

PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ATLANTIC MENHADEN MANAGEMENT BOARD

Wentworth by the Sea
New Castle, New Hampshire
October 28, 2019

Approved February 5, 2020

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1. **Approval of Agenda** by Consent (Page 1).
2. **Approval of Proceedings of February 2019** by Consent (Page 1).
3. **Move that the Atlantic Menhaden Management Board recommend to the ISFMP Policy Board that the Commonwealth of Virginia be found out of compliance, for not fully and effectively implementing and enforcing Section 4.3.7 Chesapeake Bay Reduction Fishery Cap of Amendment 3 to the Interstate Fishery Management Plan for Atlantic menhaden.**

The Commonwealth of Virginia must implement an annual total allowable harvest from the Chesapeake Bay by the reduction fishery of no more than 51,000 metric tons. The implementation of this measure is necessary to achieve the goals and objectives of the FMP, and maintain the Chesapeake Bay marine environment to assure the availability of the ecosystem's resources on a long term basis (Page 18). Motion by John McMurray; second by Rep. Sarah Peake. Motion carried (Page 18).

4. **Motion to adjourn** by Consent (Page 18).

ATTENDANCE

Board Members

Pat Keliher, ME (AA)	Andy Shiels, PA, proxy for T. Schaeffer (AA)
Stephen Train, ME (GA)	Loren Lustig, PA (GA)
Sen. David Miramant, ME (LA)	Roy Miller, DE (GA)
Cheri Patterson, NH, proxy for D. Grout (AA)	John Clark, DE, proxy for D. Saveikis (AA)
Ritchie White, NH	Lynn Fegley, MD, proxy for B. Anderson (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Phil Langley, MD, proxy for Del. Stein (LA)
Rep. Sarah Peake, MA (LA)	Steve Bowman, VA (AA)
Nichola Meserve, MA, Administrative proxy (Chair)	Bryan Plumlee, VA (GA)
Raymond Kane, MA (GA)	Pat Geer, VA, proxy for Sen. Mason (LA)
Bob Ballou, RI, proxy for J. McNamee (AA)	Chris Batsavage, NC, proxy for S. Murphey (AA)
David Borden, RI (GA)	Jerry Mannen, NC (GA)
Eric Reid, RI, proxy for Rep. Sosnowski (LA)	Mike Blanton, NC, proxy for Rep. Steinburg (LA)
Justin Davis, CT (AA)	Mel Bell, SC, proxy for R. Boyles (AA)
Bill Hyatt, CT (GA)	Malcolm Rhodes, SC (GA)
Sen. Craig Miner, CT (LA)	Spud Woodward, GA (GA)
Jim Gilmore, NY (AA)	Doug Haymans, GA (AA)
Emerson Hasbrouck, NY (GA)	Rep. Thad Altman, FL (LA)
John McMurray, NY, proxy for Sen. Kaminsky (LA)	Martin Gary, PRFC
Joe Cimino, NJ (AA)	Derek Orner, NMFS
Tom Fote, NJ (GA)	Mike Millard, USFWS
Adam Nowalsky, NJ, proxy for Sen. Andrzejczak (LA)	

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Staff

Bob Beal	Maya Drzewicki
Toni Kerns	Katie Drew
Max Appelman	Kristen Anstead

Guests

Robert Atwood, NH F&G	Ben Landry, Omega Protein	Bob Ross, Boxford, MA
Robert T. Brown, MWA	Tom Lilly, Menhaden Project	Jocelyn Runnebaum, TNC
Matt Cieri, ME DMR	Carl Lobue, TNC	John Satterly, VSSA
Sen. Ronnie Cromer, SC (LA)	Shanna Madsen, NJ DFW	Bret Scholtes, Omega Protein
Monty Deihl, Ocean Fleet Svcs.	Chris Moore, CBF	Geoffrey Smith, TNC
Doug Grout, NH F&G	Brandon Muffley, MAFMC	Ken Staples, NE Reg. Ocean Council
Joseph Gordon, PEW	Trish Murphey, AP NEP	Michael Toole, Newburyport, MA
Rebecca Heiss, NH F&G	Conor O'Donnell, NH F&G	Jack Travelstead, CCA
Pete Himchak, Omega Protein	Susan Olsen, NMFS	Peter Whelan, ASWGA
Kris Kuhn, PA Fish & Boat	Patrick Paquette, MSBA	Phil Zalzac, S. MD Rec. Fishing
Alix, Laferriere, TNC	Dale Pike, CCA	

The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in the Wentworth Ballroom of the Wentworth by the Sea Hotel, New Castle, New Hampshire; Monday, October 27, 2019, and was called to order at 1:00 o'clock p.m. by Chairman Nichola Meserve.

CALL TO ORDER

CHAIRMAN NICHOLA MESERVE: Good afternoon. If Commissioners and members of the public can please take their seats, the Menhaden Board will come to order. My name is Nichola Meserve; I am from Massachusetts Division of Marine Fisheries, and have the honor to be your chair person today.

APPROVAL OF AGENDA

CHAIRMAN MESERVE: We'll start by looking at our agenda. You will note that we're starting 15 minutes early. We're going to try to keep to that schedule, reserving that 15 minutes for our Item 5. Are there any other changes to the agenda today? Seeing none, we'll consider that approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN MESERVE: You also have your proceedings from August of 2019.

Are there any changes or revisions to the minutes from August of 2019? Seeing none, we'll consider those approved as well.

PUBLIC COMMENT

CHAIRMAN MESERVE: We'll now move on to public comments. This is for items that are not on the agenda. I have a sign in sheet that has three people listed on it that would like to speak, including Phil Zal Zack, Tom Lilly and Patrick Paquette.

In order to try to stick with our time, are there other people that would like to speak to topics not on the agenda? Seeing none, we have ten minutes on the agenda for this, so Phil if you can try to keep it to three minutes that would

be great. Please state your name and affiliation for the record, thank you.

MR. PHIL ZALZACK: Phil Zal Zack, I'm President of the Southern Maryland Recreational Fishing Organization. I'm here to talk on behalf of recreational fishermen of Chesapeake Bay. That is about 240,000 people in Virginia and Maryland. I would like to direct your attention to your goals and objectives under Amendment 3, which talk to equitable, ecological and economic benefits. Recreational fishermen are part of that. They fall under that goal as those who extract and utilize predators, which rely on menhaden as a source of prey.

What do I want to talk about? I want to talk about three basic facts and two scientific studies. The first fact is, if you recall from about 1973 to 1980, reduction fisheries took on the order of 200,000 metric tons. According to Dr. Michael Wilberg that is over a billion fish out of the Chesapeake Bay for eight years. You think that would have any impact on the menhaden? If you recall there was a striped bass moratorium following that. All right that is Fact Number 1. Fact Number 2, data provided me by the state of Maryland, Virginia, the Potomac River Fisheries Commission, Marty Gary, I'm looking at him right now. They show that the commercial harvest for the last 20 years, this is for the Potomac River and the Chesapeake Bay for striped bass has declined by 34 percent, weakfish by 99 percent, bluefish by 85 percent, summer flounder by 92 percent, and 80 percent for Spanish mackerel. Perhaps we're starving these predators to death. Maybe we're not overfishing them.

