

**Virginia Marine Resources Commission  
Menhaden Management Advisory Committee (MMAC)**  
380 Fenwick Road, Fort Monroe, VA  
VMRC Commission Room  
Tuesday, November 9, 2021 – 4:00 P.M.

**ATTENDANCE**

Members Present

Dr. Rob Latour (Chair)  
Shanna Madsen (Vice Chair)  
Steve Atkinson  
Monty Diehl  
AJ Erskine  
Daniel Knott  
Mike Leonard  
Chris Moore  
Ken Schultz  
Mark Federici

Members Absent

n/a

VMRC Staff Present

Pat Geer  
Somers Smott  
Lewis Gillingham  
Alexa Galván  
Jill Ramsey

Others Present

Taylor Deihl  
Jimmy Kellum  
Stuart Deihl  
John Balderson  
Kenneth Pinkard  
Robert Crockett

Minutes were prepared by Somers Smott.

**I. MMAC Welcome and Introductions**

Dr. Rob Latour called the meeting to order at 4:05pm. As this was the first in-person MMAC meeting, he asked for introductions from all the committee members.

**II. Approval of minutes from the from March 2021 Meeting**

The motion to approve the minutes from the March 31, 2021 meeting was made by Mr. Monty Diehl, seconded by Mr. Chris Moore. The minutes were approved by consent. Mr. Ken Schultz asked staff to provide the minutes via email when they are posted to the VMRC website. Chair Dr. Latour explained the delay in the email was due to staffing changes at VMRC, and moving forward staff will ensure the minutes are emailed out as soon as they are complete.

**III. New Business:**

**a. Virginia Fisheries Independent Surveys**

Chair Dr. Latour began with an overview of young-of-the-year menhaden catches in the Virginia Institute of Marine Science (VIMS) seine survey. He explained that the seine survey is specifically designed to capture striped bass, and any menhaden encounters are considered bycatch. The dataset is dominated by zeroes, and only 11% of the tows capture one or more menhaden over the entire time series. Chair Dr. Latour cautioned that this dataset is “boom or

bust” – sometimes there are several encounters of menhaden, and sometimes there are zero. The survey is a small part of all of the coastwide independent and dependent surveys used for menhaden stock assessments. Mr. Moore was grateful for the presentation and asked if there was concern for recruitment failure as the presented weak years happen to be from more recent times. Chair Dr. Latour warned against drawing conclusions of recruitment failure and argued that the recruitment in the 1970s was much worse than it has been recently. After the seine survey was adjusted in the 1980s, there were more samples taken but fewer encounters of menhaden. Mr. Steve Atkinson asked about the Maryland seine survey, which recently concluded that current recruitment is low compared to the last 25 years. Chair Dr. Latour again cautioned against drawing conclusions from “boom or bust” datasets, as the Maryland seine survey is designed exactly like the VIMS seine survey. He does not believe the science shows any recruitment failure and cites the healthy status of the fishery as evidence of this. He further explained that environmental factors have more influence than fishing pressure on recruitment. Mr. Moore requested that Chair Dr. Latour present on the trawl survey at the next meeting for comparison. Mr. Schultz asked Chair Dr. Latour about the importance of Chesapeake Bay specific recruitment to the coastwide stock of menhaden. Chair Dr. Latour stated that the bay is the largest nursery by area, but in reality it is not possible to determine the spawning location of the offshore population without a genetic study. Mr. Moore cited the most recent stock assessment which determined a third of the coastal population spawns in the bay, but Chair Dr. Latour confirmed that was their best estimate and should not be taken as certainty. Mr. Diehl asked how recruitment impacts the overall biomass of menhaden. Chair Dr. Latour explained the stock assessment combines all of the surveys and creates an estimated recruitment time series using a model. Stock status is based on egg production, not recruits. He explained that currently menhaden are at a healthy status, and they are not overfished. Mr. Moore mentioned that the stock assessment terminal year shows a major drop in recruitment, but Chair Dr. Latour cautioned against terminal year data. He reminded the committee that the menhaden stock assessment update has begun and more data will be coming out soon.

#### **b. Progress on Addendum 1 to Amendment 3**

Vice Chair Ms. Shanna Madsen, Deputy Chief of Fisheries Management, provided an overview of menhaden management through the Atlantic States Marine Fisheries Commission (ASMFC), and an update on the progress of Addendum 1 to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Vice Chair Madsen explained that Amendment 3 was approved in 2017 and implemented in 2018. Menhaden were managed under a single species biological reference point up until 2020 when the newly approved Ecological Reference Point (ERP) was implemented. The Total Allowable Catch (TAC) was updated in Amendment 3, with changes to the bycatch allowance and the episodic set-aside program, as well as the state allocations. Mr. Schultz asked what defines an episodic event. Vice Chair Madsen explained that if the biomass of menhaden spikes in the northern region of the U.S., those states are able to access that set-aside quota. If the set-aside is not used, then it is reallocated to all the states at the end of September every year. Mr. Diehl asked how many years have to go by until an episodic event is considered the new normal. Vice Chair Madsen explained that was the basic question the Plan Development Team (PDT) for menhaden was tasked with, with hopes that allocation changes could address episodic event issues in the northern region. Mr. Moore asked for clarification on what part of the Virginia menhaden fishery uses the bycatch provision, and how it affects the TAC. Vice Chair Madsen clarified that the small-scale non-purse seine

