

**Joint
Sport Fish Advisory Commission
Tidal Fisheries Advisory Commission
Meeting Summary
May 19, 2009, 5:00 pm to 7:00 pm
Tawes State Office Building, Cafeteria**

Sport Fisheries Advisory Commissioners (SFAC) present:

Richard Gaines, Chairman

Diane R. Baynard

Mike F. Critzer

David B. Dansberger

Brenda Foster

John D. Marple

Edward O'Brien

Mark Sampson

James L. Smith

William T. Windley Jr.

William W. Carrier

Tidal Fisheries Advisory Commissioners (TFAC) present:

William Woodfield Jr., Chairman

Jack Brooks

Russell Dize

James R. Gross Jr.

Glenn James

Andrea A. Jacquette

Karen Oertel

Larry Simms

The meeting was called to order at 5:15 p.m.

Agenda Item 1 – Welcome / Announcements

Marty Gary gave the welcome and announcements on behalf of Fisheries Service.

Upcoming meetings can be viewed at the DNR website

<http://www.dnr.state.md.us/fisheries/> on the Fisheries Activity Calendar.

Commissioner Diane Baynard has served for 12 years on both the SFAC and TFAC commissions. She will be leaving the commissions due to her pending move to Florida. The Department thanks her for all her time and advice.

The appointment process for Commissioners to the SFAC and TFAC is near completion. The appointments office is currently working to contact appointees. Once individuals are sworn in, DNR will announce the new commissions to the public.

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Agenda Item 2 – Approval of the April SFAC & TFAC Meeting Summaries

Marty Gary is working to get past meeting summaries posted online.

TFAC Meeting Summary from April 9, 2009.

All commissioners received summary. *Chairman Woodfield motioned for minutes to be approved, seconded, unanimous approval.*

SFAC Meeting Summary from April 6, 2009.

All commissioners received summary. *Chairman Gaines motioned for minutes to be approved. The motion did not pass.*

Commissioner O'Brien wanted to clarify the position of the SFAC on catch and release that was discussed at the April 6th meeting, and have the clarification be accurately reflected in the meeting minutes. The Maryland Charter Boat Industry Association (MCBIA) is not against catch and release fishing for striped bass in the lawful sanctioned season on the Susquehanna Flats. Commissioner O'Brien indicated that the MCBIA thinks what has gotten way out of control is the catch and release before the season starts in March and April. This practice has taken off especially in areas such as Sandy Point. This issue has been discussed in the past in the White Paper Committee, and in the Striped Bass Ad Hoc Group. He is not sure how the 'bait thing' got out of control, but it did and it was not monitored. The MCBIA supports catch and release, but not in an out of season context. Some charter boats are doing it (catch and release) too, but it has lessened this year due to peer pressure. The practice has picked up in last 2-3 years. ASMFC staffers and commissioners in the area are aware of it, and the Commission (SFAC) needs to make a statement saying that it is being evaluated to help keep the practice under control.

Chairman Gaines indicated for the record that a concern regarding striped bass catch and release fishing was brought to the table by several individuals, one of which was the Maryland Charter Boat Association, and this issue was discussed at the April 6th meeting. All commissioners present at that meeting unanimously agreed with the concern and asked the Department to look into options and come back with recommendations. It was expressed as a concern, not as an attempt to try to close, shut, or stop anything. The meeting summary needs to reflect this accurately for the public record.

The Department will update the minutes from SFAC meeting on April 6, 2009 and resend to all commissioners. The minutes will be approved via email with the SFAC Commissioners, and they will be posted to the public record as soon as possible.

Agenda Item 3 – NRP Update by Paul Hanyok (Commander Area 7)

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Paul Hanyok presented the Commissions with a summary of law enforcement for the past month and answered questions on Catch a Poacher from the previous meeting.

All commissioners received a handout with a summary of the violations from the last month. Violations included illegal gill nets, undersized flounder and tautog, closed season striped bass cases, undersized peeler crabs, fishermen using bait in special trout management areas, illegal fishing in youth/blind areas, etc.

The Catch-a-Poacher program is designed to encourage citizens to call in when they witness a violation with the possibility of receiving a reward. Calls are filtered through the normal NRP phone system. A caller must identify themselves. Ongoing complaints immediately go to an officer while investigations that are not currently ongoing are sent to the area officer and an officer has 5 days to make a report. The caller remains anonymous but is given an opportunity to get more involved if their added input is needed to make a case. If a case is made, a review board determines the callers reward. NRP receives 10-12 calls per year from citizens wanting to be a part of the Catch-a-Poacher program. Of the calls 2-3 cases are made with a 95% conviction rate. Most rewards are between \$100-200. The same communication center and operators receive Catch-A-Poacher calls and regular NRP calls; the difference is in the documentation of the call so the caller can receive a reward.