Fact Number 3, according to the 2019 special fishing report, Page 22, which talks of saltwater fishing; the first part of it is freshwater. There has been 11 percent decline in the American saltwater fishing participants. Based on data that I've gotten from the state of Maryland and Virginia, in the case of Maryland we've lost 50,000 saltwater fishermen since 2004.

Virginia has lost 36,000 fishermen since 2013, so that is a 36 percent decline and a 20 percent decline or about 85,000 fewer recreation saltwater fishermen. All right so those are the three basic facts. People say there has been no scientific evidence, there is a problem. Well, I beg to differ with that.

I've got two sources of information, one is Dr. Michael Wilberg, you may have heard of him. He coauthored a paper that was published last November, and what did it say? They reviewed data on about a million fish that were tagged along the coast. What did they find? They found that basically in what he called Region 2, which is the area right off the state of Maryland that the fish really don't migrate that much between about June and October.

That is a core area or a core time when reduction fishing is taking place. If you devastate a region, you may still be within the quota for the entire Atlantic coast, but you've not only devastated the Atlantic menhaden, you've devastated all the predators who feed on those. That is scientific study number one.

There is another one that just came out here recently, one of the coauthors was Dr. Thomas Miller, who is a Director of the Chesapeake Biological Lab, and they talk about and I'll quote, "Striped bass were most sensitive to increase in Atlantic menhaden fishing, largely due to their strong dietary reliance on prey species, but other higher trophic level groups, birds, highly migratory species, sharks and marine mammals were also negatively impacted. That is three facts, two scientific studies. Thirty seconds more.

CHAIRMAN MESERVE: Thirty seconds, thank you.

MR. ZALZACK: According to the latest striped bass report, the economic impact of striped bass and what has happened to them involves a total of 7.7 billion coastwide and 104,000 jobs. That's pretty significant. That is one predator

out of 22. I've got the following recommendations.

One shut down the Atlantic Menhaden reduction fishery in the Chesapeake Bay, and reduce the fishing season. Two recognize recreational fishermen as equal stakeholders in the future predator fishery by reallocating Atlantic menhaden status quota on sound conservation principals, not reduction fishery, and three fully fund Atlantic menhaden biomass survey as proposed by the Chesapeake Biological Laboratory. I've already talked to Michael Wilberg, it will cost between 200 and \$400,000.00. It's an investment we have to make, because we need to find out where we are. With that I will thank the Chairman and I'll thank this Board for your time.

CHAIRMAN MESERVE: Thank you, Mr. Zalzac. Tom Lilly, and please try to keep to three minutes, please Tom.

MR. TOM LILLY: Chairman Meserve, thank you for the opportunity. I am here representing the Menhaden Project in Chesapeake Bay, and that is a very hard act to follow but I will give it a shot. You know we heard Phil talk about the 80,000 people, saltwater fishermen that aren't there anymore. I would like to add a little parenthesis to that.

You know that number doesn't include the kids that aren't fishing, because if you're a kid in Maryland at least, and you're under 16 years of age, you haven't got to have a fishing license. But a lot of these kids aren't fishing anymore in Maryland on the Chesapeake Bay. I know this hits home, because my grandchildren who eight or nine years ago they were loving starting fishing, and now it seems like they always have something else to do.

They've lost interest. You know I could go on and on, but I know every one of you knows that that is something that's going on up and down the coast. It's the people that count in this thing, folks. That is who you really should

be thinking about. It's the people. It's the 400,000 Marylanders that are fishermen, yes.

But it's also millions of Marylanders who love the Chesapeake Bay and treasure those Maryland and Virginia traditions. That is what we're really talking about here. You know to a lot of the people it's a bunch of statistics. It's a bunch of formulas. But for a lot of us it's our lives that we're talking about here. Have I got another minute?

CHAIRMAN MESERVE: You do.

MR. LILLY: Okay. I just wanted to be as quick as I can on this. One thing I would like for you to be thinking about as the spring rolls around that there are two things going on out there on the Atlantic coast. You've got a bunch of menhaden coming down towards the Chesapeake Bay, and in May and June we know roughly how many; because we know what the factory fishing catches. They catch about 30,000 tons, about a third of their quota in those two months.

I wish you would look at the NOAA statistics out of Beaufort on the monthly catch, and what you're going to see is in April and May there are very few menhaden out there coming toward the Bay. Think about those eight purse seiners out there relentlessly after those schools in April and May, and take a look at how few schools are really there. It's about 15,000 schools total, 20,000 menhaden schools.

Okay that is happening. The menhaden are coming down in those schools toward the Bay, but there is another thing going on too, as you all know. There is spawning female spawning stock, rockfish. There are about a million of them or more are in the Bay. Those fish are coming down, and those rockfish are in there. The question that you all have to decide is will they get together? Will those rockfish get together with those menhaden? You are the people that are in control of that. It's an allocation decision in April and May. Who gets allocated those 1500 schools of menhaden? Who do they go to? Now I don't have to tell

you Amendment 3 makes it very clear how you are to make that value judgment.

CHAIRMAN MESERVE: Tom, I'm just going to ask you to wrap it up, please.

MR. LILLY: Okay. Think about those two things, those two interests colliding, because it is just that simple. We have all this complexity. But what it really comes down to is are those 1500 schools of menhaden going to get to those fish that need that food so badly? Please think about how you can make that work, because it's not working right now. Those fish are being caught.

CHAIRMAN MESERVE: Thank you, Tom and up next is Patrick Paquette.

MR. PATRICK PAQUETTE: Patrick Paquette, Recreational Fishing Advocate for Massachusetts. I'm a member of the Menhaden AP. I come before you today on behalf of the Mass Striped Bass Association, and a group of over 40 recreational sportfishing clubs that have identified themselves for many years before this Commission as the Menhaden Coalition.

I also in full disclosure, do a little bit of work on behalf of the Teddy Roosevelt Conservation Partnership on this issue. That being said, my comments are process related and not details related, and that is in regard to openness and transparency with the ongoing and soon to be peer reviewed stock assessment.

In the past on the SEDAR website, within weeks of the peer review a draft stock assessment report has been posted. We have played the game according to your rules. We have engaged scientists to participate in stock assessments, and we have identified some things and had some concerns regarding natural mortality and some assumptions regarding natural mortality that were expressed during the stock assessment meetings.

What we are not able to see prior to the peer review, which is unusual as compared to other SEDAR process that we have participated in, is the draft Stock Assessment Report. I am also aware that in different regions and in some states, some of our organizations or in related organizations have actually tried to go through legal means to try and make this happen.

I come before you today to ask one specific thing. Treat this menhaden stock assessment process at SEDAR exactly like others have been, and post the draft Stock Assessment Report on the SEDAR website as has been done before. Please adhere to the SEDAR policies and procedures regarding complete documentation, public involvement, and transparency. Thank you.

CHAIRMAN MESERVE: Thank you, Patrick. I guess just a follow up to ask if there has been a deviation from the process, and if those draft reports are planned to be released prior to the peer review?