bait fishery is able to use the bycatch provision – less than 2% of Virginia’s overall menhaden fishery. She also explained that the bycatch allowance does not count towards the TAC, but is still reported to ASMFC. Amendment 3 currently leaves the bycatch provision up to interpretation by state, where Virginia and New Jersey apply it by sector instead of by the entire jurisdiction’s TAC. Addendum 1 will clarify which interpretation is used. Vice Chair Madsen then showed how the fishery has changed over the most recent years, which prompted the ASMFC Menhaden Board to approach reallocation. There was a work group created with the Board members that produced a document for the PDT to use as they developed the addendum. The addendum will possibly be ready for public comment in February, and ASMFC will host a public meeting at VMRC for interested parties. Vice Chair Madsen then described the allocation options that will be in the addendum. Currently, there is a 0.5% fixed minimum quota assigned to all states with a declared interest in the menhaden fishery. There are options to release that 8% total quota from the fixed minimum for reallocation. The time frame used to determine state allocations has five options: long time frame, recent time frame, weighted time frame, moving average time frame, and second best year time frame. Mr. Diehl expressed concern over the recent time frame option, stating that it rewarded states that went over their quotas. Vice Chair Madsen assured him that states were not going over their quota, as all quota was accounted for by transfers and/or the episodic set aside. Mr. Diehl commented that Virginia foots the bill for most of the episodic set aside because of how much quota we get, but Vice Chair Madsen assured him the addendum hoped to adjust allocations to prevent this issue from occurring. Vice Chair Madsen then moved on to the incidental catch options for the addendum. The ASMFC Menhaden Board will have to choose how to interpret the sector quotas and if it applies to an entire jurisdiction. There are also options to restrict gear types such as purse seines and other non-directed gears. Mr. Diehl expressed concern at the removal of incidental catch and wondered how Virginia would deal with that change. Vice Chair Madsen assured him that MMAC would be involved in how Virginia would respond to that change, should it occur. Once the presentation was complete, Mr. Schultz asked if states can choose not to relinquish their quota. Vice Chair Madsen said yes, and that quota would just not be used and the TAC would not be met. Mr. Erskine asked if getting rid of the fixed minimum freed up enough quota for the northern states, and Vice Chair Madsen said that has not been determined yet and is something the PDT is reviewing with additional analyses.

### **c. An Update on Omega Protein’s Fishing Activities**

Mr. Diehl provided an informational presentation on Omega Protein. He began with photos of the schools of menhaden the spotter planes search for, and a video of the two purse seine net boats making a set. He showed photos of menhaden schools right off the shore in Virginia Beach and cautioned that those are not the schools Omega is targeting. Mr. Diehl then explained that bottom debris is to blame for their net tear issues. He described that early in the netting process the fish are able to escape unscathed if a net tear occurs, but as the net gets tighter and tighter the fish are less likely to survive if released. Once the net is tight, the mothership engines cannot be turned on or else the net would wrap in the engine. Therefore, the mothership is at the mercy of the tides. If the captain of the ship notices a tear in the net as they pull it up, they report the spill to their main office and to the proper authorities. They ask the spotter planes how many fish they observed in the school set upon, and subtract the amount they were able to process out of the net to get the total number of fish spilled. They take the latitude and longitude of the spill and inform

Chief of Fisheries Pat Geer. Omega will then monitor the location for 2-3 days with planes to check for floating fish. If any dead fish wash up on the shore, they have an environmental contractor come clean them up. Mr. Diehl continued on to say that spills are rare, and there have only been 12 spills in the last four years out of 10,000 sets of the net. He also clarified that most spills occur outside of the bay, and very rarely do fish end up floating or dead. Mr. Atkinson asked if most spills occur in shallow water, and Mr. Diehl confirmed that was accurate. From the audience, Mr. Jimmy Kellum added that the other purse seine companies follow that same spill protocol. Mr. Schultz asked how the spotter planes are able to estimate the amount of fish in a set, and Mr. Diehl explained that the spotters get within 10% of the actual amount of fish by observing the color of the fish from above, the “whip” of the fish on the surface, and by measuring the area of the school. Mr. Schultz then asked how the boat captain knows how many fish could have spilled out, and Mr. Diehl said the captain knows exactly how many fish per minute are pumped onboard, and can account for the missing fish. Mr. Diehl also mentioned that the captains estimate how many fish are in every set they make, and once they make it back to shore they confirm exactly how many fish were caught that day per set. Mr. Schultz asked where Omega’s product is primarily used. Mr. Diehl described how aquaculture operations need fish meal, as well as premium pet food companies.

