

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

2600 Washington Avenue, Newport News, VA
VMRC Commission Room, Fourth Floor
Tuesday, May 12, 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 Laine, Jr.

VMRC Staff

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

Others Present

Captain Jim Brincefield
Frank Kearney
Joseph C. Ballenger
John Wyatt
Don Honeycutt
Russell Gaskin
Beth Synowiec
Captain Steve Wray
Captain Tim Cannon
Skip Feller

A quorum was present with 12 members in attendance.

Minutes recorded by Laura M. Lee.

SUMMARY

I. Introductions; Announcements

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

II. Approval of minutes from February 17, 2009 meeting

The minutes from the February 17, 2009 meeting were approved unanimously.

III. Old Business

River Herring Update

Mr. Travelstead informed the committee that the AMSFC River Herring Management Board met last week in Alexandria, VA. That board finalized and approved Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring at last week's meeting. Amendment 2 requires all states to implement a moratorium on the harvest of river herring in state waters as of January 1, 2012 unless a state can demonstrate that they have a sustainable fishery. Massachusetts, Connecticut, Rhode Island, and North Carolina already have moratoriums in place. For over a decade, Virginia has not had the funds to monitor the small recreational dip net fisheries and gill net fisheries to determine whether or not these fisheries are sustainable. As such, Virginia will be stuck with implementing a moratorium until the state can collect information to show that the fisheries are sustainable. The River Herring Management Board stated at least four to six years of data would be needed to support claims that a fishery is sustainable. Mr. Travelstead said he plans to meet with fishermen this summer to ascertain their interest in participating in a volunteer data collection program. Virginia opposed the addendum because we cannot prove sustainability, so it would be essentially a de facto moratorium for the state. There are not enough data to prove that the small fisheries that do exist in Virginia are sustainable. There are, however, businesses that rely on recreational river herring anglers that will undergo an economic impact from the moratorium.

Mr. Rogers asked if there was any hope for allowable bycatch. Mr. Travelstead replied that the issue of allowable bycatch did not fall under the motion adopted last week. Mr. Travelstead indicated that he hoped to make the argument that some small amount of bycatch is sustainable.

There was some discussion among committee members and staff regarding species misidentification issues.

Mr. Weagley asked whether implementing restrictions now would carry any weight. Mr. Travelstead replied that he thought we would have to show the ASMFC River Herring Management Board that the Virginia fishery is not a wide-open fishery. Mr. Travelstead added that Virginia would stand a better argument, though he wouldn't know what those restrictions would be.

Mr. John Wyatt told the committee that he fishes the upper James River. Mr. Wyatt expressed his opinion that the VMRC would be wasting their time with any management plan unless they also do something about blue catfish. He said that blue catfish are eating herring up and suggested that the VMRC needs to relax the current regulations on catfish so we can provide some relief to the herring. Mr. Wyatt said he was unsure how the DGIF got management jurisdiction over catfish. He said that he felt the Commission needs to do whatever is necessary to allow the commercial and recreational fisheries catch as many blue catfish as they can; otherwise, Mr. Wyatt said the blue catfish would continue eating up American shad and herring and tearing up clam beds.

Mr. Bowden reminded the committee that the blue catfish is a non-native species. He added that blue catfish biomass is increasing, which is one reason for the lack of success in restoring shad—we're just making bigger catfish. Mr. Bowden offered to make a motion regarding jurisdiction at the next Commission meeting if Mr. Wyatt attends and brings the issue to the Commission's attention.

Mr. Wyatt stated that we need to get the blue catfish numbers under control.

Mr. Powers pointed out that one should refer to the Code of Virginia regarding jurisdiction. He said the code states that the VMRC has jurisdiction over estuarine fish and the DGIF has jurisdiction over inland fish.

Mr. Jenkins added that he hoped that they would have success regarding the jurisdiction issue at the next Commission meeting. He said that until someone in a leadership position recognizes the problem, nothing will get done.

Mr. Bowden said he will do all he can do because something has got to be done.

