels and bushels for ease of measurement (10.67 barrels = 10 barrels plus 2 bushels).

Pete Nixon asked if harvesters should plan on carrying bushel baskets on board and Mr. Grist said yes. Mr. O'Reilly explained that staff wanted to hear from CMAC on allowable maximum barrel weights. Mr. John Graham stated that a barrel of clean female crabs can vary from 108 to 122 pounds, while bright yellow-orange busted sooks (sponge crabs) can weigh up to 150 pounds. He added that some crab harvesters may pack barrels very full which will affect weight. The Hon. Robins explained to CMAC that a bushel to barrel equivalency is needed. Mr. O'Reilly stated that adding language to the regulation stating that a barrel is equal to three level bushels of crabs would be feasible, but accounting for crab condition is too complicated. Mr. Ty Farrington stated that in the past, crab amounts were measured by number of bushels or barrels, and weren't limited by weight. The Hon. Robins suggested that a potential problem with defining a barrel as three level bushel baskets could occur when a law enforcement officer

empties a full barrel into bushel baskets, because those crabs wouldn't pack that well into baskets. He added that it may be cleaner to establish the barrel limits as some number of level barrels. Mr. O'Reilly stated that staff did not want the definition of barrels to be arbitrary. Marine Police Officer Richardson stated the only issue with checking barrels is that culling is more difficult. He also stated that he had never taken a full barrel and subdivided it into bushel baskets. Mr. Powers stated that a bushel is defined in the Code, so a barrel could be defined as a 32-gallon container in regulation. The Hon. Robins asked CMAC if the committee was comfortable with the 3:1 conversion from bushels to barrels, and CMAC agreed. No motion was made.

V. Proposed limitations on the use of agents in the crab pot and peeler pot fisheries

Dr. Reneé Hoover began by explaining that the establishment of harvester bushel limits by license category for 2013 eliminated the previous spring (March 17-May 31) vessel limit of 51 bushels. The potential issue, which was brought to staff's attention by industry, is that someone could obtain an agent for a partially-active or inactive licensee to increase a vessel's combined harvester limit. Latent effort is already an issue in this fishery, and there is concern about an increase in agents as well in 2013. In 2012, 461 eligible crab pot harvesters were not active. Without the vessel limit in 2013, there is incentive to use those inactive licenses through the agent process. For example, two 85-pot category licensees, with a 27-bushel limit individually, could harvest 54 total bushels together on a vessel, which exceeds the previous years' 51-bushel spring vessel limit. With higher crab pot license categories, this potential increases. Dr. Hoover presented a series of graphs and tables demonstrating that, in general, agents outperform primary licensees in terms of pounds of crabs harvested, and there is a trend of increasing agent effort and efficiency each year. Limiting agent use has precedence in other fisheries, and no agents are allowed in those of spiny dogfish, hand-harvested horseshoe crabs, oysters, striped bass, and commercial hook and line. She explained that CMAC should discuss if any limits should exist on the use of agents in crab and peeler pot fisheries.

The Hon. Robins asked about the transition to bushel limits by license category if a vessel limit of 51 bushels were retained, and Mr. O'Reilly explained this would close out the opportunity for two licensees to work together. Mr. Powers asked if registered crab agents must have his or her own Commercial Fisherman Registration License (CFRL), and Dr. Hoover explained that the registered crab agent must either possess his own CFRL or the primary licensee's CFRL, plus the primary holder's crab gear license, while working as an agent. Mr. Dan Dise asked why the issue of agents was not considered during the fall 2012 discussions on conservation equivalency. Dr. Hoover explained that while agents were considered then, staff and industry are both concerned about the capacity for increase of agent use and the current discussion is for preemptive purposes. Mr. Nixon stated that he was a promoter of agents in the beginning, when the intention was to allow those with certain circumstances to allow their crew to continue fishing. The agent process has morphed into people purchasing extra licenses in family

members' names and then having an agent for that person, and the character of the crab fishery (in terms of areas fished) has changed due to harvest restrictions.