Agenda Item 4 – Program Updates from DNR Staff

Inland Fisheries – update by Tom O’Connell

Inland fisheries hosted an open house on May 9, 2009 at Allegany College to present the public with information on brook trout management and other current issues, and provided the public an opportunity to provide feedback. Information from the open house is available at <http://www.dnr.state.md.us/fisheries/#7b>.

ASMFC Spring Meeting – update by Tom O’Connell

Tom O’Connell represented the DNR at the recent ASMFC meeting and provided the commission with a summary of some of the highlights from the meeting. A new striped bass stock assessment will be available this fall.

The Board approved the initiation of an addendum that will come back to the Striped Bass Management Board at the next meeting in August and if approved it will go out for public comment. The addendum will allow Atlantic coastal states to roll-over up to 50% of the quota in the coastal (not Bay) commercial striped bass fishery. The roll-over would be reviewed annually by the technical committee.

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The Striped Bass Technical Committee reported the best estimates on the Virginia Wave 1 January/February striped bass recreational fishery. Virginia does not monitor that fishery, but the committee put forth their best estimate based on North Carolina data and tag recovery rates. They estimate the fishery to range from 200,000 to 850,000 fish, thus recognizing that it is a significant fishery. They suggested that the fishery begin to be monitored in Virginia.

North Carolina informed the Management Board that they sent a letter to the Secretary of Commerce asking them to reconsider opening the EEZ for recreational and commercial striped bass fishing. The Secretary of Commerce responded that this is not something that can be done at this time. There is an Executive Order, signed by former President Bush, which declares the area as Game/Sport fishing only for striped bass and red drum. It would take a new Executive Order to reconsider this issue as well as support from the ASMFC.

There was a controversial discussion regarding the menhaden reduction fishery in Chesapeake Bay. Four years ago a new cap was put in place for the Chesapeake Bay Harvest Reduction fishery, based on the previous 5 year landings in Virginia. Next spring there will be a new stock assessment. Virginia asked for an agenda item and motioned to extend the harvest reduction fishery cap for an additional 5 years. This original motion was modified to an additional 3 years with an annual review by the technical committee and management board.

Addendum for the ASMFC River Herring Fishery Management Plan was approved that defines what a sustainable river herring fishery is. It also gives states an opportunity to put forth a fishery management plan that demonstrates their fishery is sustainable and that the plan allows populations below optimal levels to grow over time. Plans must be submitted by January 1st. If the plan does not get approval from the technical committee and the management board by January 2012, the State's fishery for river herring will be closed. The Board is also sending a letter to the Secretary of Commerce regarding the by catch of the river herring estimated to be double the State directed landings. Since this is in Federal waters the Board is requesting that the Secretary of Commerce implement emergency action to monitor and address the by catch issue. DNR staff is putting together ideas for a river herring fishery management plan.

ASMFC has yearly awards for excellence. The multi-jurisdictional team, including members from Maryland, working on the striped bass investigation was awarded the Award of Excellence for Enforcement.

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Blue Crabs – update by Lynn Fegley

Winter Dredge Survey/Crab Stock Status

At the recent Chesapeake Bay Stock Assessment Committee Meeting Maryland's harvest estimate for 2008 was accepted. The total 2008 Maryland Chesapeake Bay harvest was estimated to be 29.4 million lbs; the female hard crab harvest was estimated to be 9.3 million pounds, but what was reported was significantly more than that.

The Winter Dredge Survey resulted in an estimated Bay-wide total abundance of 402 million crabs which is a significant increase over last year, but is below the average level for the survey. The goal remains an annual harvest of no more than 46% of the population. The increase in abundance is primarily due to a rise in adult crabs, especially female crabs. We will be better able to gauge how effective the management has been after we measure how many juveniles are produced by the increased abundance of adults. These juveniles will be measured in the 2009-2010 winter dredge survey.

Latent Effort

Latent effort is still a problem. 2009 bushel limits did not take into account the possibility of new entries into the fishery. In 2008, 576 additional people reported in the fishery. Mostly in the LLC category, a substantial number TFL's, and some 600 & 900 pot authorization. Some of these may have reported just to make their license active, but DNR must still manage based on the additional crabbers in order to achieve the 46% harvest target.

A Commissioner indicated for the record that in her opinion DNR 'scared people to death and a huge part of the 576 was in reaction to that,' by proposing a freeze on unused licenses. Additional commissioners agreed.