EXECUTIVE DIRECTOR ROBERT E. BEAL: Under the ASMFC Peer Review Process, the publication of draft peer review documents are not shared publically, and SEDAR is indicating they're deferring to us on this one to use ASMFC process. The reason we do that. I don't want to just say we don't want you guys to see what's going on is we've got a number of examples in the past where draft documents have been published and folks have taken those, and the draft results have shown up in newspaper articles and all over the internet and those sorts of things.

Then we get to the peer review and things significantly change, and then we end up with this sort of competing stock assessment information from the draft documents to the final post peer review document. That is why the Commission process was modified to not share those documents prior to peer review.

CHAIRMAN MESERVE: Does anyone around the table have any comment or thoughts on that or

we're okay? The ASMFC process seems an appropriate way to move forward. That was the end of the public comment for Item 3, and we'll move on to a Progress Update on the 2019 Single Species and Ecological Reference Point Stock Assessments.

PROGRESS UPDATE ON THE 2019 SINGLE SPECIES AND ECOLOGICAL REFERENCE POINT STOCK ASSESSMENTS

CHAIRMAN MESERVE: I've been informed that we're going to go straight to Dr. Drew for the ERP Benchmark Stock Assessment update, and that there is nothing particularly new from Dr. Anstead on the single species assessment, although she is here if there are any questions, so Dr. Drew.

DR. KATIE DREW: Just to remind you guys where we are in this process. The Assessment Reports are complete and have been submitted to the peer review. The peer review is occurring next week, and we'll have the final results and the peer review report available for the February meeting. That will be part of your meeting materials.

But we wanted to take a step to sort of as we've completed the assessment, to start you guys thinking about how you want to respond to this assessment. I want to talk briefly about what's next. I'm not going to be talking really about specific answers or specific numbers. But one of the things that because as Bob said these things can change during peer review.

I think overall though we've explored a lot of models and the final answer is really that there is no one right answer for ecological reference points for Atlantic menhaden, because it depends on what you guys want the ecosystem to look like. How abundant do you want your predators to be? How hard do you want to be able to fish your predators and your other prey species in the ecosystem?

All of these considerations will have implications for the right amount of menhaden

that you can take off. What we are providing is essentially a tool for you guys to evaluate these questions. We have a number of different models from very simple to very complex. The very complex models include basically 61 different species and species groups within the ecosystem.

But, we also focused on some intermediate complexity models that included Atlantic menhaden, striped bass, bluefish, weakfish, spiny dogfish and Atlantic herring. These had the best available data. They are all significant predators on menhaden, and they are all of interest to ASMFCs management process. The important thing to consider is that all of these species already have management goals and objectives, in terms of what their biomass target is, what their F target is. To a certain extent that limits what this management board can do with this information. The Board needs to start thinking about not just how they're going to manage menhaden, but how they Commission itself is going to manage menhaden.

The question is, do you want to manage to the existing FMP objectives for these predators, or do you want to redefine these objectives in consultation and in tradeoff with the Atlantic menhaden fishery? If you want to consider redefining your predator objectives, ISFMP Policy Board and NOAA Fisheries will need to weigh in on how we're redefining these.

Atlantic Menhaden Board can't say I want to keep striped bass here, and have the Striped Bass Board having a different reference point. In order to have successful management out of this process, we all need to be on the same page. One option is certainly to say these existing reference points have been set by these single-species FMPs, and that sort of creates a limited environment that we can move menhaden around in, and think about how much we want to fish menhaden in.

But if you want to expand that framework you are going to need to bring in other

stakeholders, other management boards, other management agencies, to really have a full ecosystem-based fishery management process, which will of course take a lot longer. I think the Board needs to start thinking about (we're not going to have this conversation today because we have other bigger conversations to have), but when you come back in February you need to start thinking about what are our next steps from here.

Is the Atlantic Menhaden Board only going to focus on existing FMP objectives for other species? Is that your first step? Is the next step to expand this process to the Full Commission? Are we going to manage to predator targets? Are we going to manage to predator thresholds that exist?

All of these are sort of questions that you should be thinking about, so that when you come back in February and see the results, hopefully that have passed peer review that we can provide you with a tool that will let you make these tradeoffs, and let you see some of the options that you have in terms of menhaden reference points, in terms of allowable harvest.

Thinking about this ahead of time will let you guys provide us with better information right from the get go. You guys I'm assuming will have some scenarios of what the ecosystem should look like that you would like us to evaluate. We can come back and we can bring that back to you and show you the answers. I think to have that process move quickly and move efficiently, the more you guys can be prepared to think about do you like your striped bass targets?

Do you like your bluefish targets? Do you want the target, do you want the threshold? Those kinds of questions, so that we can lay out some scenarios for the technical group to evaluate in an efficient way, and move this process forward rather than a lot of back and forth. I can take questions now on that. But I think this is really more about you guys getting ready, going back

and thinking about what do you want, not just menhaden but the entire ecosystem to look like, so you can give us some direction, in terms of providing you with options.

CHAIRMAN MESERVE: I'm looking at the Policy Board's agenda later this week, and there is a topic about ecological reference point implications. Is that a continuation of this conversation?

DR. DREW: Yes. It's also on the Policy Board because one of the options for this Board would be to say we want the full blown ecosystem-based management right out of the gate. We have to be able to address, adjust and evaluate targets for predators, as well as targets for menhaden, in which case we need to bring the full Policy Board in on this conversation.

I think we also want the full Policy Board to kind of have an opinion on how ecosystem-based management is going to work for the entire Commission. Is this just a menhaden thing, and that menhaden is the only thing we're going to worry about, and we're just going to keep everything else – all other management – the same? Is this the first step in a much larger evolution for the Commission? We're going to start that conversation at Policy Board.

CHAIRMAN MESERVE: Are there specific questions about this for menhaden today, or if the Board wants to hold questions to the Policy Board meeting when it's going to be talked about in a larger context? Lynn Fegley.

MS. LYNN FEGLEY: Just real quickly, Dr. Drew to your point. There was a survey that was done on striped bass, what did we want out of our striped bass fishery? Is that being considered as a starting point for this? Are you thinking about rerunning that?

DR. DREW: Right now we've developed some example targets and thresholds based on what are currently the targets and thresholds for striped bass that are in management right now. I think that certainly is an example of the

Striped Bass Board has been considering changing reference points or changing what they want the striped bass fishery to look like.

That's the kind of a feedback process where, do you want to do that in isolation or do you want to loop menhaden in? It's absolutely a question for the future. But for now we're just going based on the example that we're presenting is going to be based on what's an existing FMP.

CHAIRMAN MESERVE: Any other questions, John McMurray?

MR. JOHN G. McMURRAY: It was mentioned that if we go the full blown ecosystem management we have targets for predators as well as targets for menhaden, and it will take considerably longer. How much longer? Are we talking half a dozen years, a decade, or are we just talking a couple of year?

DR. DREW: It becomes a matter not on the science side, but more on the management side. That is how long is it going to take you guys to come to agreement on what striped bass and menhaden should look like together, let alone looping in NOAA on this? I think the key is we really, as a working group, as a technical group, we see this assessment as this is the first step.