Mr. Bell asked about non-reporting issues and inquired if inactive licensees would be removed from the fishery. The Hon. Robins explained that such practice is not a standing policy in the crab fishery; inactive licenses were removed by the Commission to deal with one issue in the past. Mr. Moore stated that CMAC should discuss why agents were initially allowed, and should consider a cap on the number of days a licensee can utilize an agent. This would prevent agents from being used for an entire year. He added that he is not concerned with two crab harvesters working on the same vessel. The Hon. Robins stated that agent use is a significant component of the current fishery, and eliminating agent use overnight would impact both active primary license holders and those acting as agents. Creating a cap on the number of days allowed for agent use is a long-term discussion, and CMAC should offer immediate mitigation for 2013.

Mr. Ken Diggs, Jr. suggested the vessel limit could be the bigger of the two pot-category licenses on board. Mr. Farrington added that the measures offered should be for 2013 only. He stated his opinion that inactive licensees should not be permitted to enter the fishery solely through agent use. Mr. Farrington made a motion that the 461 inactive licensees (eligible in 2012) should not have the ability to use agents in 2013. Mr. Graham seconded the motion. Mr. France stated that if this occurs, these inactive licensees may transfer their licenses to individuals who will begin to actively harvest. Mr. Powers reminded CMAC that there is a limited number of transfers permitted by year. He stated his concern that there may be a limited number of individuals that intend to work as an agent in 2013 for crab licensees who have been inactive in recent years, and may have already begun rigging their pots for the season. Mr. O'Reilly commented that this motion is good in principle, but may invite an onslaught of exemption requests for the Commission. Mr. Diggs stated that there will be no benefit for people to obtain an agent in 2013 for the first time if a vessel limit is established. Mr. Dise added his opinion that CMAC must think these issues through thoroughly before making instant decisions for the fishery that will cause problems later. Mr. Moore stated that the real issue at hand is the possibility of latent licenses becoming active, and CMAC should examine the licensees who have an agent every year, which was not the original intent of the agent process. Mr. Powers inquired if the number of agents permitted in 2013 would include those individuals who agent full-time every year for a licensee or to the primary license holder, and Mr. O'Reilly said the licenses would stay with the primary licensee and not the agent. Mr. Powers suggested that a buffer be created, such as 30% more of the number of agents in 2012.

The Hon. Robins asked for further discussion. Mr. Farrington withdrew his original motion, stating that CMAC should recommend a cap for the number of agents for 2013, and a vessel limit to prevent license stacking.

Mr. Nixon made a motion that if an agent is working on a vessel with another primary card holder, the vessel limit is equal to the bushel limit of the primary card holder. If an agent is

working on a vessel alone, he can harvest up to the limit of the crab pot category he is using. If two primary card holders are working on a vessel together, the vessel limit is equal to the combined bushel limits of both licensees. The Hon. Robins asked for clarification: should a vessel be limited to the bushel limits of two primary card holders, in the event there are three primary card holders on a vessel? Mr. Nixon clarified his motion that a vessel limit should be restricted to the bushel limits of two primary card holders. The motion was seconded by Mr. Moore. Mr. Diggs reiterated that the vessel limit should be the bushel limit of only one crab licensee. The Hon. Palmer agreed with Mr. Diggs, stating he would second that motion were it made. Mr. Bell suggested setting a 51-bushel limit for the spring, and then after May institute bushel limits by category. Mr. O'Reilly reminded CMAC that the spring season (especially March) has the most capacity for high harvest of pre-spawn crabs. Mr. Nixon stated that he would like to add the idea of a 51-bushel limit in the spring to his motion. Mr. Diggs stated that allowing crab licensees to double up their bushel limits is excessive. Mr. Nixon withdrew his motion.

The Hon. Robins asked for another motion. Mr. Farrington made a motion to allow an agent working alone on a vessel to harvest up to the bushel limit of the crab licensee for whom they are working. If two crab harvesters are working together on a vessel, the vessel limit should be the amount of one licensee's bushel limit (which can be the higher of the two bushel limits). Mr. Palmer seconded the motion. Mr. Diggs asked for clarification on the motion, and Mr. Farrington said the vessel limit is that of whichever crab gear license the harvesters show the inspector. Mr. Bell asked if this is for the whole year or just the spring, and Mr. Farrington clarified this would be for the whole year. Mr. Graham asked if there should be an amendment to include a cap on the number of agents. Mr. O'Reilly suggested CMAC address this issue through May 31 for now, and then reconsider the agent issue for the long-term at a later time. The Hon. Robins agreed that CMAC should deliver a set of solutions for 2013, and asked Mr. Farrington wanted to add any agent cap to his motion. Mr. Farrington suggested capping the number of agents in 2013 at the 151 licensees approved for agent use in 2012. The Hon. Robins stated that it would be simpler to leave the agency issue out of Mr. Farrington's motion and to address agency in a separate motion. Mr. Farrington restated his original motion (the vessel limit is the bushel limit of one license holder per day). The Hon. Palmer affirmed this was the motion he seconded, and the motion carried 8-1-0.