DNR hosted numerous Blue Crab Open Houses. The department is currently working to implement a buy-back program for LLC licenses, both active and inactive, with Federal Crab Disaster funding. Bought back licenses will not be reissued. There will be regulation submitted later in the year, to be effective April 1st, that will offer a range of options of what a license holder can do with their license. The open house informational material is available at <http://www.dnr.state.md.us/fisheries/#4g>.

A commissioner is concerned with letters that license holders are receiving stating that they have not submitted reports and that their license could be taken away if their reports are not turned in. Numerous people have complained that they did send in the reports but they are not getting logged in with the Department. DNR staff is exploring the options of computer reporting. Additionally there may be a lag time were crabbers that turn in their reports may receive one notification because the report has not been entered into the system prior to the deadline for the letters to go out, but they should not receive a second

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notification. A commissioner stated that DNR needs to fix their process for receiving and logging in reports prior to taking away peoples licenses for non-reporting.

Commissioner Dansberger has multiple concerns. First, the crab harvest was 2% over the 46% target which is a large number of crabs. Believes the Department should adjust for this overage in this coming year's catch. Second, if a crabber does not send in a report, he believes their license should be taken away. He has never had a problem with DNR receiving any report he has submitted. He is very concerned with the inaccuracies in reporting or that the winter dredge report is incorrect. Lynn Fegley clarified that the dredge survey has been an accurate tool for 20 years; this is the first year that the harvest that was reported fell outside the boundaries of the harvest that was estimated. In approximately 2 weeks NOAA will release a report from the Stock Assessment Committee that will go into detail on many of the issues the commissioner raised.

Update on Discussion of Crab Pot Buoy Colors

DNR is currently contacting members from TFAC, SFAC, and Boating Act Advisory Committee representatives and this issue will be picked up again once the new committee members are sworn in.

Oysters – update by Mike Naylor

Buy Stations

Commissioners received a hand out on Buy Stations. DNR received a request to decrease the number of buy stations as numerous locations are no longer used. It is very easy to add buy stations in the future, if necessary. The Department is sending a list of current buy stations to all stakeholders. The stations recommended for closure will be listed in red.

Shell Dredge Permit Applications

A permit to reclaim shell planted by DNR over the past 40 years but not buried by sediment up to 12 inches is pending action by the permitting agencies. Implementation of a water quality monitoring plan is expected to be a permit condition. Decision on the permit is expected this summer.

The Department is also required by the legislature to apply for a shell dredge permit application by July 1st, if recommended by the Oyster Advisory Commission. The Oyster Advisory Commission is currently recommending that the Department apply for permit to dredge shell from Man-O-War Shoals in Baltimore County.

2008/2009 Preliminary Oyster Harvest Estimates

95,331 bushels reported so far, but the reporting is not yet complete. Currently up about 12,000 bushels from last season. Looking at combined harvest from 2007-2009 the best harvest areas are concentrating around the Choptank, Eastern Bay, and Tangier Sound.

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2008 Fall Survey

365 samples taken from 282 bars. Observed mortality of oyster disease levels continue to be relatively low as they have been since 2003, but infection rates are still high.

A commissioner stated that every county should carefully review the list of buy back stations for potential closures, and provide feedback to the Department.

A commissioner asked what is being done regarding planting seed this year. This issue was discussed in detail at the County Committee Meeting. There will most likely be some minor seed program using industry money this year, but it has not been finalized.

Agenda Item 5 – 2009 Yellow Perch Management Update – by Mike Luisi

There was a need for better management in both the commercial and recreational yellow perch fishery. New management methods were implemented for the 2009 season. The commissioners received copies of the presentation. Additional copies can be requested through Marty Gary or Mike Luisi.

In addition to the information in the presentation, the following was discussed:

The initial results for the recreational fishery creel survey conducted by CBL should be available by June 1st (update – available in August).

The Declaration of Intent for the commercial fishery for the 2010 season will take place from October 1-31, 2009. Everyone who declared in 2009 will be sent a letter to declare for the 2010 fishery.

Currently DNR has to give 48 hours notice before closing the commercial fishery when the Total Allowable Catch (TAC) is achieved. The Department would like to consider decreasing that amount of notification time, because during that time period the TAC can be surpassed. The information would be easy to disseminate through the required daily call in reporting process.

There have been reports of issues with the tags once the fish have been sold to mass processing facilities. The Department is looking at alternate methods to eliminate this problem and maintain the level of accountability required.