There are steps along the way that you can take to get to maybe the end evolution of the Commission is there is no single-species boards anymore. There is only a Policy Board where we do these evaluations for all of our species coherently. That is 10 or 20 years down the road. Maybe we take the first step at the next meeting and say, we're going to manage menhaden to sustain predators at their existing objectives. We can put those measures in place pretty quickly, relative to that kind of technical work. Those numbers are set essentially, almost. Then we can work on the next step, which is how do we incorporate striped bass and menhaden conversations together?

That's a longer process. That's a management process question. But it doesn't have to be is that the first step that the Board wants to jump to, or does the Board want to take some baby steps in between, and focus on what's already written down on paper?

CHAIRMAN MESERVE: Are there any other questions? John Clark, please.

MR. JOHN CLARK: Thank you for the presentation, Katie. Just following up on what has been asked already. Obviously with striped bass and with other species we're seeing huge changes in the estimated biomass out there from the MRIP figures. I know you're still working on quite a few different multispecies models right now. How flexible and how easily would it be? You're calling these tools that when something does change in these that whatever model is chosen could give really useful feedback in a reasonable amount of time.

DR. DREW: That's a good question. First of all I would like to say all of the species that actually are going into the new models do use the new MRIP data. All of that is completely up to date for the predator species. They are all using the new MRIP data, or at least for our key focal species they are all using the new MRIP data.

Our intermediate complexity models were chosen so that as new stock assessments became available they could more easily be incorporated into these models, as opposed to some of the more complicated models that do require very intensive data sources, and would require a lot of effort to update. The intermediate complexity models could be updated on something that is more aligned with the standard single-species assessment timelines, as long as we get those assessments lined up correctly.

CHAIRMAN MESERVE: Follow up.

MR. CLARK: Just quickly. You anticipate having several different multispecies models that

would be part of the tools that would be used here?

DR. DREW: Not as part of the tools, as part of the assessment itself we explored a number of different tools, so that we could compare sort of the effects of very simple models versus very complex models. But the tool that we're recommending is, again this is why we don't want to get too much into it, because it depends on what the peer review panel thinks about all of this. But we're going to recommend one specific tool to approach this. But there are other models being explored to kind of look at some of the effects of those model assumptions and the complexity and the data availability.

CHAIRMAN MESERVE: Tom Fote.

MR. THOMAS P. FOTE: I was wondering what the extra money would cost in all these stock assessments, and the time and effort from the staff that the Commission would take. I'm thinking we're not politicians, and we're also not on the Board of Directors. We don't have to worry about really getting short term in. We can look at the long term effects over things we're doing, because we don't have to worry about the next election.

But again, I don't want to be here. My predecessor I replaced in 1990 was here at 94. I am not going to be here 22 years from now at 94, basically sitting around this table. I'm looking at realistically how much money and how much time and effort by Commission staff would be required to do all these steps?

CHAIRMAN MESERVE: I'm not going to turn to Katie to try to answer that question. I don't think it's fair for her to have to handle or not. I'm going to kind of take it as a bit of a rhetorical question, Tom that you know we're all looking for answers sooner than 22 years. I'm not sure I want to be here in 22 years either.

Are there other questions around the table? If not, Katie has given us a lot to think about in

preparation for our next Board meeting, so thank you for that some big questions to keep us up at night.

**UPDATE ON THE 2019 REDUCTION FISHERY
HARVEST FROM CHESAPEAKE BAY**

CHAIRMAN MESERVE: We'll move on to Issue 5, an Update on the 2019 Reduction Fishery Harvest from Chesapeake Bay.

I think everyone is aware at this point that Omega Protein has exceeded Amendment 3's Chesapeake Bay Reduction Fishery Cap of 51,000 metric tons. That occurred on September 6. The latest reports that I have are that the reduction landings from the Bay are now about 65,000 metric tons, so our agenda item does address the Board to consider compliance with the FMP on this issue.

This is a largely familiar discussion, as we've had it several times already. But I'll just set the stage and quickly recover the actions that the Board has taken previously on this topic, which will bring us back about a year and a half ago to when the Board first reviewed state compliance with Amendment 3's implementation deadline.

That was when the Board realized that the Virginia Legislature had not reduced the Bay cap from the Amendment 2 level of 87,216 metric tons to the Amendment 3 level of 51,000 metric tons. A motion was made to recommend noncompliance for not fully and effectively implementing and enforcing Amendment 3.

That motion was postponed until August of 2018, to in the interim send a letter to Virginia to detail the contents of the motion. In August of 2018, when the Board reconvened, the noncompliance motion was again postponed until February of 2019. Both of those postponements sought to give the Virginia Legislature additional time to act, given the political realities of a noncompliance finding.

August was the meeting when NOAA Counsel provided some input that helped us in that

discussion. The postponement in 2018 also recognized that the Bay cap was unlikely to be exceeded that year, and at the end of the year we knew that the landings did come in under the cap at about 32,000 metric tons for 2018. Then moving to February, the noncompliance motion was postponed indefinitely, provided that the reduction harvest from the Bay did not exceed 51,000 metric tons. The motion also committed the Board to consider action to modify the Bay cap after it completes action on the ERPs.

Things went along smoothly, you could say, for a couple months until September, when middle of the month the ASMFC leadership notified the states that Omega had exceeded the Bay cap. Prior to that from the documents that are in your briefing book, you should be aware that both VMRC and the ASMFC had urged Omega otherwise, and have stressed the importance of cooperation and following the cap.

Omega released a statement regarding the cap, and said it would stay within the codified level in Virginia's law that being the one from Amendment 2, and then there was additional communication from Omega justifying its action, and committing to a self-imposed 67,000 metric ton harvest limit.

That brings us to today. In a sense not much has changed from our previous discussions on this point, other than the fact that the Bay cap has now been exceeded. We know that despite the best efforts of VMRC, Virginia has not been able to implement or enforce an FMP requirement, a situation upon which the Atlantic Coastal Act would direct ASMFC to do a noncompliance finding.

However, we also recognize that the Secretary of Commerce is directed in the same Act to also consider whether the measure is necessary for the conservation of the fishery in question. This last slide is just the language from the Commission's Charter, as a reminder that if there is to be a noncompliance motion considered that it should include a statement as

to how the failure to implement or enforce the required measure jeopardizes the conservation of the resource.

As defined in the charter conservation does refer to not just the coastal fishery resource that being menhaden, but also to the marine environment and other coastal fishery resources. Lastly, just before turning to the Board for discussion on this, I'll point out that there were a large number of comments in your supplemental materials about this topic.

They speak to the passion of stakeholders on this issue, as does the public comment records for Amendment 3. I am confident that everyone here had a chance to look at those, and because of the time constraints and the extensive feedback the Board has already had on this issue, public comment may be limited during this meeting on the topic.

But I hope the public understands that those around this table are seriously engaged on the issue, and recognize your views and appreciate that input as we move forward. I think to move us forward quickly. You know we've had a lot of discussions. If there are any questions first about where we stand with the Bay Cap or the Amendment 3 requirements or anything like that let's try to address those first, any questions? Pat Keliher.