IV. New Business

a. Grouper/Tilefish Update: SAFMC proposed actions; VMRC proposals; Discussion & Recommendations

Mr. Travelstead commented that the grouper-tilefish item has been a very volatile issue. Staff has received a lot of public comment expressing concerns about the proposed regulations. There is an effort at the SAFMC to regulate the grouper-tilefish complex throughout its range. The Magnuson-Stevens Act, which gives the federal fishery management councils their authority, was amended a couple of years ago. The councils need to get serious about how their species are managed. For example, the councils will no longer establish quotas; a group of scientists—separate from the council—will determine and set fishery quotas. The recent amendments to the Magnuson-Stevens Act also require that councils account for all sources of fishing mortality throughout a species range when developing regulations. The SAFMC has proposed some very serious regulations for the grouper-tilefish complex. The proposed regulations suggest they want to eliminate the fishery in Virginia and Maryland waters. There is some information available that indicates the MAFMC could manage these species without the help of the SAFMC. Virginia is currently under no mandate to take any action on grouper or tilefish. The concern is that, if Virginia takes no action, the SAFMC will take actions that will completely eliminate Virginia's fishery. The management actions proposed by Virginia were proposed with the intention to avoid a potential elimination of Virginia's fishery. Mr. Travelstead had wondered if other Atlantic states would be willing to stick their neck out and adopt similar regulations. He has been contacting other states to get a read on what, if any, actions they plan to take. Mr. Travelstead indicated that, so far, he has been unimpressed with the responses from other states. He feels other states are not going to do anything to help convince the SAFMC to turn over the management of these species to the MAFMC.

Mr. Grist reviewed what has happened, where we are today, and what's coming regarding the management of the grouper-tilefish complex. He reminded the committee that Virginia's current commercial and recreational fishery regulations for blueline tilefish and snowy grouper were implemented in 2007. At that time, blueline tilefish was considered a species of concern and the snowy grouper stock was overfished and overfishing was occurring.

Mr. Grist discussed the current situation. In Virginia, these species contribute to a high quality recreational fishery and a commercial bycatch fishery. He reviewed the number of state records, IGFA records, and saltwater tournament citations that anglers have received for these species in the last few years. Mr. Grist said there is a data concern. There is a paucity of MRFSS data, due to the low number of encounters with these species by MRFSS interviewers. The Northeast Regional Office (NERO) charter boat and headboat vessel trip reports demonstrate limited reporting; there appears to be an inconsistency in what is reported versus what the VMRC is being told. The VMRC included blueline tilefish, snowy grouper, and wreckfish as target species for their Marine Sportfish Collection Project. The ages for fish donated to the program in 2007 have not been processed yet.

Mr. Grist said that the SAFMC management unit for grouper-tilefish runs from the North Carolina line down through Florida waters' boundary with the Gulf of Mexico Fishery Management Council. Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery will be implemented in the next few weeks. As of now, the plan only applies to North Carolina through Florida. Amendment 17 is in development and includes a preferred option for a commercial and recreational fishery Annual Catch Limit (ACL) equal to 0 fish for speckled hind and Warsaw grouper. Amendment 17 includes an option to ban fishing past the 40 fathom contour. Amendment 17 would also establish an ACL equal to 523 fish for snowy grouper (currently overfished and overfishing occurring). Mr. Grist pointed out that those 523 snowy grouper would be divided among four states for the entire year. Amendment 18 proposes an expansion of the management unit northward through the mid-Atlantic and possibly New England. If the new management unit is adopted, the proposed regulations in Amendment 17 would apply to the new management unit. Mr. Grist said the SAFMC has justification for extending snapper-grouper management unit, as there is currently no evidence that fish occurring in more northern waters belong to a separate stock. The MAFMC sent a letter to the SAFMC requesting that Amendment 18 include an alternative for a northern snapper-grouper management unit for deepwater species that would be managed by the MAFMC in consultation with the SAFMC. The VMRC included proposed restrictions to the recreational commercial fisheries for these species in the May public hearing request.

Mr. Deem inquired whether anyone had any idea regarding stock status north of North Carolina. Mr. Grist replied that a stock assessment was conducted on snowy grouper. That assessment should have included any available data north of North Carolina.

Mr. Deem asked if the MAFMC was allowed to oversee management of a northern snapper-grouper management unit, could the 523 value be changed. Mr. Grist replied that, because snowy grouper is considered a single stock, the value would stand at 523, and the northern management unit, if approved, would be allocated a portion of that number.

Mr. Bowden asked if there would be a possibility of increasing that number if a separate, northern management were approved. Mr. Grist replied that it is up to the SSC to make that determination, which could include a request for another stock assessment.

