

**VIRGINIA MARINE RESOURCES COMMISSION
FINFISH MANAGEMENT ADVISORY COMMITTEE
2600 WASHINGTON AVENUE, NEWPORT NEWS, VA
VMRC CONFERENCE ROOM, 4TH FLOOR**

TUESDAY, JANUARY 20, 2009, 6:00 PM

MEMBERS PRESENT

Hon. Ernest Bowden
Mr. Roger Parks for Mr. Wynston Holbrook
Mr. Russel Gaskins
Mr. Ken Smith for Mr. Douglas F. Jenkins, Sr.
Mr. Andy Hall
Dr. Ken Neill
Mr. Samuel Swift
Mr. Robert Weagley
Mr. Pete Nixon
Mr. Jeff Deem
Mr. Tom Powers
Mr. Chris Vaughan

VMRC STAFF

Mr. Jack Travelstead
Mr. Rob O'Reilly
Mr. Joe Grist
Ms. Alicia Nelson
Ms. Laura Lee
Ms. Bethany Eden
Mr. Hershel C. Shackelford III

MEMBERS ABSENT

Mr. Wynston Holbrook
Mr. Douglas F. Jenkins, Sr.
Mr. Walter Rogers

OTHERS PRESENT

Ms. Beverly Ludford
Mr. John C. Ludford
Mr. Z. R. Lewis III
Mr. Randy Lewis Jr.
Mr. David Agee
Mr. Scott MacDonald
Mr. Frank Kearney
Mr. David Nobles
Mr. John Wyatt

I. Introductions; Announcements

Chairman Bowden called the meeting to order at 6:01 pm.
There were no introductions or announcements.

II. Approval of minutes from the October 27, 2008 and November 18, 2008 meetings

The minutes from the previous two meetings were accepted by a vote of 11-0-1, with Chairman Bowden abstaining.

III. Old Business

a. Gill Net Control Date; discussion and final recommendation

Mr. Travelstead briefed the committee that he has received about a dozen phone calls, and 4 people had come by the office to speak with him, about their concerns with setting a control date

for gill nets. He noted there seemed to be some concern that setting a control date on gill nets was very broad. Mr. Travelstead explained to the committee that setting a control date is just a basis for potential future regulations and nothing more. He stated that a control date could be used in the future to set further regulations, or to do nothing at all. He noted that other regulations, beyond the control date, could be specific regulations intended for a single fishery such as the spiny dogfish gill net fishery, or the spot and croaker gill net fishery.

Mr. Nixon asked if the idea of a control date was that if someone had purchased a license prior to the control date that they would be okay. Mr. Travelstead answered that would be the case.

Hon. Ernest Bowden stated that all the committee should currently be concerned about is setting a date.

Mr. Travelstead mentioned that one particular concern could be if someone owns striped bass quota, but has leased that quota in recent years and never purchased a gill net license them selves. Suddenly that person does not have the history to qualify for a gill net.

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Hon. Ernest Bowden commented that this type of a situation could be handled the same way striped bass hook-and-line licenses were handled, by creating a striped bass only gill net license. Mr. Travelstead noted that these were the types of situations that would have to be thought through, if any future regulations, beyond a control date, were to be proposed.

Mr. Gaskins asked if this sort of a regulation was because Marylanders were coming to Virginia to catch striped bass. Mr. Travelstead stated that this was more of a spot, croaker, and dogfish issue proposed by industry.

Mr. Travelstead also noted that another detail that would have to be worked out involved the number of gill net licenses that a person would qualify for. He used the example that if a person had only purchased 1 gill net per year prior to the control date, would that entitle them to only 1 gill net license a year in the future.

Mr. Nixon asked what sort of regulations staff anticipates beyond a control date. Mr. Travelstead answered that setting a control date was primarily an industry request, and that staff is looking to industry for ideas. He noted that one direction staff felt was important to consider was the spiny dogfish fishery. He stated that the quota was going up this year, and that staff anticipates more interest in the fishery.