MR. PATRICK C. KELIHER: I really don't have a question, but the 800 pound gorilla here is really how Omega is going to respond. Since I was happy to put somebody on the spot in the Lobster Board meeting, I'm wondering if we can't put Omega on the spot here today, since they're in the room, and ask them to give us some additional background on this issue. The thing that I struggle most about this is while we deal with compliance issues on a state-by-state issue, here it's a company. It's a single company. I think we should hear from that company.

CHAIRMAN MESERVE: Is there any opposition to the Board to inviting Omega Protein to the

microphone, if they are so willing? I understand that there are some members here. Adam Nowalsky.

MR. ADAM NOWALSKY: I don't object to that route. I would just highlight that while I can't dispute that there is one company prosecuting this fishery. We talked a little bit about precedent before. It's really the state that we're responsible for responding to the management actions that we implement. I think we should just be very careful with our tone towards specific companies, and how it might apply to any other noncompliance finding, because it's the states that are beholden to complying with what we ask them to do.

CHAIRMAN MESERVE: With that said, Adam, I think that's a good point. For that reason, you know I expect that there may be a motion and public comment will be allowed in a limited fashion at that time. If at that time Omega Protein wishes to be part of the public comment on a motion, then I will turn to them first. Pat. Are there any questions? If not, to kind of direct our conversation I think it would be helpful to have a motion to consider at this point. John McMurray.

MR. McMURRAY: I have such a motion.

CHAIRMAN MESERVE: Go ahead please, if staff has it, John.

MR. McMURRAY: Move that the Atlantic Menhaden Management Board recommend to the ISFMP Policy Board that the Commonwealth of Virginia be found out of compliance, for not fully and effectively implementing and enforcing Section 4.3.7 Chesapeake Bay Reduction Fishery Cap of Amendment 3 to the Interstate Fishery Management Plan for Atlantic menhaden.

The Commonwealth of Virginia must implement an annual total allowable harvest from the Chesapeake Bay by the reduction fishery of no more than 51,000 metric tons.

The implementation of this measure is necessary to achieve the goals and objectives of the FMP, and maintain the Chesapeake Bay marine environment to assure the availability of the ecosystem's resources on a long term basis.

CHAIRMAN MESERVE: Is there a second to the motion? Sarah Peake. John, would you like to speak to the motion first?

MR. McMURRAY: I would, thank you Madam Chair. First of all it's pretty clear that Virginia has failed to adopt the management measures in Amendment 3, and Omega Protein has willingly exceeded the Bay cap. I would argue that the Bay cap is necessary for conservation. While the Board commissioned some work that was unable to conclude there was localized depletion, it was also unable to conclude there wasn't localized depletion. In the absence of science showing that the reduction fishery doesn't cause localized depletion then a five-year average is reasonable. If I understand correctly, menhaden recruitment in the Chesapeake Bay has been low for several years. The science is pretty clear that removing that much menhaden has had an effect on striped bass and other predators, striped bass in particular, which is overfished.

More importantly that Bay cap was about preventing localized depletion from occurring, and we made a policy decision to do that when we capped harvest at a historical average of 51,000 metric tons. It was a decision to protect one of the largest nursery grounds, not only for menhaden but for just about everything else, again referencing striped bass.

I believe we are certainly in our purview to do that. Whether or not the Secretary of Commerce will support the Commission's finding should not be the basis for a decision here. The authority of the Commission is jeopardized either way, but a failure to find Virginia out of compliance is a sure way to reduce the Commission's authority.

I'm also certain there will be a lot of pushback on this one, particularly from the recreational fishing community. This will not be an easy decision for commerce. It will not be like the last decision that it made, and for these reasons I feel like it's the right thing to do, to find them out of compliance.

CHAIRMAN MESERVE: I think I would like to go the route of speaking in favor and speaking against. If I can get a show of hands for people that would like to speak in favor of the motion around the table. Those that would like to speak against it. There will be an opportunity again, but we'll proceed with the five that have raised their hands so far and not go further than that. Unless there are people that want to speak against it, and we can alternate back and forth. With that said, Ritchie White.

MR. G. RITCHIE WHITE: This clearly is a very difficult decision, and I didn't come here for this meeting knowing how I was going to decide on this issue. This motion is very compelling, and I tend to agree that it is time for us to take a stand, and we cannot worry about the outcome. It is to Adam's point, in all due respect.

It is the Commonwealth of Virginia that has not put in the regulations that we have passed. But the company could have been good stewards and followed the lead of the Commission. The Commonwealth of Virginia didn't force them to catch over the Bay cap. That is very disappointing, and it clearly I think, does not make friends around this table when it comes to our amendment process going forward, and reallocation. For those reasons I reluctantly support this motion.

CHAIRMAN MESERVE: Steve Bowman.

MR. STEVEN G. BOWMAN: First and foremost, on behalf of the Commonwealth of Virginia, I would like to apologize for being in this situation. I would also like to thank you for indulging the Commonwealth of Virginia on two previous occasions; where we truly did attempt

to implement some type of mechanism that would remove us from the state that we're in today. Let me just start by saying that having the stigma, from the Commonwealth of Virginia's perspective, of being out of compliance on anything is not a good position in which we desire to be in. Governor Northam, Secretary Strickler, their team, and the Commonwealth of Virginia have worked tirelessly in an attempt to improve the environment, improve the work quality, to do good things in the Commonwealth of Virginia.

However, the laws and the setup in the Commonwealth of Virginia are such that there are times where the administration and its team can impose what we believe are the appropriate things to do as it relates to the management of our fisheries. For that again, I thank you for your indulgence over the last 18 months.

To follow up on what has been said about the Commission process. I have been coming up here since 1992. I came up here as a young snot as a Deputy Chief in the law enforcement division, but I've taken great strides to pay attention to what is going on around this Commission table, and learned a lot from the folks that have been here, a great deal.

I respect every minute and every encounter that we've had, and we do have a process. The process is set by law that the Commission is responsible for setting caps on fisheries. Some of us leave here and don't like it; some of us leave here and like it. Any way you look at it we end up leaving.

To Mr. Nowalsky's point, and friends are friends and business is business as I've said before, but to Mr. Nowalsky's point to others point. The Commonwealth of Virginia, as far as the Administration, would love to have not been here in this situation, and it is true that one entity, which has been at times a good partner in the Commonwealth of Virginia, but at times that brings us here today, we're a little concerned with.

If the Commonwealth of Virginia and the Administration had its way, we would not be here today. There is a process in place, and to maintain the integrity of this great Commission, I believe that there is no other option but to move forward after we've exhausted all of our attempts to do what is right, it brings us here to where we are today.

To one other final point, we know that we have science coming down the path, and I'll be quite honest. After hearing today I'm not as enthused about the speed in which the process moves, but that is sometimes I've been told that I'm somewhat that way. I tend to want things faster than later. But the science is coming.

This company had an opportunity to engage as good partners, to ride the boat with us a little bit longer, and look to see what the science could be, in order to come to an appropriate cap. The 51,000 metric tons it's been said that it's an arbitrary number. I've never known this Commission since I've been here to do anything that is completely arbitrary, because there are so many good minds around here that know the science.