For harvest monitoring, it was reported that the harvest in the Upper Bay was above the TAC, while the harvest in the Chester River and the Patuxent River were under the TAC. The overall Baywide Commercial Yellow Perch Landing was slightly above the TAC. Commissioner Oertel asked if the numbers were averaged to determine the total

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catch for the Bay. It was clarified that the population in each area is treated as a separate stock. The overage in one system does not get negated by an underage in the other systems. The populations are managed separately because of their special distribution.

Commission Simms asked if there is a total estimated number of recreational anglers that participated in the yellow perch fishery. Information on this issue will be obtained from creel survey.

Commissioner Gross stated that the 48 hour notification is crucial for commercial fishermen that are coordinating live sales. He also asked if the areas that were under harvest this year would receive that underage as an additional harvest in the future. The levels of harvest are based on the yearly assessment. Overages will be deducted from the new TAC, and underages will be not roll over to the next year.

The Department will have upcoming public forums for both commercial and recreational yellow perch anglers. The Department will follow up with both commissions once the creel survey is finalized.

Agenda Item 6 – Commercial Summer Flounder H&L Minimum

Mr. Phebus requested that the Commissions hear the issue regarding minimum size limits for commercial summer flounder and discuss it. This is not the first discussion of this issue with the Commissions.

Harley Speir, MD DNR, provide the Commission with a brief background on this issue. For a number of years the commercial H&L size limit for flounder has been the same as the size limit for recreational. The commercial limit for all other commercial gear is 14". Commercial H&L follow recreational which is bigger.

One reason is to reduce conflicts between commercial H&Lers and recreational H&Lers fishing for flounder in the same area. Conflict could arise if commercial H&Ler could bring in 14" at bay limit of 50 lbs per day and recreational would only get 1-2 fish at the larger size while fishing in the same area. This is done for other species as well (i.e. Tautog, Walleye).

The second reason is the department does not want to create a new fishery. Currently there are 267 commercial H&Lers but an additional 2288 commercial licenses could H&L. The Bay quota is relatively small at 30,000lbs. The concern is that if an additional fishery was added at commercial size limits there would be over fishing and the season would have to be shut much earlier.

The ASMFC monitoring committee for flounder looked at effects on harvest of slot limit of 14-16" and increased bag limits. A 284% increase in harvest would occur from this

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smaller size limit. Smaller size limits could increase the overall catch enormously, thus there is a possibility of creating a Commercial H&L Fishery at 14”.

Mr. Phebus addressed the Commissions in response to Mr. Speir. There has always been a commercial H&L fishery in Ocean City, but it was done quietly or not very big. He’s been fishing there since late 80’s. In 2002 or 2003 a change (in size limited regulation) occurred due to suspected conflict between commercial and recreational fishermen. He did not know of any actual conflict. In 2003 “this commission” recommended to go back so commercial H&Lers could have the same opportunity as other commercial methods, but former MD DNR Fisheries Service Director, Mr. Howard King kept it tied in to recreational size limit and the size limit has gone up ever since. It is currently 18” and over. This size represents 5% of stock, from a read-out received from Marty Gary several years ago. In order to catch 1 keeper fish a commercial H&Ler has to catch 20. That’s about the average. Side effect is killing some of the fish that are being thrown back over. For all other commercial gear the size limit is 14” and up, representing 50% of the fish. They are able to keeping 10 out of 20 fish caught. Total fishery caught almost 200,000 lbs this year between the Ocean and Bay, with most coming from the ocean. He understands that DNR will not go back to letting commercial H&Lers catch 14” flounder in the Bay area. He would like commission to recommend “allow me, in ocean to have same equity/opportunity to catch that same size (14”) fish with a H&L”. He can be in same area as other commercial fishermen who can keep more then he currently can. Commercial H&Lers brought in very little (none for him) last year because of the size limit. Once the commercial fishery limit is reach it is closed, which is a difference between commercial and recreational fishermen in what they can keep because the commercial fishery will close when reached.

No other state on coast ties in commercial H&L limit with recreational size limit. He knows Florida (not sure on Georgia), North Carolina, Virginia, Delaware do not set limits this way. He does not think users have a conflict. MD is only state that does this. He thinks area from Route 90 bridge past Rt 50 to the Verazano Bridge will be commercial free someday. He doesn’t get paid like Charter Boat Captains for fish that he has to release. The Charter Boat is getting paid for the day regardless of what fish they keep. He would like the Commissions to recommend for him to be able to fish in the Ocean at the commercial size limits. It wouldn’t be hard to enforce, once he reached Ocean limit he would come back without putting any gear in the water, thus showing that all fish on boat were caught in ocean.