Mr. Nixon asked if staff anticipated handling this fishery by fishery, or an overall limit on gill nets. Mr. Travelstead answered that future regulations would all depend upon what the goals and objectives of the committee were.

Hon. Ernest Bowden suggested just concentrating on a control date at this point, and then get together a committee of watermen to work out the details of any future regulations. He stated that he didn't want the gill net fishery to be hurt the same way the crab fishery has been hurt by out of state watermen fishing large rigs.

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Mr. Grist gave a presentation about gill net sales. He noted that Virginia gill net license sales have remained fairly steady from 1994-2008 for both types of gill net licenses. However, he noted that especially for the >600 ft gill net license, the number of Maryland license holders has been steadily increasing since 1995. He stated one particular concern from industry dealt with the dogfish fishery, and concerns that Maryland residents would catch Virginia dogfish and then land those dogfish in Maryland. He stated in this situation, the dogfish would be from Virginia, but landed in Maryland, benefitting Maryland if the future dogfish quota was managed state by state. Mr. Grist made note of increases in the recreational gill net fishery license sales and the license fees to the Marine Products Board. Lastly, Mr. Grist highlighted the top 10 species harvested by gill net 2004-2008 and showed that croaker, spot, striped bass, and spiny dogfish have been the top species harvested by gill nets most years.

Hon. Ernest Bowden asked what Virginia residents would have to do to get into the Maryland gill net fishery. Mr. Grist stated it was a pretty detailed process to enter into the fishery. He stated there is a long waiting list, then basically an apprenticeship program, then DNR classes. He stated that if you were an out of state license holder, even after you got your Maryland license, you still would not be able to have the opportunity to fish in all fisheries. Hon. Ernest Bowden stated that it is much easier for Marylanders to go fishing in Virginia, than for Virginians to go fishing in Maryland. He said that essentially it would take about 8 years for an out of state resident to gain access to Maryland fisheries.

Mr. Smith asked if the increasing license sales were due to more licenses being bought by more individuals, or the same individuals buying multiple licenses to increase the size of their rigs. Mr. Grist answered that it appears to be the same individuals buying multiple licenses to increase the size of their rigs.

Mr. Nixon asked if there was a better way to restrict out of state license holders legally. Mr. Travelstead answered that VMRC would be opening ourselves up to lawsuits. Mr. Nixon asked if it was not the time to stop selling licenses totally. He stated that we have latent effort held by Virginia citizens, but we are still selling licenses to Maryland residents. He wondered if there was a better approach to go about controlling license sales, particularly to out of state residents, so that Virginians are not excluded.

Hon. Ernest Bowden stated that he suggested a control date in 2005 so that it would catch most people, and that if we decided too many people were excluded we could always move the date forward. Hon. Ernest Bowden opened the floor for comments.

Scott MacDonald of Spots Fish Company stated that the whole goal is to keep out of state boats out and not hurt any Virginia watermen. He stated that those sorts of issues could all be worked out in the details of future regulations. Mr. Nixon commented that details added in the future would create issues that no one could do anything about. He wondered if there would ever be a stop to adding details. Hon. Ernest Bowden stated that the primary concern was to set a control date, and then get a group of industry and watermen together to discuss the details of any future regulations. He noted that if, in the end, there was no agreement about any proposed regulations, the issue would simply stop.

John Wyatt from the upper James River commented that he is also concerned about the details of any future regulations. He noted that he has friends and relatives who fish for large catfish in the upper James River and who have never purchased a gill net license. He stated there is the potential for an excellent, big catfish fishery in that area, and if that fishery opened up, they would be able to catch more large catfish using large mesh gill nets. His concern was how people could potentially enter that fishery if one were to open up in the future.

Chris Ludford, a commercial fishermen from Virginia Beach, commented that we need to concentrate on changing the exception to the two year delay on commercial registration licenses. He stated we should seek approval from the General Assembly to change the exception, because too many out of state residents were using the exception to gain access to Virginia fisheries. He also suggested putting an increase on out of state license fees. Mr. Nixon commented that the problem will be exacerbated by the blue crab situation. He noted that Maryland crab regulations are becoming more stringent, and that those displaced watermen will be trying to enter Virginia fisheries to make a living. Chris Ludford stated that most people have to buy their way into fisheries now and that it seems common knowledge that all out of state residents need to do is get the money together and buy their way into Virginia fisheries. He questioned how Virginia's quotas of certain species would be affected by Maryland residents fishing in Virginia waters and taking that catch back to Maryland.