This was based on some averages and was based on a precautionary decision. I think the decision, although it can be questioned, the decision was one that was made that was well intended. That being said, again although I do not at all like the idea of the Commonwealth of Virginia being labeled out of compliance with anything, I intend to vote for the motion.

CHAIRMAN MESERVE: Bryan Plumlee.

MR. J. BRYAN PLUMLEE: As the GA for Virginia, I just want to acknowledge the dozens of fishermen through their leadership who have written or called about the lack of oversight of the primary permit holder for this species by our Legislature. Both the recreational and commercial fishermen of our state complain about two primary points.

First, the decline in menhaden relates directly to the decline in the predator species; less food, less fish. This is perhaps a difficult science and a subtle point for our Legislature, but perhaps at this coming session they will recognize it and enact and adopt the recommended allotment. Even if the information is anecdotal, we know our state scientists with VIMs and Marine Agency rely routinely upon the observations of our fishermen to enact regulations.

The second primary point is that there is a perceived double standard, which puts effective enforcement of our laws in jeopardy. When we allow a powerful actor to ignore regulations, all of our regulations are diminished. Our Legislature meets in January, and it's my sincere wish is that this finding of noncompliance today will cause them to act to adopt the cap. But also to divest themselves of their regulatory authority over this single species, and put it in the hands of the Virginia Marine Resource Commission.

CHAIRMAN MESERVE: Tom Fote.

MR. FOTE: I figured I had to say something, because of all the comments that were put on me, because New Jersey was the one that went out of compliance and went to the Secretary of Commerce. But that was in a different situation. We were not asking for more fish, we were not asking to get away from the conservation that was being imposed on us.

All we were asking for is we want to use our own rules and get the same size that we wanted for our state, not what another state had. We took a greater reduction as a matter of fact as it turned out, then all the states that were required to do, because we knew what we were going to do in our state. We weren't going out of compliance to basically get more fish or to basically harvest more fish. We just wanted to have a different size. This is a different situation.

My concern has always been that we have reduction plants up and down the coast; as a

matter of fact North Carolina was the last one to have one. My question has always been what makes one company allowed to absorb the reduction harvest of all the other states? We have no other fishery that did that.

When we did away with the flynet fishery, we did away with certain fisheries, the dragging fishery in the weakfish. We didn't get back to one other dragger from another state because they were allowed to do it. We basically just distributed a pool among all the actors in that fishery. Having said that I look at what is going on with menhaden, and I've been sitting around this table, well not as a Commissioner, but since 1990, but as a player since about '87.

This is one of the problems we've always had with the menhaden industry. At least it's not as bad as it used to be, where there used to be five members of the industry in the five states that used to harvest the resource that actually managed the resource. At least now it's the full Commission almost, and it's basically a better place than we are. That is one of the reasons I'm supporting this. We need to do what we have to do, whether in the future it might be voting New Jersey, we'll make our arguments before the Secretary of Commerce and let them do that. But this is for conservation of the other resources too that is involved in this fishery, and not just the stock of the menhaden.

CHAIRMAN MESERVE: Emerson you'll be next. Before you go though, could I get a show of hands from the audience? How many people think they may want to address the Board on this issue, taking consideration the way the discussion is going, I'm just looking to do some time management, just one? Okay two, okay thank you. Emerson, go ahead.

MR. EMERSON C. HASBROUCK: Although I was not supportive of lowering the bay cap when we voted on that, because it didn't in my mind have a lot of solid biological reasons to do so. However, this Board passed that resolution that set that Chesapeake Bay cap. I support this motion. Even though I did not support lowering the cap, I fully support this motion.

The Board made a decision, and I think we have to stand by that decision regardless of what we think the Secretary of Commerce may or may do. We can't worry about that. We need to do what we have to do to maintain the integrity of this Commission, so I fully support this motion. I feel badly for Mr. Bowman and his staff, kind of caught between a rock and a hard place. But hopefully this action may prompt the Legislature to give them regulatory authority.

CHAIRMAN MESERVE: I'm going to turn to the public now, and the first I saw was Ben Landry and Tom Lilly I also saw your hand, you will be next.

MR. BEN LANDRY: Thank you Madam Chair and Commissioners. I appreciate the opportunity to address you guys. My name is Ben Landry; I'm with Omega Protein. You guys clearly know my company and what we do. You guys have been a significant part of our operations for a long time.

I come before you today not with any illusions that what I've seen is going to turn around in the next five minutes or so. But I do think it's important that you guys understand how the 2019 fishing season worked for Omega Protein. If you guys indulge me, it may be a little bit over a couple of minutes.

I guess to start things off; you know I've heard a couple of speakers today talk about the decline of menhaden. That simply is not the case. The stock assessments have proven over and over again, and you're seeing this play itself out as the stock has increased up to Maine, you're seeing record catches. This population is robust and healthy and sustainable.

It's not a declining stock. I think that's important. Take that into account as you guys think about how to view this overage. Our season started in May in the Chesapeake Bay, and we saw a number of schools inside the Bay. We had a little bit of difficult time finding fish outside of the Bay in the very beginning of the year. We had internal discussions about this.

That was unusual to us, but we thought that since it was such moderate amounts of harvest at the time that there was going to be ample time for it to regulate itself, where the fish move outside into the ocean. As that kind of continued into June, we caught a break in July. All of our vessels, every single day in July, were outside in the ocean, and we thought that the situation had normalized itself that we were getting back to the norms, where the majority of the fish caught were outside of the ocean, adhering to your stated purpose in 2006 to fish more outside of the Bay.

I think we have a very strong and very present record of that as adhering to your word, and fishing less in the Bay. In July not a single fish was caught in the Chesapeake Bay. Then we had some weather events early August, where we had a difficult time fishing out into the ocean, for weather and for safety.

But we saw really enormous schools inside the Bay, just inside the Bay, inside the Bay Bridge Tunnel, which we said, "all right, well let's fish in the Bay. We know it's going to move our bait number up a little bit, but we've got to keep this operation going. We've got to keep our fishermen receiving paychecks; otherwise we're just going to tie up our vessels."

That happened again a second week in August, and then a third, and then probably around late August it became inevitable that we were going to run up to that 51,000 number. Anyone that thinks that we took this process lightly, or thumbed our nose at the Commission that is just not my view of it, I mean it was a very difficult decision of how do you balance going over the 51,000 number that you guys have set, and we have enormous respect for this body, we have for a long time.

But, how do you kind of battle between telling your fishermen that you're going to tie up boats, not for any biological reason, there are tons of menhaden out there, but we just don't have access to them. I think the first week of September or so we went over the 51,000

number, notified a number of you all in a statement. I take full responsibility. If you guys read that letter to be aggressive or flippant about the cap that was not the intention.

We continue to have internal discussions. That letter made it look like we would go all the way up to the 87,000 number, which was in Virginia code. That was never out intent. We came back and we said, "Where are we going to voluntarily halt this year?" That is how that 67,000 number came about. The 67,000 number combined with last year's harvest would still put the two-year average under the 51,000.