Mr. Travelstead said the question is whether we are too far ahead of the curve in terms of our proposed regulations. Without hearing support from other states, Mr. Travelstead said he felt Virginia was way out ahead of the curve in that respect. The SAFMC will be meeting in June to decide whether to include an option for the MAFMC proposed alternative for a northern grouper-tilefish management unit when Amendments 17 and 18 go to public hearing. Mr. Travelstead suggested that we could wait on the June meeting before deciding on how we should move forward.

Mr. Travelstead mentioned that the Recreational Fishery Advisory Board met last night. One of the proposals was made by ODU for a project to collect scientific information on some of these species. If that project is approved, the ODU project personnel will need a lot of assistance from fishermen in collecting data. That information will go a long way in convincing the SAFMC that a separate, northern management unit is needed.

Mr. O'Reilly pointed out that just a few years of improved recent data would have difficulty in budging the status of the stock. A number of years of data are needed.

Ms. Beth Synowiec suggested closing a season during spawning rather than implementing drastic reductions in possession limits.

Capt. Jim Brincefield told the committee that he stood before them two years ago in opposition of any regulations. He submitted six pages of comments to the staff regarding the current issue. Capt. Brincefield said the reason he is here is states rights. He said he felt the SAFMC wants Virginia to help them rebuild their fishery. He added that Virginia has a world-class fishery that would be eliminated if these proposed regulations are passed. Capt. Brincefield said we were going to study it following the implementation of the 2007 regulations. He said no one is going to pay for a possession limit of 1 fish per boat, adding that it might as well be a moratorium. If someone catches a second one, it will have to be thrown back dead. Capt. Brincefield indicated he has done some research and feels this is more a political than a science issue. He felt that if the VMRC passes the proposed regulations in hurried matter, it would put them [charter boats] out of business. Capt. Brincefield said he spoke with Mr. Rick DeVictor and Ms. Kim Iverson, both of the SAFMC, on the phone today. Capt. Brincefield said Mr. DeVictor and Ms. Iverson indicated to him that it was too early to say what Amendment 17 and 18 will be in final form; there are many options and it will be one and half to two years before the amendments are available for public comment. Capt. Brincefield said he felt the VMRC is leading us to believe their hand is being forced. He has come across conflicting information on the growth of grouper. Capt. Brincefield said he strongly feels VMRC's proposed regulations are going to wipe us out, including tackle shops and others that support the industry. He said the regulations currently in place hurt us two years ago when they were adopted. Capt. Brincefield asked the VMRC get some members of industry together to come up with better management options.

Mr. Powers asked Capt. Brincefield how he would feel about reporting his catch to the VMRC. Capt. Brincefield replied that he would give every copy of every catch record to the VMRC and the federal agency with no problem.

Mr. Jack Reynolds introduced himself to the committee as a recreational fisherman and said he felt the rules and regulations currently in place are good for everyone. He said he would support the regulations the VMRC is proposing if there was science (for Virginia) to back up the proposed actions. Mr. Reynolds said he feels Virginia has a wonderful fishery. As a recreational fisherman, Mr. Reynolds said he would be all for reporting catch as he thinks it is important for fishery and for management. He said the wholesalers and commercial fishermen would be hurt by the proposed regulations and that the proposed regulations would be at the expense of recreational anglers, because if would not be worth going out to catch one fish. Mr. Reynolds commented that he would strongly support research efforts.

Capt. Steve Wray told the committee that he ran a recreational charter boat and sent a letter to VMRC staff regarding his opinions of the proposed regulations. Capt. Wray suggested the VMRC look into creating a limited entry fishery, at least for the charter boat industry, to eliminate some of pressure.

Capt. Tim Cannon commented on the limited available science. He mentioned that, several years ago, Claude Bain told him how tagging data show evidence of strong site fidelity for tautog. Capt. Cannon added that he felt if tagging data were collected for grouper, they would indicate that grouper also demonstrate strong site fidelity.

Mr. Bowden asked if grouper can be tagged. Mr. Grist replied that there is a mortality issue as tendency for the eyes to bulge out could leave the fish permanently blind. The problem is the depths the fish are coming from. If not for these issues, a tagging study would be ideal.

Mr. Powers inquired whether there was any potential of using the chemical make-up of otoliths to determine where they're from or where they've been. Mr. Grist responded that such a study could be tied in to ODU's proposed project.