Mr. O'Reilly commented that, with the exception of striped bass, all the species management plans were formulated based on landings data.

Mr. Smith stated that there was a bill before the General Assembly to raise the out of state license fee to \$850. He then asked if there was any way we could raise the individual gear license fees for out of state residents as well. Mr. Travelstead answered that to do something like that quickly, you would have to amend a bill that is already going through the General Assembly. He stated that we would open ourselves up for law suits if we adopted a license fee that was punitive in nature.

Mr. Powers stated that eventually spot and croaker will have total allowable catch limits imposed on them, which means that we may have a poor year of croaker and we will get hit with a cut in the total allowable catch limit. He stated that we need to keep in mind that all of these fisheries will eventually be put on a quota.

A motion was made to accept the control date as described. The motion was seconded, and passed by a vote of 10-0-2 with the chair abstaining.

IV. New Business

a. Public Interest Review Process for Fixed Fishing Devices (other than Pound Net)

Mr. Travelstead explained to the committee the public interest review process currently in place for pound nets. He noted that if any negative public comments are received, the applicant must then come before the Commission for a public hearing, at which the Commission takes public comment and then decides if the license will be granted. He stated that the currently regulation has been on the books for approximately 3 years, and in that time there have only been about 15 new site applications, of which only several have met with any negative type of public comment.

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He stated that of those that were brought before the Commission, several were required to slightly alter the location of the nets, and several locations were not approved. Mr. Travelstead noted that the currently regulation outlines the type of information the Commission must consider when licensing pound nets, which includes; the net's effect on other fisheries, SAV, water quality, recreational activities, and other property owners. Lastly, he noted that a public recommendation was made to include a 30 day public interest review process for all fixed fishing devices.

David Nobles, President of the Coastal Conservation Association, stated that his association believes that the public review process is important and that all types of fixed fishing devices should have a hearing process if there is any sort of objection. He stated his concern is not only for property owners, but also for recreational fishermen. He said his association would look to the committee to support a proposed change to the regulation so that all fixed fishing devices would have to go through a public review process before being licensed.

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John Wyatt, a commercial fisherman, worried that everyone is out to put the commercial fishermen out of business. He stated that there will always be someone objecting to the placement of a net. Hon. Ernest Bowden stated that this public review process would only be for new fixed fishing devices, not those that are already licensed. He also stated that the Commission wanted the committee to determine if this type of a regulation is worth pursuing.

Hon. Ernest Bowden asked staff if there was a license for a weir available in the state of Virginia. Mr. Travelstead answered that there is some general language in the fixed fishing device regulation, but nothing specific to a weir. He also noted that to the best of his knowledge, there are not very many staked gill net licenses sold in the state of Virginia either. He noted that when the shad fishery closed, all the staked gill net licenses used in that fishery were grandfathered, and that those license holders would still be entitled to those licenses.

Mr. Swift asked staff if it would only take one complaint to start the procedure of hearing. Mr. Travelstead answered that it only takes one complaint to bring the application before the Commission for a hearing, however that does not mean that the Commission will deny the license because there was a single complaint.

Mr. Powers stated that all this regulation would have to say is that if there were any objections to a new net in a particular site that the Commission would get to decide what was fair and if a license should be granted.

Mr. Nixon stated that this type of a regulation is a time thief. He noted that a lot of the complaints against fixed fishing devices are not legitimate complaints, and it would be a serious waste of a waterman's time to go through the review process. Mr. Weagley agreed, stating that a 30 day review process takes too long because the fish will not stay in one area for that long a period of time.

Mr. Deem asked if a staked gill net would fall under the category of a fixed fishing devise because it sounds like a temporary sort of devise. Mr. Travelstead answered that it is considered a fixed fishing device; however they are certainly more portable than a pound net.