The further you go back the three-year average, the four-year average. That number drops. In terms of this perennial exceeding of the cap, we've only gone over the 51,000 number one time probably in the last four or five years. This is not troubling the stock at all. We get that it's higher than the number that you asked us to stay within, but in terms of deleterious effects of the stock that is not the case.

I can tell you now that our fishing in the Bay has been halted short of the 67,000 number. You know we do that as an offer of good faith that as we move forward, which the real eye on the prize should be the ecological reference points and not the Bay cap, due to a number of reasons. But we think that the ecological reference points will be something that this Commission can hang its hat on for a long time. Let's look forward to that. But we understand that you guys are well within your prerogative to do whatever you guys want to do. We give that update to you all, just to give you guys some color that this was not this company that's been around for 106 years thumbing its nose at you, it was simply a difficult decision that we made to keep our fishermen fishing.

If we would have thought that the population was troubled by this, I think the decision might have been different, but since we've seen such a healthy, robust stock that has kind of been our thought process behind it. I thank you for

the opportunity to address you all. I don't know if it's appropriate, but if you guys have questions I'm happy to answer those as well.

CHAIRMAN MESERVE: While you're in the seat I guess we'll, if you're willing, take a couple of questions from Board members, if they have a burning desire. Adam.

MR. NOWALSKY: Can you describe what role in your decision making process the fact that the Virginia Legislature did not enact the updated cap, in combination with this body's failure to pursue, or decision not to pursue a noncompliance finding previously. Can you tell us what role that played in your decision making?

MR. LANDRY: Thank you for the question, Mr. Commissioner. I would say little. We knew that we were not going to be found on the hook criminally, because of the number in Virginia, it was 87. I would say that that factored in. Was it a conscious effort to say, we're going to go over this? Did we decide in April or May that we were going to go over this, because the number was 87, and this Board had given us some leeway? No.

That was not into our calculus. In fact the decision was made because we haven't gone over this number. We've seen enormous schools out in the ocean of late, and the idea of catching over the 51,000 number in the Bay was a bit shocking to us, I would say at least through the middle part of the season. It had very little impact in us saying that we were going to go over this, because we felt comfortable from a regulatory standpoint. Does that answer your question?

MR. NOWALSKY: Thank you.

CHAIRMAN MESERVE: A couple of other hands over here, Ritchie White.

MR. WHITE: Thank you Mr. Landry for taking our questions. It seemed what you were saying, if I understand you correctly, is that your

decision to go over the cap was based on your analysis of the stock of menhaden, and because it's robust then you decided that it did no harm to go over that. If Virginia changes their management regime and adopts the 51,000 tons for Chesapeake Bay, will you make the decision based on your sense of the stock, or will you abide by that quota if that becomes the law in Virginia?

MR. LANDRY: If I'm correct, you're saying that if a bill makes its way through the General Assembly and gets adopted at 51,000, and that becomes the new number in the code? We would adhere to that. We're not in the practice of breaking Virginia law. That would be the approach that we would take.

CHAIRMAN MESERVE: Senator Miramant.

SENATOR DAVID MIRAMANT: Mine was a statement in support for the motion that I would like to come back to, not to question the public.

CHAIRMAN MESERVE: Very good. Were there any other questions for Mr. Landry? Tom Fote.

MR. FOTE: You made a statement about having to tie up your boats at the dock and not send them out at that particular time. There are other dates, and you know that the menhaden are out in the ocean right now, so you could have basically gotten the quota you needed just by waiting until the ocean opened up and the storms quieted down. Well that is true with a lot of the fisheries we manage. We make boats tie it up.

I'm thinking, are you ignorant of the fact that we do that to a whole bunch of other fisheries, where groundfish fishermen have to stay at the dock, where fluke fishermen have to stay at the dock, because we decide that certain periods of time. They don't ignore what the Commission puts out there, or the Council's put out there. It's an understanding. Now because you had a loophole in your Virginia law, and it wasn't going to be a criminal act, it seemed to me it

was a little cavalier to say, "Well we can get away with this now."

Especially in the fact, and I think you must have realized this. That's the question I'm asking, you would have gotten all the quota you needed to fill the gaps you needed, by just waiting until when the sea settled down, as most of our boats. Because we don't allow them to fish within three miles of the shore for dragging for fluke and things like it, they have to wait until the ocean calms down. I'm really having a hard time dealing with this the way you're putting it forward to me.

MR. LANDRY: Okay, so the only question I heard in there was if I was ignorant of the idea that other fisheries have to deal with weather. Clearly, we're aware of that. Our fear is that it's an awful lot of risk for the company of our magnitude to take. That is not an indictment of other fisheries. But if we leave dozens of thousands of metric tons on the table, and we get weather in October/November, then we're going to be shy of that coastwide quota.

You guys have apparently been comfortable with the coastwide quota numbers that you guys have given us, and we haven't exceeded that. But we've always kept in our mind that we do have a smaller reserve in the Bay, and how do you manage that versus trying to catch a coastwide quota versus trying to stay within the Bay-wide quota? It was just a risk that we thought we could not take.

CHAIRMAN MESERVE: As long as it's a question, Tom. I want comments about the behavior directed to the Board's discussion, and not asked of Mr. Landry.

MR. FOTE: Okay the question has to do with harvesting smaller fish. It was always Omega's point of view, when there were certain other states that were actually harvesting peanuts, and they were harvesting ones because they didn't have good oil content. Wasn't those fish that you were harvesting not the most profitable fish, because they weren't that big,

the ones in the Bay that you were harvesting at that time, compared to what you're getting in the ocean right now?

MR. LANDRY: I can't comment on the age classes of fish. National Marine Fisheries Service has not yet provided the age classes to us. But I will tell you it's a mixed bag. I mean sometimes you get the bigger, oiler fish in the Bay; sometimes they're out in the ocean.

That has never really been a huge part of our fishing operations, in terms of where to catch and how fat they may be. I mean the hope is that they have plenty of oil content, sure. But you can catch sometimes those age three, because of the highly migratory nature of them. You can catch those age threes, age fours in the Bay from time to time too.

CHAIRMAN MESERVE: Okay, any other questions for Mr. Landry? Lynn Fegley.

MS. FEGLEY: Thank you, Ben for offering your perspective. I heard you say to keep your eye on the prize that is the ecological reference points. I don't know that this is a question. I feel compelled to make everybody aware that we are on the cusp of being able to manage this with some ecological vision of this fishery.

You had said, "Oh the menhaden stock is okay." But just please remember everybody that there is a value judgment component to ecological reference points. We ran a survey to see what we wanted out of our striped bass fishery, to help us how to manage that. We talked about doing homework, to think about what we want out of our fisheries as we develop these ecological reference points.

I would just ask you, Mr. Landry, to keep that in your mind, because we don't want to hear, I don't personally want to hear that ecological reference point isn't set appropriately, because it will be a value judgment. It's going to have that component, but it's going to be a scientifically backed one. I just felt compelled to say that.

CHAIRMAN MESERVE: I'm looking to Ben, if you have anything to say. If not, I'll turn to Ritchie White.