He appreciates the Commissions time.

Commisioner Mark Sampson commented that if the Department considered lowering the commercial H&L size limits there will be a conflict. The size limits should “Absolutely Not” be lowered because “yes, there would be a conflict in the ocean”.

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Agenda Item 7 – AES LNG Plant Proposal Status

Marty Gary, MD DNR spoke on behalf of the DNR staff.

A letter dated April 24, 2009 from Elder A. Ghigiarelli Jr, Deputy Administrator, MDE Wetlands and Waterways Program to Mr Joseph P. Davia, Chief, MD Section Northern, Regulatory Branch, Baltimore District, Corps of Engineers and Mr. Kent Morton, Project Manager, AES Sparrows Point LNG, LLC was passed out to all Commissioners.

Commissioner Critzer requested status of the AES application for LNG plant at Sparrows Point Permit.

From the letter “ MDE is unable to conclude that, on this record, the Project will be carried out in compliance with Maryland water quality standards. Accordingly, the State of Maryland hereby denies the Clean Water Act, Section 401 Water Quality Certification for the Project. The Department will reconsider this decision upon the applicant’s fulfillment of the above information/consultation requirements.”

Commissioner Critzer is curious if DNR has a gut feeling if the project will go ahead and believes it will be a negative impact to all stakeholders in this room. Is the department pursuing some sort of mitigation from AES because they are creating a negative impact on stakeholders?

Marty Gary does not know if mitigation is currently being pursued. Tom O’Connell will follow up with another unit under Frank Dawson to find out. Marty Gary will get answer to Commissioners over email.

Commissioner Critzer asked for clarification of the status as he understands it ‘currently permit is denied but there is a legal process to go through to possibly get it passed?’

Marty Gary agreed that this is his understanding from reading the letter.

Another Commissioner stated that yes, it is denied but a big loophole exists in letter “The Department will reconsider this decision upon the applicant’s fulfillment of the above information/consultation requirements.” Mitigation was discussed in past SFAC meeting. This project will impact everybody (with ships coming up the bay). AES should give money to improve recreational fishing opportunities to replace what they are taking away for example fund the reef program, public fishing docks, better access, etc. Same thing on commercial side, funds for getting crab pot buoy colors changed, etc. If the project goes, the Department should be ready with a list of mitigation requests. All are opposed to it, but if it goes MD should benefit from it and it should be focused on the

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recreational and commercial fishermen that are being displaced. DNR needs to be ready if the project goes ahead.

Commissioner Critzer stated appeal is through Federal Appellate court in Richmond, which is much more detached and he believes project will continue to gain momentum.

Commissioner Ed O'Brien said there was a big push at the end of the last administration to get this project through. He thinks the issue is far from dead. MD legislators need to pursue this issue with the new administration. Every stakeholder with possible exception of 1 opposes this situation. This is not a time to fall back and wait, regenerate reasoning to oppose project, resend letters of opposition sent in the past.

Commissioner Ritchie Gaines asked if it would be appropriate for both commissions to go on record in opposition? *He motioned – That the joint TFAC and SFAC encourage the Department to continue to support the denial of the application permit and the construction and opening and implementation of the facility. The motion was Seconded by Larry Simms. There was no Discussion. The motion passed with one abstention from Commissioner Diane Baynard. All other Commissioners present voted in favor of motion.*

The Commissioners agreed with Commissioner O'Brien to resend the letters that were sent in the past. Marty Gary will work with the two Chairmen to accomplish this.

Agenda Item 7 – New Business

A commissioner is concerned with the striped bass tags being ready in time for the start of the season.

The company that makes the tags stated they would not be able to make the tags in time, but it is now probable that the tags will be ready in time. The DNR staff will come up with an alternate option if the tags are not ready in time.

Commissioner Jack Brooks said that there is a looming disaster because picking houses did not get the H2B guest worker visas for temporary workers to pick crabs. Similar issues are happening in Virginia where the industry has petitioned Governor Kaine to petition Washington to help solve this problem. Would like to know if the Maryland Governor can do the same or help support Governor Kaine's efforts. Tom O'Connell will follow up on this issue.

Jack Brooks motioned to ask the Governor of Maryland to become vigorously active with the Governor of Virginia and other Governors to pursue with the leadership in Washington D.C. a quick resolution to the H2B/Seasonal worker limit that we face in the Chesapeake Bay. The motion was seconded. Both TFAC and SFAC voted and

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passed the motion. None were opposed. Commissioners Bill Critzer and Diane Baynard abstained.

The meeting was adjourned at 7:20 p.m.

DRAFT