#### **IV. Issues for Committee Consideration**

##### **a. Proposed reduction fishery spill catch accounting**

Mr. Atkinson began by saying although he agrees that spills are less than 1% of the Chesapeake Bay cap, he still thinks every single menhaden is important given the status of striped bass in the bay. He believes that the amount of fish spilled should be reduced from the bay cap as it is wasting fish that would have been used for food by other fish. Mr. Diehl compared the loss of the resource to crab pot bait in the bay, as well as hook and line fishing. Chair Dr. Latour asked Chief Geer if Virginia had any other fisheries held to this standard – quota subtractions due to spilled fish. Chief Geer said no, and that Virginia does not have a wanton waste law specific to fisheries either, so fishers can discard dead fish with no punishment. Mr. Schultz asked how a wanton waste law would apply to a fish spill with Omega, and Chief Geer said it would depend on how the regulation defined wanton waste (e.g., accidental or deliberate). Mr. Atkinson believes that if Omega sets in shallow water, that is deliberate and they should be held accountable. Mr. Diehl interjected to say the same thing could be said about hook and line fishing near structures. Mr. Schultz reminded the committee of the visibility of Omega fish spills, citing this as the reason for the need for accountability for their quota. Mr. Mike Leonard said that discard mortality estimates are accounted for against the catch limit for striped bass in the stock assessment, so the principle of accountability is not new and should also apply commercially. Chair Dr. Latour cautioned against the mortality estimates, saying it’s possible they are severely underestimating the actual recreational mortality. Mr. Erskine asked if the wanton waste law could apply to both the recreational and commercial sector, and Chief Geer said accountability is difficult with the recreational sector so it would likely be commercial only. Chair Dr. Latour asked if there was a precedent for fish spill catch accounting, and Vice Chair

Madsen said no, there is no fishery that presently works this way and the fishery would need an ITQ system, like striped bass or black sea bass to count against an individual quota. Vice Chair Madsen also mentioned that the magnitude of the spills are visible in this fishery, but in other fisheries it may be impossible to determine (e.g., ghost pots, ghost gillnets, etc.). Chair Dr. Latour reminded the committee that MMAC cannot work in a vacuum and they must make recommendations that can be used agency-wide. He also reminded everyone that in reality the discussion is commercial fishing vs. commercial fishing (i.e., Omega Protein falls under VMRC's commercial fishing umbrella). The committee agreed that the recommendation would be for staff to begin work on a wanton waste law for the fisheries of Virginia, and to come back with more information at the next MMAC meeting.

#### **b. Proposed restriction on purse seine fishing – 1 mile from shore**

Mr. Atkinson asked to see the location of Omega's net sets and fish spills in relation to the shores of Virginia. Chief Geer prepared a map showing the sets in comparison to the shore, and indicated that the spills are usually outside the one mile buffer Mr. Atkinson is proposing. He further explained that there have only been three spills inside the bay in the past four years. Mr. Kellum from the audience cautioned the committee against penalizing the purse seine fisheries for fish spills as it may reduce accountability. The captains may be less likely to report fish spills if they know they will get in trouble. He also reminded the committee that no company wants spills as the clean up can cost as much as \$80,000. Mr. Diehl agreed with Mr. Kellum and said that one of their spills cost two to three dollars per fish to clean up.

### **V. MMAC Strategic Vision**

Chair Dr. Latour tasked the committee individually with bringing forward visionary thoughts for goals and objectives for MMAC. The committee is strong because of the diverse backgrounds and sector representation, and that strength can be used to break down misconceptions of the fishery. Vice Chair Madsen added that it is important for each committee member to bring what they learn from MMAC back to their sectors and explain the facts, to prevent the spread of misinformation.

### **VI. Other Business**

Mr. Erskine described an issue with his sector of the fishery – the bait sector. He attempted to find more quota last year and could not purchase it, but the market was available. He suggested that MMAC look into Virginia's sector allocations and transfers. Vice Chair Madsen suggested MMAC put together a sub-committee to look into this. Chair Dr. Latour asked Mr. Erskine to come up with some proposals for the next meeting. He also asked Mr. Erskine, Mr. Diehl, Mr. Moore and Vice Chair Madsen to be on the committee. Mr. Kellum and Mr. Stuart Diehl from the audience also asked to be on the committee. Vice Chair Madsen will chair this subcommittee and gather industry input from the various menhaden sectors. The subcommittee will work on

some strawman ideas, but not final products, that can be given as a progress report at the next full MMAC meeting.

Chief Geer asked the committee to stay informed on COVID-19 Relief packages and encouraged those eligible to apply for the latest USDA funding when the application period opens.

Vice Chair Madsen agreed to email out the Addendum 1 public document once it was available for public comment from ASMFC and encouraged members of MMAC and interested parties to attend subsequent ASMFC public hearing.

## **VII. Adjournment**

The meeting was adjourned at 6:11 P.M. by Chair Latour.