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Hon. Ernest Bowden commented that if the perceived problem is weirs, then weirs should be involved in a public review process because they most closely resemble pound nets.

Mr. Deem commented that the committee should at least consider a public review process for all fixed fishing devices because the public has a right to comment on things of this manner.

Mr. Powers asked how much trouble it would be to move a staked gill net once it was set. He stated that after the fact, if there was a problem with the net, the Commission could decide if the net needed to be moved. He stated that it seemed that a fyke net required a lot more effort to set and remove the net and so those types of nets should come under a public review before being set. Mr. Weagley commented that while a staked gill net may be easier to set than a pound net, it was still time consuming to set and move depending on where it was located. Mr. Swift commented that most of the experience he has with staked gill nets is that you set the net where the fish are, and then take the net up as soon as the fish are gone. He stated it is not like a pound net that will fish for months and months at a time. Mr. Powers suggested a regulation that allows for a staked gill net to be set prior to a review process, under the condition that if there are objections to the placement of the net, the Commission can decide whether the net can remain in that location or needs to be moved.

Mr. Parks commented that commercial fishermen have just as much right to catch fish as the property owner has to move there. He suggested that this regulation should support the commercial fishermen. Mr. Travelstead commented that he doesn't think this would be an issue if not for the comment made before the Commission. He stated he has never heard any public complaints about a fyke net or a staked gill net.

David Nobles commented to the committee that they needed to keep in mind that the water belongs to everyone, and there needs to be a public review process as an avenue to express opinions.

Mr. Nixon made a motion that a public review process not be included for fixed fishing devices, other than pound nets, unless there is a problem in the future. The motion was seconded by Mr. Hall. Mr. Powers offered to amend the motion to include that if a pound net was denied at a specific location, that a public review process must take place before any other type of fixed fishing device could be sited in that same location. Hon. Ernest Bowden asked Mr. Nixon if he would accept Mr. Powers' amendment. Mr. Nixon did not accept the amendment. The motion carried with a vote of 7-4-1 with the chair abstaining.

b. Summer Flounder 2009 recreational measures-discussion

Mr. O'Reilly explained to the committee how the ASMFC assesses summer flounder models and creates total allowable limits for the commercial and recreational fisheries. He commented that the reason there have not been lower length limits or increases in creel limits is because there is a rebuilding target number of spawning stock that still needs to be achieved. He noted that Virginia, Delaware and North Carolina were all under the 2008 quota. Mr. O'Reilly noted that in the years where we've had to do reductions in quota, most of the savings that we have achieved have been done through increasing size limits. He stated that ASMFC recently passed a motion that any state that goes over quota will have to take at least 50% of that reduction in a

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closed season. He also commented that there is a lot of volatility to the flounder fishery and that the ASMFC is requesting at least a 2 week closure of the fishery be placed in the wave where the highest landings occur. Mr. O'Reilly stated that April through June seems to be the biggest months of landings and the best fishing. Lastly, Mr. O'Reilly noted that the ASMFC wants states to show that they have other ways to control the amount of landings other than just seasonal closures. Mr. O'Reilly presented several scenarios of size and catch limits that may be proposed to the ASMFC. He stated that an 18.5 inch, 5 fish catch limit, with a seasonal closure July 21-August 3 would potentially put us on target to be close, but not exceed quota. He then showed all the size and catch limit options that came out of the ad hoc committee. Mr. O'Reilly stated that 17 or 17.5 inch size limits are just not feasible and would certainly not pass the ASMFC Technical Committee. Lastly, Mr. O'Reilly told the committee that staff is hoping the committee could recommend some options to present to the ASMFC Technical Committee.

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Mr. Nixon asked if staff knew how many trips were involved in the previous year's numbers, and would that have any bearing on the number of potential trips this coming year due to the state of the economy? Mr. O'Reilly stated that in general the number of trips has been increasing each year, however it is impossible to tease out the relationship between harvest and trips.