The Hon. Robins asked the committee about the issue of agents, and opened up the floor for public comment. Mr. Mark Sanford offered his opinion that he is against agent use. Mr. Douglas Jenkins stated that the complex issue of agency should be tabled until later for a fair discussion. Mr. France asked for the original definition of a crab agent, and Mr. O'Reilly clarified that now, anyone who does not hold a crab gear license can act as an agent. Mr. Farrington stated that CMAC must cap agents at a manageable level to prevent overharvesting, but can't punish businessmen using agents. Mr. Powers suggested creating an allowance for

short-term agents for vacation or illness. Mr. O'Reilly stated it would be difficult for Law Enforcement to deal with an ever-changing roster of agents.

Mr. Nixon made a motion to set the 2013 agent cap at 151 with a 10% overage allowance, and if that cap has been reached and someone has a dire emergency, they may be granted an exemption by the Commission or at the discretion of the Commissioner. The motion was seconded by Mr. Diggs. Mr. Powers asked if the 151 licenses are the same licensees who registered an agent in 2012, plus 10% more (15 additional individuals totaling 166 licensees in 2013) to provide for those who have never used an agent before but need one for the first time. Mr. Nixon clarified that he was correct: the 151 crab licensees who had registered an agent in 2012 would be automatically eligible in 2013 to register an agent, plus any additional 15 crab licensees. The motion passed 8-0-2, with Mr. Dise and the Hon. Palmer abstaining.

VI. Tending requirements for crab gear

Mr. O'Reilly stated the issue of tending requirements was brought up three years ago, and at that time, CMAC had more pressing issues to face that have now been addressed. Staff is now seeking guidance if CMAC would like to now reconsider this issue. The Hon. Robins stated that there is currently no mechanism in regulation for enforcing any tending requirements. Mr. O'Reilly suggested this issue could be discussed with Law Enforcement at a Regulatory Review Committee meeting, and then brought back to CMAC. Mr. Nixon explained there are crab harvesters who leave crab pots for many weeks or even all year when finished with crabbing, and the Hon. Robins agreed there are no regulatory mechanisms to prevent wet storage of pots. Mr. Bell stated that the increasing price per rig will deter people from voluntarily leaving pots out. Mr. Moore added there are problems with recreational pots being left out all year, as well.

VII. UPDATE: Reconsideration of Crab (and Other) Fisheries Violations in Terms of Sanctions

Dr. Hoover explained a survey was mailed to CMAC, and only four have been returned. When all surveys are returned, staff can summarize the comments and return to CMAC. Similar surveys were sent out to the Finfish and Shellfish Management Advisory Committees (FMAC and SMAC). The Hon. Robins asked about the degree of violations: if someone is slightly over the tolerance of undersized crabs compared to someone with a significant amount of undersized product segregated on the vessel, will these be treated differently? Dr. Hoover said the differences in severity should be addressed in the survey comment sections. Mr. Powers stated that he would like to add a violation to the list (the sale of recreationally-harvested crabs). Mr. O'Reilly added that the Commissioner would like the Commission to receive the input from the advisory committees. Mr. Powers suggested CMAC be provided with information on the distribution and frequency of violations that occur.

New Business

The Hon. Robins asked for new business before CMAC. Mr. Farrington stated that many crab harvesters are using orange plastic baskets to bring crabs to market instead of a wooden barrel or basket. He asked if the regulation could be amended to permit the use of orange plastic baskets that are not over-full. Mr. O'Reilly said this is also an issue for oysters and will be addressed at the Regulatory Review Committee and with Law Enforcement.

Mr. Powers recommended that if CMAC intends to majorly change the use of agents in the crab fishery, to do so by mid-summer so that industry can plan accordingly.

Mr. O'Reilly stated that the next meeting date has not yet been set, but will be around the time that the Bay-wide Winter Dredge Survey results are released. Mr. Nixon requested that CMAC be provided the results before the general public.

The meeting was adjourned at 8:09pm.