Mr. Don Honeycutt told the committee that there is a new bill in front of Congress to amend Magnuson-Stevens Act. He suggested the committee wait until after the June meeting and wait to see how the proposed bill pans out before making a recommendation.

Mr. Bowden said he doesn't think that bill is moving ahead very favorably.

Mr. Skip Feller said that he runs headboats out of Rudee Inlet. He said that limiting possession won't work because of the popularity of the fishery. Mr. Feller added that he would be willing to participate in any reporting program.

Dr. Neill said the SAFMC has the political high ground to impose Amendment 18. The SAFMC is obligated to satisfy the Magnuson-Stevens Act. Unless it can be shown that a separate management plan can comply with the Magnuson-Stevens Act, we can't stop them.

Dr. Neill said he felt Mr. Travelstead's recommendation to wait on the outcome of the June meeting was probably the best option.

Mr. Bowden said that a lot of money and a lot of time would be needed in order to demonstrate that the fish occurring in Virginia waters are part of a separate stock unit.

There were some questions about the issue of separate stocks. In fisheries management, stocks are typically managed as a single unit unless there is sufficient evidence to suggest the presence of separate stocks.

Mr. MacDonald agreed that it made sense to wait for the outcome of the June meeting, unless counterparts in other states are going to do anything.

Mr. Travelstead said the critical thing is to get data, including getting fish for ODU's proposed study.

Mr. Travelstead said that the councils don't do anything quickly. He said there were a couple of choices: do nothing and ask the Commission to table the issue until after the June SAFMC meeting or, if the committee feels the need to do something, ask the Commission to go forward with permits and mandatory reporting. The latter choice would show that Virginia is serious about managing the fishery as its own and will start the collection of data. Mr. Travelstead added that the decision about whether to include an option for managing fish in northern waters as a separate unit will be made in June.

Mr. Bowden asked when the plan would be implemented if a separate, northern management unit was not established. Mr. Travelstead replied the plan would be implemented in about a year if a northern management unit were not approved.

Mr. Travelstead reminded the committee that councils have to account for all mortality throughout a species range.

Mr. Deem asked the captains who were present if they have to discard any fish under the current possession limits. Capt. Brincefield responded that they do catch fish unintentionally. Those fish can be included in the limit for the captain or co-captain. Capt. Brincefield suggested that stressed fish tags be provided to the captains so fish that would otherwise be discarded dead could be used for something good.

Motion

A motion was made by Mr. Powers to put a permit process in place for these species and to attach mandatory reporting to the permit. The motion was seconded by Mr. Deem.

Discussion on Motion

Mr. Travelstead clarified that he has not heard back from Maryland or New Jersey. He has heard back from Delaware, who said they were not going to do anything.

Motion Vote

The motion carried with 11 votes for and one abstention.

b. Striped Bass: A January Commercial Ocean Fishing Season; Discussion

Mr. Grist informed the committee that a proposal was made to open Virginia's coastal striped bass fishery in January. Mr. Grist showed data demonstrating that harvest by the coastal fishery typically peaks in February and a second smaller peak occurs in December. This pattern is similar to what has been observed for the bay fishery. Mr. Grist showed trends in the number of active coastal harvesters by month and in the number of coastal trips by month; the monthly trends were similar to the harvest patterns. Mr. Grist indicated that tag transfers peak in February and November. He then discussed the question of opening the coastal fishery in January. Mr. Grist pointed out there would be a number of logistical difficulties. Demands on staff are high. The VMRC does not know the quota for the upcoming fishing year until late December, at times. Staff needs to know the quota in order to develop the permits, determine the tags, and put the packets together. The striped bass fishery is a year-round management issue for staff—at times, the entire staff—and is only one of many responsibilities. The timeline devoted to striped bass has evolved into a fine-tuned process and the preparation that would be required to open the coastal fishery earlier would affect that timeline, which would, in turn, impact other tasks. Mr. Grist explained that staffing, facility, and administrative resources are limited. He also discussed issues regarding storage, the cost of ordering tags, and scheduling conflicts with the facility. Mr. Grist said that logistically, staff can't pull it off given current resources and other issues.