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Hon. Ernest Bowden asked if staff was asking the committee for their preference for an option to take to the ASMFC. Mr. O'Reilly answered that yes, staff would like some input as to what options would be most suitable to take to the ASMFC Technical Committee. He stated that the main goal was to not get caught with an option that results in a large overage.

Mr. Powers suggested that staff modify the calculations involving the smaller size limits to show exactly how long of a seasonal closure would be necessary in order to not exceed quota. The committee asked if there was any idea how much of the discards resulted in mortality. Mr. O'Reilly answered that the only data we have is from a 10 year old study, which states that 10% of the discards resulted in mortality. He stated that depending on the water conditions and the time of year, he believed that mortality from discards could be much higher than 10%.

Mr. Weagley asked if we would ever reach the spawning stock biomass goal. Mr. O'Reilly answered that staff is more concerned about the use of the new stock assessment model, and how that model will treat the data that is being used. He stated that staff thinks the rebuilding target is quite high.

Mr. Powers asked how much more data do we need from the Virginia Volunteer Survey Program to make it viable to use that data as part of the stock assessment model. Mr. Grist answered that we only had about 180 lengths, and we would need about an order of magnitude increase in participation in the program. Mr. Powers then asked what it would mean for Virginia's quota if we eventually achieved the long term target. Mr. O'Reilly answered that the ASMFC could potentially change regulations, or start to manage the fishery by fishing mortality rate, or judge the performance of the stock by other measures similar to striped bass. He stated that it should lead to a situation where we would not be fishing at 18.5 or 19 inches in the long term. Mr. Powers asked if when the spawning stock increases, if the fishery would open up to lower size limit fish. Mr. O'Reilly answered that it should.

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Randy Lewis, Jr., a bait and tackle shop owner from Wachapreague, stated that a lot of people have told him that a 19 inch fish is not worth going fishing for. He also stated that he thinks a 10% mortality rate on discards is low, and that the mortality rate on discards is probably more around 30-40%. Mr. Lewis suggested that 18 inches and 4 fish would be a better limit than 19 inches and 5 fish. He stated that he thought a slot limit or other type of quota or size limit would be more practical. He feels it is counter productive to throw back and potentially kill large female fish, to try and find even larger keeper female fish.

Randy Lewis, Sr., a bait and tackle shop owner from Wachapreague, questioned the validity of the VIMS study which was done in large tanks on the Eastern Shore. He stated that 10% mortality is definitely too low, and that the mortality rate of discards is probably closer to 65%.

Mr. Smith asked if barbless hooks would be good for fishing flounder or other fish. Randy Lewis, Sr. answered that a barbless hook would be helpful, but it is not something that we will see required by regulations in the very near future.

Mr. Deem asked if customers would still come if the flounder limits were 18.5 inches and 3 fish. Randy Lewis, Sr. answered that it would be better to leave the limit at 5 fish. He stated that most of the people that go fishing do not catch 5 fish because they do not know how to catch a flounder correctly.

Mr. Powers made a motion that Mr. O'Reilly re-calculate the smaller size options and season closures and take all those options to the ASMFC Technical Committee for consideration.

Mr. Vaughan asked why there were not any options that allow for a slot limit. Mr. O'Reilly answered that there was a big push in 2008 for a slot limit. He stated that the ASMFC Technical Committee came back with slot limit options that were not what most people wanted to see so it was never pursued further. for 2009. Mr. Travelstead indicated the concept of a slot limit was still under study.

The motion made by Mr. Powers was seconded by Dr. Neill. The motion passed 11-0-1 with the chair abstaining.

Hon. Ernest Bowden asked if there was any other business to come before the committee.

Mr. Smith asked about the invasive species bill currently before the General Assembly. He asked if the blue catfish could be included in a tagging study in an attempt to ask for the 32 inch size limit to be removed. Mr. Travelstead answered that the Game Department is in charge of regulating the blue catfish size limits.

V. Next Meeting

The next meeting will be scheduled sometime around February 17, 2009.

VI. Adjournment

The meeting was adjourned at 8:40 p.m.