MR. LANDRY: We very much hope that the ecological reference points carry a significant scientific nature to it, and that whatever happens to the Bay cap hopefully can be rolled into ecological reference points, and have some kind of scientific backing. That is our hope as well.

CHAIRMAN MESERVE: Thank you, my mistake. It was actually Rep. Abbott who had his hand up.

MR. DENNIS ABBOTT: Thank you Mr. Landry for being here, and thank you for taking my question. We know you're always here when there is a menhaden meeting, for sure. In your description of the fishery this year you talked about whatever reasons drove you back to Chesapeake Bay to catch fish, because they were near the Bay tunnels, wherever they were. Would I not be wrong in surmising that Omega Protein will go where the fish are when they need them, regardless of the numbers? That is the impression I think I'm left with. Would you not think it would be a dereliction of our duty as Commissioners not to find the Commonwealth of Virginia out of compliance?

MR. LANDRY: I think that to answer your first question. Omega largely does go where the fish are. You know that is within reason of course. We're not going to travel too far up north, but we have a region, particularly in the Mid-Atlantic that our goal is to catch fish first outside of the Bay, because that is the message that this Commission and many stakeholders have provided with us.

Yes, I would say that we do go where the fish are when that is at all possible. I won't comment on your duty as a Commissioner. You guys certainly are free to make the decision that you guys choose to, nor am I here to urge you on a particular place. I would say that if you look at from 2000 to 2009, Omega Protein

caught roughly around 92,000 metric tons in the Chesapeake Bay.

From 2010 through this year with the higher number, we're right at that 51,000 number that you've asked us to stay within. I think while this year is that anomaly, this year is that to use the term perhaps, episodic event, where they are all inside the Bay. The goal of this Commission to keep us at the 51 number has been met over a ten year period. I would just offer that.

CHAIRMAN MESERVE: I'm going to turn to John McMurray for the last question to Mr. Landry, and then look to other public comments.

MR. McMURRAY: I don't actually have a question for Mr. Landry, but I have a question for Kate regarding Mr. Landry's comments.

CHAIRMAN MESERVE: Okay go ahead, please.

MR. McMURRAY: I may have misunderstood, but there seems to have been some inference that ERPs will give us some guidance on how to set a Bay cap, but that's not the case, correct? My understanding is that the development of ERPs was a coastwide process. It is not going to provide us specific information on the Chesapeake Bay. Absent an entirely new stock assessment for the Bay only, we need to set a limit based on other data, which is essentially what we did with the Bay cap. Is that correct?

DR. DREW: That is correct, yes.

CHAIRMAN MESERVE: I'm going to thank you, Ben for coming to the microphone, for your testimony and a bit of a cross examination there, and invite Tom Lilly to be next for the public comment, and at the same time have the Board be thinking about whether or not. I know Senator Miramant had a comment in support of the motion. If anyone else feels the need to make a comment on the motion, we'll come back to the Board shortly. Mr. Lilly, two minutes please.

MR. LILLY: The first thing I would like you to keep in mind is that I mentioned those 2500, 1500 schools rather of menhaden that have been coming down the Atlantic coast. We know that is what's caught. The basic difficulty here is we don't know what is left in the water. We don't have a measure of that. You're allocating to Omega without a measurement of what is left, or what the total is. As a result of that despite what Mr. Landry says, of those 1500 schools, they could be catching 99 percent of them, and none of them are getting to the rockfish. Now there is no question that we have a very good example in the spawning rockfish biomass down by what is it, 40 percent? Now that is hurting the whole Atlantic coast.

Those fish should be in the Bay. We need menhaden to feed those fish. I think the answer possibly to what he had to say is not so much what they did, but what have resulted, and what you could have accomplished if they hadn't done it. If they had not done it, and I haven't heard this mentioned, as of September 1st, what would have happened?

What would have happened as of September 1, if they had not violated the spirit of that regulation? We would have had about 100 or 150 schools of menhaden coming into the Bay per day, to feed our beleaguered Chesapeake Bay fish. That didn't happen, because they violated the spirit of that regulation. That is the thing you were trying to accomplish that got unaccomplished, if that's the word, by what they did.

Right now through all of September and October, menhaden would have been coming into the Bay to feed our beleaguered fish, and that didn't happen. That is what this is all about, what didn't happen that would have for the first time benefited our Chesapeake Bay ecosystem so greatly. It could have made a huge difference, and it's not. I hope that's your answer.

CHAIRMAN MESERVE: Thank you Mr. Lilly. Were there others from the public? I didn't see any hands earlier. If not, we're going to bring the discussion back to the Board. There was one more hand raised from Senator Miramant in favor of the motion.

SENATOR MIRAMANT: I was just reminded, well a few days ago reading the materials and coming across that letter, of what got me interested in preservation, becoming a member of the Marine Resources Committee in Maine, working with the Commissioner in Law Enforcement, and realizing that how we got here with so many of the fisheries was the same attitude that I was reading was that when a fishery doesn't like what somebody is telling them, they just say that it's not based in science, or numerous things.

I expect that of them. Then it became the state that had to try to regulate, and they did a terrible job. That's why this was formed, and why I was so happy to be able to become a member, because as states we get together and it's not subject to the votes coming from your hometown, and some bad rules being passed, as we watch the fisheries dwindle.

I feel like we are on track, but we need to support this Amendment to make sure that the amount of work that goes into this now to protect fisheries, even if we err on the side of overprotecting them for a while. We have more than made up for it in the other direction, but I don't think that is the case here. I just want to make sure everybody knows that. This is an essential Board for doing just the kind of work that this Amendment is stating.

CHAIRMAN MESERVE: We've had a pretty robust discussion in favor of the motion. Does anyone want to speak against the motion? Bob Ballou, is there something that you would like to add to the conversation?

MR. ROBERT BALLOU: Yes thank you, Madame Chair. I strongly support the motion. I'm deeply disappointed in Omega's actions. I

would like to ask regarding the exceedance of the cap. As I read Section 4.3.7 of Amendment 3, there is a clear payback provision in there. Will that be implemented necessarily irrespective of this motion? Is that a separate action that is going to be taking place for 2020?

MR. MAX APPELMAN: Yes, the overage will be deducted from next year's cap of 51,000.

CHAIRMAN MESERVE: I think we're ready for a vote on the motion. Is there a need to **caucus? One minute caucus so I can talk to my delegation. The discussion can come back to the Board. I don't believe the motion needs to be reread; it hasn't changed since it was put up on the Board.**

We do have a request for a roll call vote, but I'll try the easy way first and ask if there is any opposition to the motion or abstentions, two abstentions from the Services, from U.S. Fish and Wildlife Service and National Marine Fisheries Service, and no further opposition. The motion carries, and I will assume, Bob that this will come before the Policy Board on Thursday.

EXECUTIVE DIRECTOR BEAL: Yes, there is a placeholder agenda item on the Policy Board schedule for Thursday morning.

ADJOURNMENT

CHAIRMAN MESERVE: Is there any other business to come before the Board this afternoon? Seeing none; motion to adjourn. So moved, we are adjourned, thank you.

(Whereupon the meeting adjourned at 2:25 o'clock a.m. on October 27, 2019)