Mr. Bowden said that Virginia has a recreational fishery in January and February in the EEZ that is illegal. He said weather affects the number of days that commercial fishermen can operate. He suggested staff were influenced by an e-mail campaign against opening the coastal fishery earlier. Mr. Bowden thinks VMRC staff can work something out for 30 participants. He felt there were ways to work around some of the logistical issues.

Mr. Travelstead said the staff had received no e-mails related to administrative issues. Some e-mails related to gear conflicts were received.

Mr. Grist stressed that the issue is not a lack of willingness by staff; it is just not logistically possible.

There was some discussion about allowable mesh sizes.

Mr. Holbrook asked if the issue was going to be on the Commission agenda. Mr. Bowden replied that it would probably not be included in the agenda.

Committee members proposed several ways to work around the logistical issues. Mr. MacDonald and Mr. Bowden felt that, given the small number of fishermen in the coastal fishery, there could be a solution.

Mr. Grist again stressed that it's not for lack of want by staff to work something out. Staff spent a lot of time trying to figure out a way to make this work. He reiterated that the process is a fine-tuned process and something would be affected for every way we looked at it.

There was some discussion about the impacts of the federal Bottlenose Dolphin Plan and Harbor Porpoise plan on the fishery.

Mr. Travelstead asked how many days the coastal fishermen needed in January, with the understanding that they wanted the whole month.

Mr. Bowden said that January and February landings for the recreational fishery have exploded. He said he felt this was not equitable in terms of management, as required by the Code of Virginia.

Mr. MacDonald said the earliest the coastal fishery could open would be January 15 due to regulations in the federal Bottlenose Dolphin Plan.

Mr. John Wyatt asked about the possibility of using a special January tag that has a different color. Mr. Bowden replied that would make the process more expensive and more troublesome, but would consider anything that works. Mr. Bowden added that the coastal fishermen need help.

Mr. Weagley asked about having a breaking point in July to reconcile records. Mr. Bowden agreed that would be fine with him and asked if that is possible.

Mr. Grist commented that it was not true that there is more staff availability in summer; there are other tasks that need to be done.

Mr. MacDonald said that if the coastal fishery was opened earlier, the fish would be worth more.

Mr. Powers said he still felt there would be gear conflict issues.

Mr. MacDonald suggested that fewer striped bass would be discarded by the dogfish fishery if Virginia's coastal fishery is opened earlier.

Mr. Powers inquired if the fishery could not be open before January 15, would it be practical to limit fishing to Monday through Thursday. Mr. Swift said there could still be weather issues. Mr. Bowden added that the coastal fishermen already compromised because they can't fish before January 15.

Mr. MacDonald said that no matter what time of year the coastal fishery operates, there are going to be gear conflicts.

Mr. Bowden asked why staff couldn't process the 37 coastal fishermen first. Mr. Travelstead explained that the process takes so many days and opening the coastal fishery earlier would

require carrying out that process twice. While it would not take as long to process 37 fishermen as it would to process 500, the process would still need to be done twice.

Mr. Bowden said not all preparation issues apply to the coastal fishery.

Mr. Travelstead suggested that the committee not worry about the administrative issue for right now. That is a serious problem, but not the biggest problem. The biggest problem is gear conflict. Also, some bay fishermen are upset because allowing the coastal fishery to open earlier would give the coastal fishermen an advantage in the marketplace. Mr. Travelstead suggested solving these two problems first. If only an administrative issue remains, perhaps a solution could be found.

Mr. O'Reilly provided an update on how the recreational fishery data are used in the stock assessment. He said that recent estimates of Virginia's recreational harvest during January/February are extremely high.

Mr. MacDonald said there was a two to three month window 2 to 3 month window when the coastal fishermen really fish in the ocean. They could give up a month or two in the summertime. In the spring, they could start fishing as early as January 15 (due to federal regulations) and fish through February 15. They have two weeks in the spring and are asking for another two weeks.

Mr. Holbrook asked whether they thought if they went to the Commission, wouldn't the Commission ensure that they had the staff to accommodate.

Mr. Travelstead said that the VMRC is regulatory body and has no authority to add staff. The General Assembly has that power.

Mr. Bowden said he would like to continue the discussion at the next meeting.

Mr. Travelstead again suggested that the committee save the administrative issue for last. If they could show the Commission a certain level of comfort with the other issues, that would go a long way with the Commission.

V. Next Meeting

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

VI. Adjournment

The meeting was adjourned at 8:29 p.m.